

**REPORT OF THE NEW JERSEY SENATE  
JUDICIARY COMMITTEE'S  
INVESTIGATION OF RACIAL PROFILING  
AND THE NEW JERSEY STATE POLICE**

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**June 11, 2001**

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## FOREWORD

In October 2000, the Department of Law and Public Safety released over 90,000 pages of documentation and Governor Whitman's office released approximately 3,500 pages of documentation concerning racial profiling. Copies of the documents are available to the public in a repository located at the Hughes Justice Complex. Each document was assigned a category and numbered within that category. The categories are as follows:

AL	Activity Logs
CO	Commercial Document
D	Troop D Audit
DOJ	Department of Justice
GC	Government Correspondence
IA	Internal Affairs
OAG	Office of the Attorney General
OR	Other Relevant Documents
OTG	Office of the Governor
SO	Standard Operating Procedure
ST	Statistics
T	Training

Thus, the first document produced in the Activity Logs category was marked AL 000001, the second document produced in the Activity Logs category was marked AL 000002, etc. Special counsel to the Senate Judiciary Committee and counsel to the Senate Minority reviewed these documents.

From January through March 2001, special counsel to the Senate Judiciary Committee and counsel to the Senate Minority conducted joint interviews and depositions of witnesses. Citations to transcripts of the interviews and depositions will be referred to herein by the witness' name and page number (e.g., "Rover at \_\_\_"). Documents were marked as exhibits at

the depositions and interviews of witnesses. Those documents were numbered according to the first letter of the deponent's last name and the exhibit number (i.e., G-1, G-2, etc.).

The Senate Judiciary Committee held hearings on March 19, 20, 27, and 28, and April 2, 3, 9, 10 and 18, 2001 (the "Hearings"). Citations to hearing transcripts will be referred to herein by the hearing date and page number (e.g., "March 19 at \_\_"). Additional documents were also marked during the hearings before the Senate Judiciary Committee. Those documents were marked SJC 1 – SJC 14.

Copies of all deposition transcripts and transcripts of the hearings are posted on the Legislature's Internet site (<http://www.njleg.state.nj.us>).

## **ACKNOWLEDGEMENTS**

The New Jersey Senate Judiciary Committee (the "Committee") gratefully acknowledges the Office of Legislative Services ("OLS"), which provided significant and invaluable assistance to special counsel and the Committee. Many individuals offered their assistance and are too numerous to mention. However, certain individuals played key roles in assisting the investigation.

Albert Porroni, Esq., Executive Director of OLS, wore many hats. He is a brilliant lawyer, scholar, and administrator. Mr. Porroni's exceptional insight, legal acumen, and dedication to the Committee's efforts catalyzed and indeed helped sustain the investigation.

Mr. Porroni's efforts were complimented by the efforts of James R. Adolf, Esq., Victoria P. Lawler, Esq., and John J. Tumulty, Esq. Messrs. Adolf and Tumulty and Ms. Lawler provided significant legal and administrative assistance to the Committee, special counsel and counsel to the Senate Minority. They were a pleasure to work with.

## INTRODUCTION

In October 2000, Senator William L. Gormley, Chairman of the Committee, announced that the Committee would conduct a review of racial profiling, the New Jersey State Police ("NJSP"), and the timing of the indictments in the Hogan and Kenna criminal matters.<sup>1</sup> Michael Chertoff, Esq., a partner at Latham & Watkins and former U.S. Attorney, was appointed Special Counsel to the Committee. In several criminal matters involving defense claims of selective prosecution, defense attorneys won discovery motions in 2000 requiring the State to release internal documents concerning racial profiling. In September 2000, Attorney General John Farmer announced that he would waive the attorney client and deliberative process privileges and would voluntarily make historical materials available to the general public through a central repository. The Committee served the Department of Law and Public Safety ("LPS"), Office of the Attorney General ("OAG") and Governor Whitman's office with several written requests for information and documentation.<sup>2</sup> In response, the LPS released over 90,000 pages of documentation and Governor Whitman's office released approximately 3,500 pages of documentation. The LPS' production was supplemented several times in response to additional requests for information by the Committee. The LPS and Governor Whitman also identified custodians of the record. In total, approximately 100,000 pages of documentation were reviewed in connection with the Committee's investigation. The initial document release by the OAG covered the period ending April 20, 1999, the date of the Interim Report of the State Police

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<sup>1</sup> On April 23, 1998, Troopers James Kenna and John Hogan fired on four men in a van they stopped on the New Jersey Turnpike. They were subsequently indicted by two separate State grand juries. One indictment related to the troopers' actions on April 23, the other indictment concerned charges that the troopers had filed a number of reports that inaccurately described the race of motorists they stopped on the New Jersey Turnpike.

<sup>2</sup> The LPS is comprised of numerous Divisions, including the NJSP and the Division of Criminal Justice ("CJ"). The Attorney General and his office, the OAG, oversees the operations of the LPS.

Review Team Regarding Allegations of Racial Profiling (the "Interim Report"). At the Committee's request, the document disclosure period was extended to May 15, 1999, the date of then Attorney General Peter G. Verniero's confirmation to the State Supreme Court.

Mr. Chertoff and his legal team of five lawyers, led by Scott Louis Weber, Esq., reviewed and coded every document over a two-month period.<sup>3</sup> The results of the document review were made available to the Committee and counsel to the Senate Minority, Jo Astrid Glading, Esq., Douglas A. Wheeler, Esq., Leon J. Sokol, Esq., and Stephen M. Holden, Esq. As a result of the document review, special counsel and counsel to the Senate Minority identified 35 witnesses. Further, counsel determined that 29 of the witnesses would testify in depositions and that the remaining six witnesses, significant for historical purposes, would simply be interviewed. The 35 witnesses were: W. Cary Edwards, Esq.; Hon. James J. Ciancia; First Assistant Prosecutor Terrence P. Farley; Chief Justice Deborah T. Poritz; Commissioner David C. Hesper; Director of the Division of Law, Jeffrey J. Miller; NJSP Lieutenant Colonel Valcocean Littles; NJSP Captain Ernest Volkman; Assistant Attorney General Alfred E. Ramey, Jr.; Hon. Frederick P. DeVesa; NJSP Sergeant First Class Thomas Gilbert; Associate Justice Jaynee LaVecchia; NJSP Major Vincent Modarelli; Assistant Attorney General Anne C. Paskow; NJSP Captain Richard Touw; NJSP Lieutenant Daniel J. Cosgrove; NJSP Captain David E. Blaker; NJSP Major Joseph Brennan; NJSP Lieutenant Colonel Michael Fedorko; NJSP Lieutenant Colonel Robert Dunlop; NJSP Lieutenant Colonel Lanny Roberson; NJSP Detective Sergeant Steven Serrao; Assistant Attorney General John Fahy; Assistant Attorney General George Rover; NJSP Colonel Carl Williams; NJSP Colonel Justin Dintino; Christine Boyle; Robert J. DelTufo, Esq.; NJSP

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<sup>3</sup> The Latham & Watkins team consisted of Mr. Chertoff, Mr. Weber, Eric Jaso, Esq., Mark H. Goldberg, Esq., Elisa Lee, Esq., Kalama M. Lui-Kwan, Esq., and Suzanne M. Slavin.

Lieutenant Albert Sacchetti; Hon. Alexander P. Waugh, Jr.; First Assistant Attorney General Paul Zoubek; Assistant Attorney General Debra L. Stone; Assistant Attorney General Ronald Susswein; Senior Deputy Attorney General Sally Ann Fields; and Associate Justice Peter G. Verniero.<sup>4</sup>

From January 30 through March 1, 2001, special counsel and counsel to the Senate Minority conducted joint interviews and depositions of the witnesses. All interviews and depositions were open to members of the Committee. The interviews and depositions took approximately 150 hours and resulted in over 4,000 pages of transcript.

At the suggestion of special counsel, the inquiry into the Hogan and Kenna cases was focused upon the timing and public release of the indictments so as to not interfere with the pending criminal cases. The Committee did not investigate the substance of the charges or sufficiency of the evidence in either criminal case.

On March 8, 2001, the Committee announced that its investigation into the issue of racial profiling would include the following:

- (1) an investigation into any organizational and cultural issues in the LPS and the NJSP that may have developed, ignored, concealed or fostered racial profiling;
- (2) a review of the accuracy and completeness of any evidence presented to the Committee in 1999 concerning racial profiling, and the truthfulness and completeness of any testimony presented to the Committee in 1999 concerning racial profiling;
- (3) a review of actions concerning racial profiling taken by the NJSP and the LPS following the ruling by Judge Francis in State v. Soto, 324 N.J. Super. 66 (Law Div.

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<sup>4</sup> Associate Justice Peter G. Verneiro declined the Committee's request for a pre-hearing interview or deposition and responded that would make himself available to testify only during the Committee's hearings.

1996), including any statistical analyses and the dissemination or concealment of that statistical information;

(4) an examination of the reasonableness of the State's actions in the appeal and subsequent withdrawal of the State's appeal in Soto;

(5) a review of the State's actions, following the Soto ruling, in discovery motions and evidence suppression motions brought by defendants alleging racial profiling, up to and including the State's decision to release 95,000 pages of documents, and including its compliance with disclosure and discovery requirements;

(6) a review of activities within the LPS and the NJSP, and the actions by individual State officials, concerning the investigation into racial profiling that was initiated in late 1996 by the United States Department of Justice Civil Rights Division ("DOJ"), including any statistical analyses undertaken by the NJSP or the LPS and the dissemination or concealment of such statistical information;

(7) a review of any activities within the LPS and the NJSP concerning allegations of racial profiling or racial discrimination involving the NJSP;

(8) a review of the circumstances surrounding the timing and public release of the indictments of Troopers Hogan and Kenna;

(9) a review of activities within the NJSP and the LPS concerning the State Police Review Team and the development of the Interim Report and the Final Report of the State Police Review Team, dated July 2, 1999 (the "Final Report");

(10) a review of circumstances surrounding the resignation of Col. Carl Williams; and

(11) an examination of the circumstances surrounding the Consent Decree entered into with the DOJ on December 30, 1999, the content of the Consent Decree, and the status of those and other reforms.

The Committee held public hearings on March 19, 20, 27, and 28, and April 2, 3, 9, 10 and 18, 2001 (the "Hearings"). The Committee heard testimony from witnesses identified during the document review, depositions and interviews. In addition, the Committee announced publicly that it would entertain testimony from members of the public and other interested parties during the hearings and it did so. The following witnesses testified at the Hearings: NJSP Sergeant First Class Thomas Gilbert; NJSP Captain Richard Touw; NJSP Captain David E. Blaker; NJSP Major Joseph Brennan; NJSP Lieutenant Colonel Michael Fedorko; NJSP Lieutenant Colonel Robert Dunlop; Assistant Attorney General John Fahy; Assistant Attorney General George Rover; NJSP Colonel Carl Williams; NJSP Lieutenant Albert Sacchetti; William Buckman, Esq.; Hon. Alexander P. Waugh, Jr.; First Assistant Attorney General Paul Zoubek; David Hespe, Esq.; Assistant Attorney General Debra L. Stone; Assistant Attorney General Ronald Susswein; Associate Justice Peter G. Verniero; Attorney General John J. Farmer, Jr.; NJSP Colonel Carson Dunbar; NJSP Sergeant Vincent Bellaran; Ivan Foster; Laila Maher, Esq.; Felix Morka, Esq.; Ronald Thompson, Esq.; Regina Waynes Joseph, Esq.; Assemblyman Joseph Charles, Jr.; Senator Wayne Bryant; Assemblywoman Nia Gill; Assemblyman LeRoy Jones; Assemblywoman Nellie Pou; NJSP Trooper Emblez Longoria; NJSP Sergeant First Class Robert Watkins; NJSP Detective Sergeant First Class Joseph Soulias; Renee Steinhagen, Esq.; NJSP Sergeant Yusuf El-Amin; NJSP Trooper Gregory Sanders; NJSP Trooper Mark Stephens; Assistant Attorney General Martin Cronin; Police Chief George Pugh; NJSP Detective Andre

Lopez; NJSP Lieutenant Carmelo V. Huertas; NJSP Trooper Ed Lennon; Professor James Fyfe;  
NJSP Captain David Leonardis; and NJSP Sergeant James Fennessy.

## **FACTS**

The Committee's discovery process occurred in three phases. The first phase consisted of the document review, interviews and depositions, and testimony during the Hearings from individuals with relevant information revealed during the interviews and depositions.<sup>5</sup> The second phase consisted of testimony from individuals who requested to testify at the Hearings. The third phase consisted of testimony from individuals who testified at the Hearings about reforms and the NJSP's and the LPS' ongoing efforts to address racial profiling. Accordingly, the Committee's factual recitation is presented in three sections: (1) Evidence From The Document Release And Attendant Witness Testimony; (2) Evidence From Witnesses Who Requested To Testify At The Hearings; and (3) Evidence From Witnesses Concerning Reforms And The NJSP's And The OAG's Ongoing Efforts To Address Racial Profiling.

### **1. Evidence From The Document Release And Attendant Witness Testimony**

#### **A. Pre-Soto Developments**

In 1975, the NJSP had 2,400 employees, which included 23 African American officers, five Hispanic officers and one female officer among 1,765 sworn personnel, and 26 African American individuals and one Hispanic among 600 civilian employees. The DOJ brought a lawsuit against the NJSP pursuant to, among other things, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Act of 1972, 42 U.S.C. 2000e *et seq.* The lawsuit alleged race and gender discrimination by the NJSP in its recruiting and hiring practices. The

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<sup>5</sup> Copies of the documents the Committee reviewed are available to the public in a repository at the LPS. However, the Committee determined that certain documents contained particularly relevant information; and, as such, those documents were marked as Exhibits at the Hearings. Copies of the Hearing Exhibits and other relevant documents are contained in chronological order in the Appendix to this Report. The Appendix is available for inspection by the public at the Office of Legislative Services Library.

State entered into a consent decree on October 7, 1975. That consent decree was ultimately dissolved on October 19, 1992, except that by agreement, the DOJ continued to monitor gender representation in the next three NJSP classes.

On April 23, 1987, the Comprehensive Drug Reform Act of 1987, N.J.S.A. 2C:35-1 et seq., was signed into law. The Act provides uniform sentencing guidelines for drug offenses and declares that, among other things, "New Jersey continues to experience an unacceptably high rate of drugrelated crime, and continues to serve as a conduit for the illegal trafficking of drugs to and from other jurisdictions. For this reason, enhanced and coordinated efforts designed specifically to curtail drugrelated offenses will lead inexorably to a reduction in the rate of crime generally, and is therefore decidedly in the public interest." See N.J.S.A. 2C:35-1.1. Thereafter, then Attorney General ("AG") W. Cary Edwards issued the "Statewide Action Plan for Narcotics Enforcement" ("Action Plan"), which directed "that the enforcement of our criminal drug laws shall be the highest priority law enforcement activity." This plan called for the development and use of "offender profiles" and for training of the "most efficient techniques for identifying drug couriers." (Action Plan Directives 6.4 and 6.5)

From February through September 1988, an internal debate occurred at the OAG regarding the use of "drug-courier profiles." Assistant Attorney General ("AAG") Debra Stone wrote that "a stop and/or search of a suspect based solely on that person fitting a 'drug courier profile' is unconstitutional," while Deputy Attorney General ("DAG") Meredith Cote noted that profile characteristics standing alone "provide only arbitrary, generalized and unsupportable suspicion and thus, are constitutionally impermissible as classifying factors." AAG Ronald Susswein disagreed, however, stating that "the limited use of drug courier profiles...does not

offend the Constitution, but is an extremely prudent and necessary use of available law enforcement resources.” To conclude otherwise, AAG Susswein opined, would result in a “fundamental reversal of our narcotics enforcement and patrol policy.” AAG Susswein warned, however, that a profile based solely on race was impermissible. Ultimately, the internal debate about the permissibility of drug courier profiles had little, if any, effect on the Action Plan's call for the use of drug courier profiles. Indeed, Directives 6.4 and 6.5 were not implemented.

The current racial profiling controversy had its beginnings in 1989, when WWOR-TV aired a series of news reports that examined allegations by minorities that they were being targeted by the NJSP on the New Jersey Turnpike ("Turnpike"). This series, "Without Just Cause," investigated complaints of profiling from the NAACP and ACLU. Then NJSP Col. Clinton Pagano was interviewed for the series and stated that, among other things, "[violating rights of motorists was] of serious concern [to him], but nowhere near the concern that I think we have got to look to in trying to correct some of the problems we find with the criminal element in this State" and "the bottom line is that those stops were not made on the basis of race *alone*." (emphasis added)

In early 1990, then NJSP Col. Justin Dintino and then AG Robert DeLufo signaled plans to change NJSP policies in order to reinforce the protection of the Constitutional rights of motorists, even if it meant a drop in drug-related statistics. Shortly thereafter, on April 6, 1990, a consolidated motion to suppress evidence was filed by 19 defendants in the Soto case. The defendants in Soto claimed they were the victims of selective enforcement of traffic laws.

On May 31, 1990, the NJSP adopted a new Standard Operating Procedure, SOP F-55, which prohibited troopers from using personal characteristics such as race, age, sex, or style

of dress as facts relevant to establish reasonable suspicion, unless the trooper could identify how the characteristic was directly related to a criminal activity. SOP F-55 also required a review of all consent searches by field supervisors.

Soto was not the only racial profiling case in the early 1990s. In a Warren County case, State v. Kennedy, defendants won a victory in 1991 when the Appellate Division ruled that their statistical survey was adequate to establish a colorable basis for their claim that they were stopped under an officially sanctioned policy of targeting black motorists. But the Kennedy defendants ultimately lost in 1996, when the Appellate Division affirmed a ruling that they had failed to prove selective enforcement based on race.

In Middlesex County, Judge Figarotta ruled in 1991 that the defendants in State v. Durant made a colorable basis showing of selective enforcement based on statistics showing there were black occupants in the car in 87.7% of indictable arrests on the Turnpike during a two-year period. But in 1993, Judge Figarotta ruled that the defendants failed to prove a barracks-wide pattern of selective enforcement. The Court ruled, however, that for up to 20 officers, there was enough proof to warrant a review of the records of those officers. As a result, less than three months later, criminal charges were dismissed against 618 drivers stopped on the Turnpike. The cases were dismissed at the request of Middlesex County Prosecutor Robert Gluck, without input from the OAG. Of the cases dismissed, 308 were among those put on hold while the constitutional challenge in Durant was resolved.

By memo dated August 20, 1993, DAG John Fahy sounded one of the earliest warnings on the racial profiling issue. DAG Fahy, who later litigated the Soto case for the State, provided a briefing for then Executive Assistant Attorney General ("EAAG") Alexander Waugh,

Jr. on the racial profiling issue for EAAG Waugh's use at a meeting with Troop Commanders. DAG Fahy updated EAAG Waugh on the status of various cases around the State, discussed the legal standards in such cases, and critiqued the defense statistics that were presented in other cases. DAG Fahy warned:

In the future, some courts might rely more heavily on statistics and find a de facto pattern of discrimination resulting in selective prosecution based upon statistical evidence. The question is what percentage will be tolerated by the Court with regard to disparate figures for arrests of minorities and non-minorities. At this point no one knows the answer to that question. Our office continues to argue that statistics alone should not be used to determine whether the actions of a particular officer in a particular case are appropriate. The State Police must recognize, however, that some Troopers do have very high percentages of arrests of minorities. This is not to say that any particular Trooper has engaged in racial profiling, but it could result in court inquiries into the actions of the officer and someday lead to a finding of racial profiling by that Trooper.... In defending against racial profiling allegations, there appears to be a need to generate better stop statistics....

(F-3)

**B. The Soto Suppression Hearings And The Decision**

On November 28, 1994, suppression hearings commenced in Soto. Hearings were conducted on 72 days and ended on May 25, 1995. During the hearings, the defense presented testimony from two former troopers who testified about being coached on racial profiling practices. NJSP training materials that depicted minorities in a stereotypical fashion were introduced into evidence. During discovery, each side created a database of all stops and arrests by the NJSP between Turnpike Exits 1 and 7A out of the Moorestown Station for thirty-five randomly selected days between April 1988 and May 1991.

The defense also conducted traffic surveys to help make its case and it presented evidence that 13.5% of the vehicles traveling on the southern end of the Turnpike had a black

occupant, and 15% of those cars speeding on the Turnpike had a black occupant. The defense then presented evidence that of the stops in which race was identified, 46% of the stops between Exits 1 and 3 of the Turnpike involved blacks. The defense also presented evidence that 35.6% of the stops between Exits 1 and 7A of the Turnpike involved blacks.

On March 4, 1996, the Honorable Robert E. Francis, J.S.C., issued a decision in Soto. Judge Francis held that the defense's presentation of statistical evidence and testimony of NJSP officers and ex-troopers established that the NJSP engaged in "de facto" racial profiling by stopping black and Hispanic motorists along the Turnpike from 1988 to 1991. As a result, Judge Francis ordered the suppression of all contraband and evidence seized in those cases.

Judge Francis agreed with the defense expert, who concluded that it was highly unlikely that the wide disparity between the rates at which blacks and whites were being stopped on the Turnpike could have occurred randomly. Judge Francis stated that "[k]ey corroboration for finding the State Police hierarchy allowed and tolerated discrimination came from Colonel Pagano." Soto, 324 N.J. Super. at 81. Judge Francis was highly critical of Col. Pagano, and cited Pagano's remarks condemning critics of the NJSP, his firm adherence to drug interdiction practices in the face of claims of profiling, and his failure to investigate whether there were discriminatory practices by the NJSP. See Soto, 324 N.J. Super. at 81–83. Judge Francis held:

The statistical disparities and standard deviations revealed are indeed stark. The discretion devolved upon general road troopers to stop any car they want as long as Title 39 is used evinces a selection process that is susceptible to abuse. The utter failure of the State Police hierarchy to monitor and control a crackdown program like DITU or investigate the many claims of institutional discrimination manifests its indifference if not acceptance. Against all this, the State submits only denials and the conjecture and flawed studies of [its expert witness].

Soto, 324 N.J. Super. at 84-85. Thus DAG Fahy's earlier predictions in his memo to EAAG Waugh were borne out in Soto. More important, the Soto ruling forever changed the legal terrain of the racial profiling issue.

### C. The Response To Soto

After losing the Soto case, DAG Fahy wrote a memo to EAAG Waugh on March 12, 1996 that analyzed the ruling and the viability of an appeal. DAG Fahy said that the case would be difficult to overturn on appeal because of the strong factual findings made against the NJSP. He criticized the Court for relying on the Public Defender's statistics regarding the population of the Turnpike, and for reaching its conclusions despite the fact that race was not recorded in two thirds of the stops examined. DAG Fahy also said it could be argued that the Court improperly shifted the burden to the State to explain the reason for the disparate rate at which blacks are stopped. This final argument later became central to the State's justification for maintaining the Soto appeal for three years.

Because it was an interlocutory order, the State had only 15 days from when Judge Francis signed the order on April 17, 1996 to decide whether to seek an appeal. In consultation with several staff members, then AG Deborah Poritz decided to appeal. AAG Deborah Stone testified in her deposition that she and DAG Ann Paskow had reservations about the appeal because the case "was a mess factually," particularly Col. Pagano's testimony. But she said they eventually agreed the case could be appealed on narrow legal issues. (Stone at 29-32) AAG Stone also testified that DAG Paskow asked whether they could be sure the NJSP were not profiling, and AG Poritz said she had asked the NJSP and they assured her they were not. (Stone

at 30) DAG Fahy said it was his understanding that the decision to appeal was firm. (Fahy at 129)<sup>6</sup>

Within a few weeks of the Soto ruling, an ad hoc committee was established that consisted of representatives of the NJSP and OAG to develop responses to problems raised by the ruling. This committee was chaired by NJSP Lt. Col. Val Littles, and included Capt. Joseph Brennan, Capt. Richard Touw, Sgt. David Blaker, then Det. Reilly, Det. Thomas Gilbert,<sup>7</sup> DAG Fahy, and DAG Susswein (the "Littles Committee"). The work of this committee was memorialized in memos written by SFC Gilbert to then Col. Carl Williams. The memos indicate that there was a cooperative exchange of information regarding racial profiling between the NJSP and OAG following the Soto ruling. The Littles Committee met on March 25, April 12, May 16, and October 4, 1996.

During the March 25, 1996 meeting the participants discussed the high rate at which troopers were not following SOP F-3, a procedure that required troopers to call in a description of the race of the driver and occupants of all stopped vehicles. This failure meant that the statistical database in Soto excluded 62.6% of all stops for the survey period. The participants agreed that compliance with SOP F-3 needed to be emphasized. The participants also discussed a need for improved training, and plans were laid to initiate training on the Soto ruling, as well as other search and seizure issues.

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<sup>6</sup> In her interview, Chief Justice Poritz advised that during her transition from AG to Chief Justice she briefed then AG Peter Verniero about Soto and racial profiling and "flagged" these issues for him.

<sup>7</sup> While on the Littles Committee Thomas Gilbert was a Detective. However, he was subsequently promoted to Sergeant, then Sergeant First Class; and, as such, will be hereinafter referred to as "SFC Gilbert." While on the Littles Committee David Blaker was a Sergeant. However, he was subsequently promoted to Captain; and, as such, will be hereinafter referred to as "Capt. Blaker."

The meeting participants also discussed the need to improve the collection of raw data by adding information about race to the trooper's patrol chart, rather than relying upon radio logs, and extending the retention of records. Although there was general agreement on this point, this change was not adopted until more than two years later, in October 1998, after the Hogan and Kenna shooting.

The participants discussed Judge Francis' criticism of the NJSP's Internal Affairs Bureau ("IAB"), and that Capt. Touw had recently started inspection audits to "examine patrol/enforcement patterns at specific duty stations." (G-1) This is significant because it indicates early steps were taken to gather statistical data about the racial composition of traffic stops, and that there was early knowledge by the OAG of those steps. Indeed, DAG Fahy testified that he did not recall details about inspection audits, but he had told his superiors that he believed "further information need[ed] to be obtained regarding the racial makeup of State Police stops." (Fahy p. 131) In an April 19, 1996 memo to then CJ Director Terrence Farley, DAG Fahy reported that Capt. Touw had developed a monitoring program that was being experimented with. Moreover, in a December 5, 1996 memo to EAAG Waugh, DAG Fahy outlined the "proactive response" by the NJSP that followed Soto "with encouragement from our office." (F-13) He mentioned that the IAB had established an auditing procedure for dealing with selective enforcement complaints that allowed analysis of a pattern of discriminatory enforcement by an individual trooper or unit of troopers.

The Littles Committee met again on April 12, 1996. Among the issues discussed at the meeting was the need to review the activities of each trooper involved in the Soto case to determine potential negative issues, and it was determined that if the review uncovered substantial

problems, the decision to appeal would be reevaluated. There also was a discussion about other profiling cases that appeared since the Soto ruling, the fact that it was unlikely that they would be dismissed on summary judgment, and the likelihood that there would be numerous attempts to secure NJSP records and statistics. DAG Susswein testified that at this meeting he noted that "the times had now changed" and that there was a "chink in the armor." (April 9 at 24–25) DAG Susswein suggested that the OAG and the NJSP should no longer seek to defend their old actions and statistics, but instead should operate on a forward looking basis to show that steps were being taken to address racial profiling. The group also discussed a Hunterdon County profiling case, and the fact that one of the troopers in that case had a lengthy IAB file.

After that meeting, DAG Fahy sent a memo to CJ Director Terrence Farley on April 19, 1996, that reported on the status of selective prosecution issues and the plan to "buy some time" in the Hunterdon case while "other efforts to resolve this matter which we discussed are pursued." (F-10) He also reported that the NJSP was independently looking at the records in the affected counties to assess whether any problem existed, and that he would be told of their findings so they could be considered in making tactical decisions regarding how to proceed in each county. In a May 17, 1996 memo to then First Assistant Attorney General ("FAAG") James Ciancia, DAG Fahy reported that he and Capt. Touw were going to meet with then Hunterdon Prosecutor Sharon Ransavage the following Monday to give her statistical information about the arresting officers in two Hunterdon cases. DAG Fahy noted that the Hunterdon Prosecutor was uncomfortable with pleading these cases to reduced charges because they were first degree drug charges. DAG Fahy testified that he had discussed with FAAG Ciancia the possible need to encourage prosecutors to downgrade cases, and that such a discussion took place with the

Hunterdon Prosecutor. (Fahy at 156-163) Ultimately, it was decided that instead of litigating those cases, they would be dismissed or downgraded from first-degree felony offenses.

In a June 11, 1996 memo, DAG Fahy asked Capt. Touw to conduct a review of Troopers Hogan and Goldberg to determine the validity of a suppression motion that was brought in Mercer County. DAG Fahy also advised Capt. Touw that the discovery order was only preliminary and was "part of a broader plan" in which the NJSP, the OAG, and the Public Defender were attempting to resolve alleged selective enforcement practices statewide. (Fahy at 170-172)

DAGs Fahy and Susswein attended another meeting of the Littles Committee on May 16, 1996. SFC Gilbert reported that at this meeting the participants again discussed improving compliance with SOP F-3. He also reported that despite grumbling among some personnel, the Division also had been given "clear notice from the courts" that the ability to collect stop data exists, and the Division had been "negligent in collecting and analyzing this data" and would be subject to additional court instructions to produce it. (G-6)

SFC Gilbert also reported that the NJSP Records and Identification Section prepared an analysis of State troopers involved in the Soto appeal. DAG Fahy testified that he did not recall this analysis being discussed at the May 16 meeting, or his ever being provided with the analysis. (Fahy at 168-169) SFC Gilbert, however, testified that he believed he shared the analysis with DAG Fahy at the May 16 meeting. (Gilbert day 1 at 139-145) The results of this analysis were later referenced in an undated memo from SFC Gilbert to then Col. Williams, which SFC Gilbert said he wrote in February 1997. Gilbert reported that in the three-year period from June 1988 through May 1991, the minority arrest rates for troopers involved in the Soto appeal

were: 63%, 80%, 79%, 84%, 100%, 90%, 84% and 92%. (G-13) The early knowledge of these high minority arrest rates raises questions about the wisdom of maintaining the Soto appeal for nearly another three years, when the individual cases may not have been defensible if the State won its appeal and the cases were remanded. As noted above, there was discussion at the April 12, 1996 meeting that if the review of the records of the troopers in Soto uncovered problems, the appeal would be reevaluated.

October 4, 1996 was apparently the last time the Littles Committee met and DAGs Fahy and Susswein did not participate in the meeting. By memo dated October 11, 1996 detailing the events of this meeting, SFC Gilbert updated Col. Williams on the development of a four-hour search and seizure training program, which ultimately never materialized. SFC Gilbert reported to Col. Williams that the documents show "the audit process has proven itself" and will help NJSP deflect future criticism. SFC Gilbert also reported a marked improvement in compliance with SOP F-3, which required calling in the race of motorists during traffic stops. SFC Gilbert also pointed out Capt. Touw's recommendation that the patrol log be changed to include race. (G-7b)

SFC Gilbert attached various documents to his October 11 memo. Included were: IAB documents concerning an investigation into complaints by minority troopers at Moorestown that white troopers were profiling; and a document indicating a 90.2% compliance rate with SOP F-3. Apparently also included was a memo from Capt. Touw that reported that the percentage of minorities stopped by both minority and non-minority troopers was "dramatically higher" than reported by the expert in Soto. A subsequent action memo by Col. Williams, however, rejected the proposal to purchase search and seizure materials for stations, and rejected Capt. Touw's proposal to record racial tabulations of trooper stops on periodic trooper evaluation reports.

**D. The DOJ Investigation**

On November 7, 1996, EAAG Waugh received a call from Steven Rosenbaum, Esq. at the DOJ. Rosenbaum informed EAAG Waugh that the DOJ was interested in looking into the allegations of Soto to determine if the complained-of behavior was still ongoing. EAAG Waugh informed then AG Peter Verniero about the DOJ investigation. AG Verniero asked EAAG Waugh to see if the DOJ would defer sending a letter about the investigation to allow for AG Verniero to meet with representatives of the DOJ. The DOJ agreed to defer sending the letter and a meeting was scheduled for December 12, 1996.

Before the December 12 meeting, DAG Fahy wrote a memo to EAAG Waugh summarizing the racial profiling litigation history, and detailing the "proactive response" by the NJSP, including the work he and DAG Susswein undertook with the Littles Committee, and the establishment of an auditing procedure for dealing with selective enforcement complaints. (F-13) Prior to the meeting AG Verniero advised EAAG Waugh that he had an interest in having the DOJ's activities called something other than an investigation.

DAG Fahy and EAAG Waugh accompanied AG Verniero to the December 12 meeting with DOJ officials in Washington. The DOJ provided a sample document request detailing the type of information the DOJ might ask the OAG to produce. AG Verniero made it clear that the State would cooperate with the DOJ review, and he was concerned that it not be called an "investigation." Indeed, AG Verniero requested that the DOJ refer to its activities as an "inquiry" and not an "investigation." AG Verniero advised the DOJ that he was not inclined to enter into a consent decree, there was discussion about the Soto ruling being defective because a question of the accuracy of the survey and the legal issue concerning the shifting of the burden,

and there was some discussion about how voluminous the DOJ sample document request was. A suggestion was made that the DOJ should limit its inquiry to the southern part of the Turnpike, at least initially. (Waugh at 97) When they returned from the meeting with the DOJ, EAAG Waugh asked DAG Fahy to review the document request. DAG Fahy reported back that most of the records could be provided, but that it was an extremely broad request that would require unreasonable amounts of documents.

Another meeting took place on December 24, 1996 that was attended by AG Verniero, EAAG Waugh, DAG Fahy, Col. Williams and SFC Gilbert. The DOJ investigation was discussed and a copy of the DOJ's sample document request was provided to Col. Williams and SFC Gilbert. Though not at the meeting, in early January DAG George Rover was identified as the person who would be the liaison between the DOJ and the OAG, as well as the liaison between the NJSP and the OAG. Following the meeting, EAAG Waugh asked DAG Fahy to draft a letter to respond to the DOJ.

In DAG Fahy's January 3, 1997 draft letter to the DOJ for AG Verniero's signature, Fahy criticized the traffic survey that was conducted in Soto and was the basis for the conclusion that minorities comprised 15% of speeders on the Turnpike. DAG Fahy then wrote:

I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violator survey. **The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike patrolled by troopers assigned to the Moorestown Station remains near the level reported in the Soto case. This figure is also higher than that reported at other State Police stations in this State, including those along the Turnpike.** It is difficult for me to believe that despite a clear official policy prohibiting racial profiling and repeated declarations requiring adherence to this policy, that troopers assigned to one station would continue to reject it. This is particularly true since troopers are routinely reassigned to a variety

of duties and the personnel stationed at Moorestown including supervisors is fluid. Perhaps the answer lies in factors which can be accounted for in a professional and unbiased violator survey.

Therefore, I request your patience as New Jersey undertakes a costly and ambitious study of the traffic and violator patterns on the southern portion of the Turnpike. (Emphasis added)

(F-26) This passage is significant because it demonstrates early knowledge that there was ongoing statistical analysis being conducted by the NJSP, that the percentages of minorities being stopped had not changed in the years since the Soto analysis was conducted, and that the numbers suggested a problem and required further analysis. DAG Fahy testified that he based this representation on reports he had heard that the numbers were running about the same as in Soto. (Fahy at 290-293) This entire passage, however, was ultimately deleted from the letter in changes made by AG Verniero, and was replaced with the following sentence: "My office is in the process of developing a trustworthy violator survey." (March 27 at 130-131) Despite this representation in the letter to the DOJ, a violator survey was not conducted during AG Verniero's tenure.

In January 1997, DAG Rover began his work in response to the DOJ investigation. SFC Gilbert also began his inquiry into the racial profiling issue by gathering and analyzing NJSP documents that were also responsive to the DOJ inquiry. DAG Rover and SFC Gilbert had regular communications and they worked closely with each other in connection with the DOJ inquiry.

In February 1997, SFC Gilbert wrote a memo to Col. Williams (the "Gilbert Memo"). This undated memo played an important role in the Committee's investigation. In the Gilbert Memo, SFC Gilbert reported that he conducted some analysis "[i]n order to get a handle on what we are facing" and that "[t]he numbers are not good." (G-13) SFC Gilbert pointed out

that the percentage of consent searches<sup>8</sup> involving minorities was higher than that of Maryland, and that the consent numbers in Maryland recently forced the Maryland State Police to enter into a consent decree with the DOJ.

SFC Gilbert noted that the NJSP numbers indicated that 89% of consent searches by the Moorestown barracks and 94% of consent searches by the Cranbury barracks involved minorities. (G-13) By comparison, 80.3% of Maryland State Police searches were of minorities. SFC Gilbert also noted that because of Soto, an investigation of Illinois police, and the Maryland settlement, "[t]he Justice Department has a very good understanding of how we operate and what type of numbers they can get their hands on to prove their position." (G-13) He made recommendations for how to forestall an unfavorable settlement with DOJ by taking proactive steps. Ultimately, SFC Gilbert concluded that "we are in a very bad spot." (G-13)

The Gilbert Memo is the first specific mention of consent search data, and the first mention of the Maryland settlement agreement in the documents generated by the State and produced to the Committee. The consent search data became central to the racial profiling issue over the next two years, and was the central basis for the conclusions drawn in the Interim Report issued in April 1999.

SFC Gilbert and Col. Williams testified that after Col. Williams received the Gilbert Memo he instructed SFC Gilbert to immediately share the information contained in the Gilbert Memo with DAG Rover. SFC Gilbert testified on several occasions that he promptly gave DAG Rover an overview of the numbers and the information contained in the Gilbert Memo, that

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<sup>8</sup> Unlike probable cause searches, consent searches are conducted after a trooper has asked the motorist's permission, and obtained written consent. Consent search data was a central part of the Maryland court order that resulted from a lawsuit brought by the American Civil Liberties Union, and was part of the information that the DOJ requested in its investigation into the NJSP.

DAG Rover understood the gravity of the numbers, and that DAG Rover said he would report it up his "chain of command" (which would be Waugh and Verniero). (Gilbert 2/14 at 207-209; Gilbert 2/22 at 125-127)

DAG Rover, however, denied that SFC Gilbert told him about specific consent search data, and said that SFC Gilbert only told him the New Jersey numbers were in the "ball park" of Maryland and urged him to make sure EAAG Waugh knew this information (Rover at 40-43; March 20 at 92-95) DAG Rover testified that his understanding was that since the Soto case was based on motorist stop data, and not consent search data, only the stop data was relevant to his work on the DOJ investigation, and post-stop data was not relevant. (Rover at 76-79) This testimony was somewhat curious because DOJ had requested consent search data, the Maryland case turned heavily on consent search data, and SFC Gilbert and Capt. Touw were both conducting analyses of consent searches at this point. Furthermore, just a few weeks later, on March 18, 1997, DAG Rover wrote a strategies memo to EAAG Waugh and DAG Fahy (the "Rover Strategies Memo") discussing his expectation that the DOJ was more interested in consent search data than in traffic stop data. This memo was forwarded to AG Verniero.

Remarkably, the Rover Strategies Memo contained much of the same information presented in the Gilbert Memo. In his memo, DAG Rover wrote that he expected the DOJ would follow the same course of action that was followed by the plaintiffs in the Maryland case, and rely upon consent search statistics as evidence of selective prosecution. The Rover Strategies Memo suggested that the OAG take the position that consent search documents were not relevant to the DOJ's inquiry of whether minorities were being **stopped** based on their race and if the DOJ

insisted upon using this data, it should also be required to examine the factual circumstances that led to each individual request for consent to search a vehicle.

On May 20, 1997, AG Verniero met with EAAG Waugh, DAGs Rover and Fahy, Capt. Blaker, Col. Williams and SFC Gilbert. The agenda for this meeting indicated that the topics to be discussed included the status of the DOJ inquiry and document production, a strategy to conduct a violator survey, production of consent to search documents, the Maryland case and the "proper characterization" of consent to search documents, and future strategy (including providing documents concerning the DOJ's drug interdiction policies). A notation at the bottom of this agenda, written by Capt. Blaker, indicated that, "AG advised he would not consent to signing a consent decree, 'they'd have to tie me to a train and drag me along the track before I'd sign a decree.'" (G-19) EAAG Waugh testified that he also recalled AG Verniero making a statement to that effect. (Waugh at 170-171)<sup>9</sup>

The NJSP officials at the meeting said they understood AG Verniero's statement to mean that AG Verniero would allow the NJSP to investigate whether there was a problem and give New Jersey an opportunity to fix its own problems without federal intervention. Capt. Blaker said that by the time of the May 20 meeting, data were being collected to determine whether a racial profiling problem extended beyond a few troopers, the inspection audits were underway, and training was being improved. (Blaker at 125-26) Capt. Blaker also testified that the Maryland data and the NJSP data were discussed at this meeting. (Blaker at 127) It is

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<sup>9</sup> Judge Waugh testified that subsequent to the announcement of the Committee's investigation he had a conversation with Justice Verniero, who said he did not remember making such a statement. Judge Waugh said he told Justice Verniero that he remembered him saying something like that to which Justice Verniero responded he had not remembered saying that.

unclear what training he referred to because the search and seizure training recommended by the Littles Committee was never actually implemented.

SFC Gilbert testified that there was some discussion at the May 20 meeting about how the NJSP consent search numbers were roughly the same as Maryland, and that it was apparent to him that everyone at the meeting was informed about the NJSP statistics. (Gilbert at 288) SFC Gilbert also said that AG Verniero made a comment that he would reach out to then United States AG Janet Reno to discuss the conflicting messages being received from the DOJ concerning civil rights and drug interdiction. (Gilbert at 290-291)

The OAG representatives who attended this meeting had less clear recollections, and said that statistics were not discussed, except in general terms, concerning how the NJSP consent search numbers were comparable to Maryland's consent search numbers. There were a number of conflicting statements concerning this meeting. For example, SFC Gilbert and Capt. Blaker testified that DAG Rover did most of the talking at this meeting, while DAG Rover claimed he said very little. (Gilbert at 293; Blaker at 110; March 20 at 290)

By this point in time, the DOJ had reached an agreement with the LPS to focus its inquiry on 30 sample dates in 1995 and 1996, and to examine only the Moorestown and Cranbury barracks. SFC Gilbert proceeded to do his own analysis of the 30 sample dates and on July 10, 1997, he reported in a memo to Col. Williams and Capt. Blaker that the minority consent search rate for those dates was 82%. SFC Gilbert also reported that 89% of the negative probable cause searches during those days were of minorities.<sup>10</sup> (G-25)

DAG Rover testified that he did not receive this statistical analysis, and never received a statistical breakdown of the 30 sample dates. He also testified that he did not recall

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<sup>10</sup> A negative probable cause search is a probable cause search in which no contraband is found.

SFC Gilbert telling him about the analysis. (Rover at 168-70) DAG Rover also testified, however, that in early 1999 in conversations with SFC Gilbert about the DOJ's request for probable cause search information, SFC Gilbert told DAG Rover that he had already given the statistical breakdown of the 30 sample dates to him. DAG Rover said that when he saw the information in 1999, it was his view that they were clearly responsive to the DOJ's request for information. (Rover at 161-172)

Christine Boyle, the LPS staff person who analyzed the statistics contained in the Interim Report, testified that nearly all of the information she included in the Interim Report concerning consent searches and traffic stops came from a file of documents SFC Gilbert delivered to the OAG on March 15, 1999. (Boyle at 50-51) Boyle testified, however, that the information concerning the 30 sample dates came from information contained in boxes of DOJ materials that had been collected by DAG Rover, and which were given to her by DAG Michael LoGalbo. (Boyle at 124-125) Much of the statistical analyses Boyle relied upon were those developed by SFC Gilbert during the early months of the DOJ investigation and from monthly compilations collected from NJSP barracks and forwarded up the chain of command to the Superintendent from 1997 through 1999. SFC Gilbert testified that he had kept DAG Rover informed of these analyses on an ongoing basis, and that DAG Rover was taking this information to his superiors, EAAG Waugh and AG Verniero. (Gilbert at 211-213)

SFC Gilbert's file also contained comprehensive six-month analyses of minority stop and consent search rates for the Moorestown and Cranbury barracks covering the period beginning April 1997. SFC Gilbert testified that DAG Rover was fully aware that the NJSP were keeping these ongoing statistical analyses, and that DAG Rover's superiors also should have been

aware of them. In fact, SFC Gilbert testified that these analyses became a significant issue in November 1998, that was brought to the attention of the highest levels of the NJSP and the OAG, after Lt. Col. Dunlop mentioned to Steven Rosenbaum of the DOJ that the NJSP had been conducting ongoing analyses of the racial composition of stops and searches. SFC Gilbert testified that in November 1998, the DOJ contacted the OAG to obtain these statistics, and that DAG Rover contacted SFC Gilbert to tell him that the DOJ was now requesting information about the ongoing monitoring. SFC Gilbert testified that he arranged a meeting with Col. Williams, Lt. Cols. Fedorko and Dunlop, and DAG Rover to discuss the DOJ request, and Col. Williams took the position that absent a court order or subpoena, he did not want to release the ongoing monitoring information to the DOJ. SFC Gilbert testified that DAG Rover indicated he would convey the Colonel's position to his superiors. (Gilbert 2/22 at 119-128)

DAG Rover testified that he did not recall meeting with SFC Gilbert, Col. Williams and Lt. Cols. Fedorko and Dunlop, but that he did receive a call from the DOJ in December 1998 asking if the State had any audits or statistical analyses of the southern part of the Turnpike. DAG Rover testified that he met with then FAAG Hespe, DAG Fahy and AAG Ramey to discuss this new document request. DAG Rover testified that FAAG Hespe instructed him not to turn the statistics over and to "get back to Justice and say we're looking [sic] and let me know if they ask again." (March 20 at 142-144) Current FAAG Zoubek also verified that during his discussions with the DOJ in 1999, DOJ officials indicated that they had learned from Lt. Col. Dunlop that New Jersey was keeping ongoing monitoring statistics. (April 2 at 54-55)

FAAG Hespe's account of these events contradicted the accounts of SFC Gilbert and DAG Rover. FAAG Hespe testified that DAG Rover told him he had received a call from a

contact at the DOJ requesting information, and that he directed DAG Rover to call back the DOJ and find out what they wanted and why they wanted it. (April 2 at 245-262) Hesper claimed he never knew that the DOJ was conducting an investigation of the NJSP. (April 2 at 255-260) This was difficult to square with Justice Verniero's testimony that FAAG Hesper was responsible for supervising DAG Rover's work on the DOJ investigation after EAAG Waugh left the OAG at the end of 1997. (March 28 at 84-85 and 242-244)

This collection of testimony presented inconsistencies, but as a whole it suggested that once the DOJ learned in late 1998 that the State was maintaining ongoing statistics about the racial breakdown of stops and consent searches, and requested those statistics, an effort was made by high level officials within the OAG and NJSP to conceal these statistics from the DOJ.

Documents and testimony also suggested that on at least one earlier occasion, a decision may have been made by AG Verniero not to turn over information that was responsive to the DOJ's inquiry and document request. On July 29, 1997, EAAG Waugh sent a memo to AG Verniero (the "Waugh Memo") concerning a collection of documents recently received from the NJSP. EAAG Waugh raised the question that the collection "appears to be within the ambit of the documents requested by DOJ and may have to be produced for them." (G-27) The Waugh Memo also advised that DAG Rover was looking into the issue further.

The documents attached to the Waugh Memo included a copy of a document that was referred to in the Hearings as the "Smith Special." The Smith Special was an NJSP report dated January 10, 1996, prepared by then Sgt. J.E. Smith concerning allegations by minority troopers that non-minority troopers stationed at the Moorestown barracks were engaging in racial profiling. Also attached was a September 24, 1996 NJSP report prepared in response to the

Smith Special. That document contained an audit setting forth that a high rate of stops involved minority motorists (about 34% of stops by solo patrols and between 36.9% and 52% of stops by dual patrols), but concluded that there was no evidence that non-minority troopers were targeting minority drivers any more than minority troopers. The attached documents also included a May 15, 1996 NJSP report on this investigation, which documented that an audit found that minority drivers constituted 62% of all consent searches and 65% of all probable cause searches conducted by the Moorestown Station on the Turnpike.

EAAG Waugh testified that he did not recall specifically what happened as a result of this memo. (Waugh at 195; March 27 at 182-187) DAG Rover testified that EAAG Waugh instructed Rover not to turn the document over to the DOJ. (March 20 at 114-116) FAAG Paul Zoubek testified that Rover told him later that there had been a decision not to forward some of the documents to the DOJ, and that DAG Rover did not send any information without talking with EAAG Waugh. DAG Rover also told FAAG Zoubek that he had worked with EAAG Waugh and AG Verniero on the DOJ investigation and that the steps he took he did in consultation with EAAG Waugh and AG Verniero. (Zoubek at 137-149)

Once there was agreement on 30 randomly selected dates for which the DOJ would examine trooper activity in the Moorestown and Cranbury barracks, SFC Gilbert gathered up the relevant documents from the barracks and sent them to DAG Rover by mid-Fall 1997. Other documents indicated that DAG Rover proceeded to send the requested documents to the DOJ a few at a time, over many months, and did not finish sending the documents until May 1998. EAAG Waugh testified that DAG Rover apparently was under a mistaken impression, based on something EAAG Waugh had said to him, that DAG Rover should "stall" in responding

to the DOJ. EAAG Waugh said he had only meant to convey to DAG Rover that he should not "drop everything" to respond to each DOJ request. (Waugh at 220-221)

The DOJ investigation did not become public until February 17, 1999, and documents and testimony indicated that at this point, the DOJ increased its communications with the OAG. By early April 1999, there were discussions within the LPS about the possibility of a consent decree. AAG Susswein's early drafts of the Interim Report made reference to the analysis of 30 sample dates requested by the DOJ, but ultimately all references to the DOJ were edited out at the direction of AG Verniero. FAAG Zoubek testified that AG Verniero directed that this information be edited out of the Interim Report because he wanted to keep the scope of the DOJ investigation confidential. (Zoubek at 378-379; April 2 at 10)

DAG Rover wrote a memo to then Director Zoubek on February 26, 1999, shortly after Director Zoubek took over the response to the DOJ investigation, detailing what documents had been produced to the DOJ, and some of the "numerous documents" that he did not produce to the DOJ. (R-18) FAAG Zoubek said that as he came up to speed on how the DOJ investigation had been handled during the previous two years, he had concerns about DAG Rover's involvement and the level of production to date. (Zoubek at 151) DAG Rover's memo was noteworthy because of the documents that DAG Rover indicated had not been produced. According to this memo, among the documents not produced to the DOJ were a 1996 internal affairs document containing an audit of the Moorestown Station, a statistical breakdown of motor vehicle stops for the sample dates, negative probable cause searches, an audit of the Perryville/Washington Station and Hunterdon County statistics.

On February 28, 1999, Gov. Whitman dismissed Col. Williams for making racially insensitive comments reported in a Star-Ledger article, and named Lt. Col. Michael Fedorko to serve as interim superintendent.

On April 26, 1999, AG Verniero and FAAG Zoubek testified before the Senate Judiciary Committee about the Interim Report. Also, late on April 26, AG Verniero received a four-page letter from the DOJ announcing that it had concluded its investigation and determined that the NJSP “engaged in a pattern or practice of discriminatory law enforcement.” The DOJ letter detailed its statistical findings and assessments of the practices of the NJSP. (SJC-5)

On April 29, AG Verniero provided a letter to Chairman William L. Gormley in which he related that “[i]n furtherance of my testimony on the subject of racial profiling, I wanted to let you know, that since my appearance before the committee, I have learned that the Civil Rights Division of the United States Department of Justice has authorized the filing of a civil suit against [the NJSP] . . . alleging that [NJSP] officers have engaged in discriminatory law enforcement.” (A copy of the April 29, 1999 letter is contained in the Appendix) AG Verniero did not mention that the DOJ had actually concluded its investigation and had advised AG Verniero of its finding that the NJSP “engaged in a pattern or practice of discriminatory law enforcement.”<sup>11</sup>

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<sup>11</sup> It should be noted that the April 26, 1999 letter from the DOJ was not released to the Committee during the document release in November 2000, because the originally agreed-upon end date of the document production was April 20, 1999. However, the April 26, 1999 DOJ letter was not included in the supplemental document production that occurred after OAG agreed to extend the end date of the document production to May 15, 1999. The letter’s existence was discovered by minority counsel during a telephone conversation with the DOJ on March 27, 2001. By letter dated March 27, 2001, Special Counsel requested that the OAG provide the Committee with a copy of the April 26, 1999 DOJ letter. The OAG ultimately provided the Committee with a copy of the April 26 DOJ letter on March 28, 2001.

The manner in which State officials responded to the DOJ inquiry, and events surrounding the DOJ probe, have become centrally important to the Committee's inquiry. Some individuals from the OAG have suggested that the DOJ was not aggressive in the pursuit of its investigation. There is also considerable evidence that then AG Verniero and other top State officials took steps to slow down the DOJ investigation, limit it, impede DOJ's work, and hold back relevant documents.

The events surrounding this investigation became important in the Committee's inquiry because they indicated there was knowledge within the OAG that the NJSP were developing statistics concerning the racial breakdown of stops and searches on the Turnpike, and that those statistics were cause for concern.

**E. The Hogan And Kenna Shooting And The Sacchetti Audit**

On April 23, 1998, Troopers James Kenna and John Hogan fired on four men in a van they stopped on the Turnpike (the "Turnpike Shooting"). On May 4, 1998, AG Verniero announced that he referred the investigation into the Turnpike Shooting to a State grand jury, and that Burlington County Assistant Prosecutor James Gerrow, Jr. would be a special prosecutor ("SP") and would lead the review team.<sup>12</sup>

In the course of investigating the Turnpike Shooting, Lt. Sacchetti was directed to conduct a racial composition survey of stops conducted by Troopers Hogan and Kenna. On May 8, 1998, after Lt. Sacchetti presented his findings to then Lt. Col. Dunlop, he was advised that Troopers Hogan and Kenna may have falsified reports on the night of the shooting, possibly to conceal the race of motorists they were stopping. As a result, Lt. Sacchetti was told that his

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<sup>12</sup> SP Gerrow was chosen out of the Burlington County Prosecutor's Office because of a conflict within the Mercer County Prosecutor's Office.

survey might not be accurate. Lt. Sacchetti was sent back to the Cranbury barracks to conduct an audit of warnings issued by Troopers Hogan and Kenna to determine whether he could ascertain the extent of records falsification by the two troopers.

On June 11, 1998, Lt. Sacchetti met with Lt. Col. Dunlop and other NJSP officials, and a decision was made to begin an audit of troopers at the Cranbury barracks, in addition to Troopers Hogan and Kenna, to determine if other troopers were engaging in race-based records falsification. This ultimately came to be known as the "Troop D audit." The progress of this audit appeared to be important in relation to the prosecution of Hogan and Kenna.

The Troop D audit consisted of three phases: Phase I identified troopers who had a pattern of discrepancies; Phase II then investigated those troopers by calling motorists involved in traffic stops to determine discrepancies; and Phase III then consisted of a statistically valid random audit of all personnel within a barracks, and a sample of motorists stopped by those personnel, to attempt to identify troopers with discrepancies that may not have been identified in the first two phases. Lt. Sacchetti regularly briefed then Lt. Cols. Fedorko and Dunlop on the progress of the Troop D audit.

Lt. Sacchetti began his audit in Cranbury on July 3, 1998. The second phase began in Cranbury on August 20, 1998, and the third phase began on December 14, 1998. On September 10, 1998, Sacchetti attended a meeting at which the findings of his audit to date were discussed. Lt. Col. Fedorko indicated internal investigations would be initiated against all troopers identified with discrepancies, and Lt. Col. Fedorko said the audit would only cover Cranbury. This later changed, and the audit was expanded to cover Moorestown and Newark.

At a September 11, 1998 meeting between Lt. Sacchetti and Lt. Cols. Fedorko and Dunlop, Lt. Col. Dunlop expressed concern that the focus of the Troop D audit was beginning to shift from race-based wrongdoing to administrative issues.

On February 10, 1999, Lt. Sacchetti met with then Director Zoubek, AAG Stone, Col. Williams, Lt. Cols. Fedorko and Dunlop, and Det. Sgt. John Cazzupe, and presented a summary of the Troop D audit to date. Lt. Sacchetti testified that Director Zoubek seemed pleased with the progress of the Troop D audit. Director Zoubek, AAG Stone and Det. Sgt. Cazzupe were also directly involved in the Turnpike Shooting investigation.

On March 8, 1999, the NJSP began work on the Newark barracks as part of the Troop D audit. On March 10, 1999, AG Verniero met with Director Zoubek, AAG Stone and SP Gerrow, to discuss the status of the Turnpike Shooting investigation. AG Verniero expressed frustration with the pace of the grand jury investigation into the Turnpike Shooting, said he felt that the public wanted some action taken in the case, expressed concern about the upcoming one-year anniversary of the Turnpike Shooting, and proposed the idea of seeking an indictment on the less serious falsification charges first. Director Zoubek, AAG Stone and SP Gerrow advised AG Verniero that seeking an indictment on the falsification charges and announcing it publicly could taint the ongoing grand jury investigation into the more serious charges concerning the Turnpike Shooting.

Despite the advice of three experienced prosecutors, AG Verniero directed that the falsification case be presented to a separate grand jury as soon as possible. On April 19, 1999, one day before the release of the Interim Report, AG Verniero announced that a grand jury had indicted troopers Hogan and Kenna on falsification of records charges (the "Falsification

Indictment"). The Falsification Indictment was publicly released even though the grand jury convened to examine the more serious charges involved in the Turnpike Shooting had not yet concluded its consideration of the evidence. The grand jury that examined the Turnpike Shooting ultimately returned an indictment on September 7, 1999 (the "Shooting Indictment"). Also on April 19, Lt. Sacchetti met with Lt. Col. Fedorko and informed him that the return rate on the Phase III audit was slow in Cranbury because his people were not receiving responses from motorists that had been contacted by mail. Lt. Sacchetti also advised that at the current pace, it would take a year and a half to two years to complete the audit. Lt. Col. Fedorko testified that he thereafter advised the OAG that the audits of Moorestown and Newark were not revealing anything and that there was no point in continuing the investigation. (Fedorko at 59)

On May 14, 1999, Lt. Sacchetti met with Lt. Cols. Fedorko and Dunlop and other NJSP officials and asked what steps NJSP planned to take to discipline troopers for infractions discovered during the audit. Lt. Col. Fedorko said he would discuss it with Lt. Col. Dunlop after the meeting, and Lt. Col. Dunlop called Lt. Sacchetti later in the day and said the OAG would decide discipline in those matters. Of the 42 racial discrepancies uncovered (excluding troopers Hogan and Kenna), 29 troopers were involved, and ten cases were sent to the CJ. Those ten cases were eventually sent back to the NJSP for administrative discipline, and apparently had not been acted upon at the time of Judge Andrew J. Smithson's ruling dismissing the Hogan and Kenna indictments. In fact, the Committee learned that during the course of its investigation in February 2001 investigators were assigned to these cases in an effort to resolve them nearly two years after they were first identified by the Troop D audit, and after a long period of inactivity.

On May 20, 1999, Lt. Sacchetti talked with Lt. Col. Dunlop, and asked what direction to take regarding the audit. He was advised that the decision was not Lt. Col. Dunlop's, but was in the hands of the OAG. Lt. Sacchetti said that at this point, he had 30 troopers with very little to do, and needed authorization to move ahead to the next phase of the audit. He said he was told by Lt. Col. Fedorko to just stand by. Finally, on June 10, 1999, a decision was made to terminate the Troop D audit detail. Phase II was not completed in any barracks, and Phase III was never launched in Moorestown and Newark. There was conflicting testimony as to why the Troop D audit was terminated. Lt. Sacchetti said he was told the decision was made by the OAG and that he was never asked to file a final report. (March 27 at 20-31) Lt. Col. Dunlop said he did not recall why the audit was disbanded and Lt. Col. Fedorko said it was disbanded on the recommendation of Lt. Sacchetti because it was not uncovering much wrongdoing. (March 19 at 275-280; Fedorko at 60-62) It should be noted that this audit was heralded in the second paragraph of the Interim Report as a comprehensive examination of the activities of troopers on the Turnpike that was still pending. But in the weeks that followed the issuance of the Interim Report, the Troop D audit was effectively allowed to expire.

Lt. Col. Dunlop told Lt. Sacchetti on September 9, 1999 that there was no need to provide a final report. More than a year later, on October 10, 2000, Lt. Sacchetti was told at a meeting with Maj. Brennan and others to submit his rough copy of the report to date as a final report.

In October 2000, Judge Smithson dismissed the shooting indictment, and said the public release of the first indictment had tainted the second grand jury. Judge Smithson called the public release of the indictment "an act of political expediency" spurred by "powerful and

intimidating forces driving the decision making of the Office of the Attorney General." State v. Hogan, No. 99-09-00163S at 31 (Sup. Ct., Law Div., October 31, 2000). Judge Smithson's decision was later reversed by the Appellate Division, which held that Judge Smithson's criticism of the Attorney General was "unfair and unfounded." State v. Hogan, 336 N.J. Super. 319 (App. Div. 2001). On March 14, 2001, the Supreme Court announced that it was refusing to hear an appeal of the Appellate Division's decision. State v. Hogan, 2001 NJ Lexis 420 (March 14, 2001).

**F. The Interim Report And The Withdrawal Of The Soto Appeal**

On February 10, 1999, AG Verniero announced the formation of a State Police Review Team (the "Review Team") to examine issues surrounding the procedures for processing complaints from the public and internal complaints from troopers, training programs for supervisors, and the system of internal discipline. AG Verniero announced that the Review Team anticipated promulgating a report of its findings in June 1999. The formation of the Review Team was announced the same day that the Star-Ledger reported it had analyzed arrests on the Turnpike and that 75% of arrests during the first two months of 1997 were of minorities. FAAG Zoubek said he learned of the Review Team, and his assignment to head up the Review Team, on the day it was announced and he was not consulted prior to the decision. (Zoubek at 92-94) FAAG Zoubek also testified that the initial announcement did not mention that the Review Team would examine racial profiling, and he learned that racial profiling would be added to the Review Team's task only when AG Verniero made such a statement to a newspaper reporter during an interview shortly after the Review Team was announced. (Zoubek at 119-121)

On February 26, 1999, Governor Whitman nominated AG Verniero to the New Jersey Supreme Court, the day after Justice Pollock announced his retirement. On March 5,

1999, the OAG filed a motion seeking a 120-day delay of oral arguments scheduled for April 23 in the Soto appeal.

On March 8, 1999, the New Jersey Legislative Black and Latino Caucus (the "Caucus") requested information from AG Verniero concerning racial profiling for use in their April, 1999 hearings. The March 8 letter requested, among other things, stop data for a six-year period. (SJC-7)

On March 15, 1999, SFC Gilbert attended a meeting with OAG officials and provided a copy of a notebook containing documents and statistical information concerning racial profiling (the "Gilbert Notebook"). (G-33) The documents were received in response to then Director Zoubek's request that the NJSP provide all relevant documents concerning racial profiling. The Gilbert Notebook in part contained information previously provided to AG Verniero in July 1997 and copies of the same information reviewed by AAG Stone in June 1998.<sup>13</sup> Also in the Gilbert Notebook were comparisons to the Maryland consent to search rates that were

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<sup>13</sup> According to AAG Stone, after reviewing the information obtained from Lt. Sacchetti, she had recommended in June 1998 that the OAG withdraw the Soto appeal because of statistical information that had been developed by the NJSP. That data revealed stop rates commensurate with the rates presented by the defense in Soto, and was the same stop data that was included in the information AG Verniero received on July 29, 1997. This information was not produced to the defense in Soto during the pendency of that case. Despite AAG Stone's recommendation to Director Zoubek that the OAG withdraw the Soto appeal, it was not withdrawn at that time.

Moreover, on March 16, 1999, a telephonic oral argument with the judges of the Appellate Division was conducted in connection with the State's motion to adjourn oral argument in the Soto matter. (March 27 at 73 – 84) One of the judges reminded the State of its continuing discovery obligations. Counsel for the defendants, William Buckman, Esq., advised that the State had not provided any discovery subsequent to Judge Francis' ruling in March, 1996. Indeed, since the close of witness testimony in May, 1995 the State had not provided any discovery to the defense.

Mr. Buckman also testified that he reviewed the OAG's production of over 90,000 pages of documentation in November 2000. (March 27 at 81 – 86) During his review he discovered categories of documents that had not been produced to the defense in Soto despite having been formally requested. Particularly troublesome to him was the State's failure to produce consent to search forms and data. When the defense requested those materials the State responded that such documentation and data did not exist or it could not be located.

shared with DAG Rover in February 1997 and discussed at the May 20, 1997 meeting. The Gilbert Notebook also contained the ongoing statistical analyses that the DOJ apparently had requested from DAG Rover in late November or early December 1998, after learning of them from Lt. Col. Dunlop. DAG Rover testified that FAAG Hespe instructed him not to produce the statistics for the DOJ.

FAAG Zoubek testified that after receiving the Gilbert Notebook he was angry about learning of some of the information contained therein for the first time. (Zoubek at 161) He said he was not aware that the NJSP was keeping regular, ongoing audit statistics. The receipt of the Gilbert Notebook prompted both AG Verniero and FAAG Zoubek to write memos to their files the following day, March 16, 1999, indicating that they had that day received statistical information from the NJSP that they had not seen before. Also on March 16, a three-judge panel of the Appellate Division rejected the OAG's request for a delay of the oral arguments in Soto. Within a few days, AG Verniero instructed the Review Team to accelerate its review of racial profiling, which resulted in the completion of the Interim Report a mere two months after announcing the NJSP review.

FAAG Zoubek also testified, however, that when he went through DAG Rover's files prior to the issuance of the Interim Report he found some statistical information that apparently the NJSP had sent the OAG much earlier in the course of the DOJ investigation. (Zoubek at 199-210) This prompted FAAG Zoubek to tone down considerably language in an early draft of the Interim Report that criticized the NJSP for only recently providing information that pointed to profiling. FAAG Zoubek testified that when he told AG Verniero about the documents he found in DAG Rover's files, AG Verniero's first concern was whether there was any

indication in the documents that AG Verniero had previously seen the documents. (Zoubek at 232-233)

Testimony by AAG Susswein, the author of the Interim Report, and Christine Boyle, an LPS statistician who prepared the analysis of all the empirical data in the Interim Report, indicated that the most important statistics contained in the Interim Report (stop and consent search statistics) came from the Gilbert Notebook. (April 9 at 26-27; Boyle at 64-68) SFC Gilbert testified that these statistics should not have been news to the OAG because he kept DAG Rover informed on an ongoing basis of the analyses he was conducting, and the audit activity within the NJSP that began after the Soto ruling. (Gilbert at 202-204) This raised the obvious and central question: If the OAG knew in 1997 about problematic statistics concerning consent searches, as many witnesses have testified, why did it wait until 1999 to take any action?

On March 29, 1999, AG Verniero responded to the Caucus' March 8 request. Despite having received the data contained in the Gilbert Notebook, AG Verniero advised that such information "would require a massive effort to produce as the State Police does not have this data in easily retrievable form." (SJC-8)

On April 20, 1999, the OAG released the Interim Report. That same day the OAG announced that it was withdrawing the Soto appeal. The Interim Report concluded that the problem of racial profiling is "real -- not imagined" and that minority motorists had been treated differently by the NJSP on the Turnpike. (Interim Report at 4 - 5) The Review Team defined the problem of "disparate treatment" as it relates to "racial profiling" to include situations in which a trooper relied on a person's race, ethnicity or national origin - in conjunction with other factors - to select vehicles to stop from among all of those being operated illegally. The definition

encompassed a trooper's making of any discretionary decision based on race or ethnicity during a traffic stop, such as ordering the driver or passengers to step out of the vehicle or conducting a consent search of the vehicle. (Interim Report at 45-56)

The Interim Report revealed two interrelated problems that may have been influenced by the goal of interdicting illicit drugs: willful misconduct by a small number of NJSP members, and more common instances of possible *de facto* discrimination by officers who may have been influenced by stereotypes and thus may have tended to treat minority motorists differently during the course of routine traffic stops. For the period between April 1997 and November 1998, for which statistics were compiled, the Cranbury and Moorestown stations on the Turnpike reported that four out of 10 stops (40.6 percent) involved black, Hispanic, Asian or other non-white people. (Interim Report at 25-26)

Even more disturbing were statistics demonstrating that minority motorists were disproportionately subject to consent searches. State Police procedures required that before a trooper could request permission from a driver or occupant to search a vehicle, the trooper must have had "reasonable suspicion" to believe that the search would reveal evidence of a crime. Although consent searches are rare, the data related to them are especially instructive because the decision by a trooper to ask for permission to conduct a search is purely discretionary. The aggregate data in the Interim Report, which span selected periods from 1994 to 1999 and include 1,193 consent searches, showed that more than three out of four consent searches (77.2%) involved black or Hispanic motorists. As a result of concerns raised by these statistics, the Review Team recommended that the NJSP conduct a case-by-case review of every consent search made on the Turnpike in 1997 and 1998 to determine whether reporting requirements and

procedures were complied with. Moreover, the Review Team discovered that most consent searches did not result in a "positive" finding. (Interim Report at 28) Specifically, 19.2% of the searches the Review Team considered resulted in an arrest or seizure of contraband. (Interim Report at 28) When the Review Team accounted for race and ethnicity it discovered that 10.5% of the searches that involved white motorists resulted in an arrest or seizure of contraband, that 13.5% of the searches involved black motorists resulted in an arrest or seizure, and 38.1% of the searches of Hispanic motorists resulted in an arrest or seizure of contraband. (Interim Report at 28)

The Interim Report also presented arrest data from the Computerized Criminal History ("CCH") database for 1996 through 1998 for Troop D, which patrols the Turnpike, which revealed that of a total of 2,871 arrests, 32.5% involved white persons, 61.7% involved black persons and 5.8% involved persons of other races. Despite these percentages, however, the Review Team concluded that, viewed in artificial isolation, arrest rates could not provide conclusive proof of racial profiling or discriminatory practices. Nor did they provide evidence that minority citizens are more likely than whites to be engaged in criminal activity, the Review Team noted. In fact, the Review Team concluded that police officers may have been subjecting minority citizens to heightened scrutiny and more probing investigative tactics that lead to more arrests, and then using those arrest statistics to justify those same improper tactics. (Interim Report at 70)

Ultimately, the Interim Report recommended a series of remedial steps to ensure that all routine traffic stops made by the NJSP would be conducted impartially. Among the major recommendations were:

- 1) Developing a comprehensive and automated "early warning system" to detect and deter the disparate treatment of minority motorists. By collecting all available sources of information about trooper performance, this system would allow supervisors to quickly monitor and remediate potential problems.
- 2) Establishing a new, comprehensive standard operating procedure for initiating and conducting traffic stops.
- 3) Developing comprehensive new standard operating procedures for requesting permission to search and for conducting consent searches.
- 4) Issuing an updated Attorney General's statewide drug enforcement strategy that will define the enforcement priorities and contributions of all law enforcement agencies in a coordinated and multi-disciplined response to New Jersey's drug problem.

(Interim Report 86-111) AG Verniero and FAAG Zoubek testified before the Committee on April 26, 1999 about the Interim Report and racial profiling.<sup>14</sup>

On May 5 and 6, 1999, AG Verniero testified before the Committee in connection with his nomination to the New Jersey Supreme Court. At his confirmation hearings AG Verniero testified about, among other things, racial profiling, the status of the DOJ investigation, the Review Team's work, and the Interim Report.<sup>15</sup>

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<sup>14</sup> The Caucus held regional public hearings on April 13, 20 and 27 concerning racial profiling. Prior to the first hearing the Caucus extended invitations to AG Verniero, Lt. Col. Fedorko, and Supt. Williams. Each declined the invitation. (See New Jersey Legislative Black and Latino Caucus "A Report on Discriminatory Practices Within the New Jersey State Police," dated August 1999)

<sup>15</sup> During the course of its investigation, the Committee concluded that AG Verniero engaged in a pattern and practice of withholding and concealing information from the DOJ, the Appellate Division of the New Jersey Superior Court, the litigants in Soto, and the Legislature. The Committee determined that in furtherance of that pattern and practice, AG Verniero made repeated false statements and offered misleading testimony to the Committee on April 26, May 5 and May 6, 1999.

By letter to the Honorable Donald T. DiFrancesco, Acting Governor, dated April 4, 2001, the Committee requested that the Acting Governor call for the immediate resignation of Peter G. Verniero. (A copy of the April 4, 2001 letter is contained within the Appendix). The Acting Governor subsequently called for the resignation of Peter G. Verniero and he refused. By letter to the Honorable Jack Collins, Speaker of the General Assembly, dated April 10, 2001, the Committee detailed its findings and respectfully requested that the General Assembly consider appropriate Articles of Impeachment to be presented to the Senate forthwith. (A copy of the April 10, 2001 letter is contained in the Appendix). By letter dated April 17, 2001, the Committee presented Speaker Collins with an additional basis for impeachment. (A copy of the April 17, 2001 letter is contained

On May 15, 1999, Verniero stepped down as AG and FAAG Zoubek was appointed Acting AG. On May 24, 1999, John Farmer was unanimously confirmed as AG and was sworn in on June 3, 1999.

**G. The Final Report And The Consent Decree**

On July 2, 1999, the Final Report was issued. While the Interim Report focused on the subject of racial profiling, the Final Report focused on recommendations concerning the issues of hiring, promotions, internal affairs and discipline. The Final Report's recommendations included the creation of an oversight unit within the the OAG headed by an Assistant Attorney General/Director in Charge ("AAG/Director"), who would report directly to the AG. The AAG/Director would be charged with assuring the implementation of all remedial actions approved by the Attorney General together with administering any necessary coordination and interaction with the DOJ on matters related to the NJSP. The recommendations also called for the restructuring of the NJSP equal employment opportunity/affirmative action ("EEO/AA") complaint investigation process with the assumption of direct supervision by the OAG. (Final Report at 4)

The Final Report called for the internal affairs process to be substantially reformed under the supervision of the OAG in a manner consistent with the Attorney General's Statewide Internal Affairs Policy. In reforming the internal affairs process, the Review Team recommended the creation of the Office of Professional Standards ("OPS"). One of the key recommendations in 

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in the Appendix).

On May 3, 2001, the Senate overwhelmingly passed a resolution that called for the resignation of Peter G. Verniero. (A copy of the May 3, 2001 Resolution is contained in the Appendix). On May 10, 2001, the Assembly fell three votes short of defeating a procedural motion that tabled a resolution that would have opened impeachment proceedings in the Assembly. (A copy of the tally sheet for the procedural motion is contained in the Appendix)

Despite the foregoing, Peter G. Verniero did not resign from the New Jersey Supreme Court.

the Interim Report was the development of a comprehensive and computerized early warning system designed to identify individual troopers whose performance suggested a need for further review by supervisory personnel. One of the functions of the OPS would be to take responsibility for analyzing the data constituting the early warning system, proposed in the Interim Report. Additional recommendations related to recruitment, selection, promotion, performance evaluation, facilities review, provision of additional legal support and assistance, and the discipline process were also provided in the Final Report.

Since becoming AG, AG Farmer has addressed racial profiling and reforms of the NJSP on several fronts. He has supervised the completion and promulgation of the Final Report, a comprehensive review of the NJSP management and structure. The EEO/AA function within the NJSP has been transferred to the OAG so that the NJSP is treated like all LPS divisions. The IAB has been reorganized and recruiting and training functions have been augmented.

On September 10, 1999, AG Farmer announced that AAG Cronin was hired to head the Office of State Police Affairs ("OSPA"). The OSPA was identified as being responsible for, among other things, implementing the recommendations of the Review Team's Interim Report and Final Report. On September 20, Col. Dunbar was nominated to replace interim Superintendent of the NJSP, Lt. Col. Fedorko.

With the assistance of FAAG Zoubek and AAG Cronin, AG Farmer concluded negotiations with the DOJ, which resulted in the entry of a Consent Decree on December 30, 1999. It was hoped that the reforms mandated by the Consent Decree coupled with other initiatives would finally provide a much-needed catalyst for change by significantly reducing the

incidents of racial profiling on the Turnpike. Introductory language of the Consent Decree provides that it addresses the following matters:

[P]olicy requirements and limitations on the use of race in law enforcement activities and the procedures used for conducting motor vehicle searches; documentation of traffic stops including post-stop procedures and enforcement actions; supervisory measures to promote civil rights integrity; procedures for receiving, investigating, and resolving misconduct allegations; training; responsibilities of the OSG concerning the NJSP; public reporting by the NJSP about its law enforcement activities; and the establishment of an independent monitor to review and analyze implementation of the Consent Decree by the State.

Specifically, the Consent Decree includes the following provisions:

- 1) *Policy Requirements (§§26-28)*: 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, except where state troopers are on the look-out for a specific suspect who has been identified in part by his or her race or national or ethnic origin. The NJSP shall continue to require that troopers make a request for consent to search only when they possess reasonable suspicion that a search will reveal evidence of a crime, and all consent searches must be based on the driver or passenger giving written consent prior to the initiation of the search.
- 2) *Traffic Stop Documentation (§§29-34)*: Troopers engaged in patrol activities will document the race, ethnic origin, and gender of all motor vehicle drivers who are the subject of a traffic stop, and also will record information about the reason for each stop and any post-stop action that is taken (including the issuance of a ticket or warning, asking the vehicle occupants to exit the vehicle and frisking them, consensual and non-consensual vehicle searches, uses of force, and arrests).
- 3) *Supervisory Review of Individual Traffic Stops (§§35-39)*: Supervisors regularly will review trooper reports concerning post-stop enforcement actions and procedures, and patrol car video tapes of traffic stops, to ensure that troopers are employing appropriate practices and procedures. Where concerns arise, supervisors may require that the trooper be counseled, receive additional training, or that some other non-disciplinary action be

taken. Supervisors also can refer specific incidents for further investigation, where appropriate.

4) *Supervisory Review of Patterns of Conduct (§§40-56)*: The State will develop and implement an early warning system, called the "Management Awareness Program," that uses computerized information on traffic stops, misconduct investigations, and other matters to assist NJSP supervisors to identify and modify potentially problematic behavior. At least quarterly, NJSP supervisors will conduct reviews and analyses of computerized data and other information, including data on traffic stops and post-stop actions by race and ethnicity. These reviews and analyses, as appropriate, may result in supervisors implementing changes in traffic enforcement criteria, training, and practices, implementing non-disciplinary interventions for particular troopers (such as supervisory counseling or additional training), and/or requiring further assessment or investigation.

5) *Misconduct Allegations (§§57-92)*: The NJSP will make complaint forms and informational materials available at a variety of locations, will institute a 24-hour toll-free telephone hotline, and will publicize the NJSP toll-free number at all State-operated rest stops located on limited access highways. The State also will institute procedures for ensuring that the NJSP is notified of criminal cases and civil lawsuits alleging trooper misconduct. Allegations of discriminatory traffic stops, improper post-stop actions, and other significant misconduct allegations will be investigated by the Professional Standards Bureau inside the NJSP or by the OAG. All investigations will be properly documented. Where a misconduct allegation is substantiated concerning prohibited discrimination or certain other serious misconduct, discipline shall be imposed. Where a misconduct allegation is not substantiated, the NJSP will consider whether non-disciplinary supervisory steps are appropriate.

6) *Training (§§93-109)*: The NJSP will continue to implement measures to improve training for recruits and incumbent troopers. The training will address such matters as supervisory issues, communication skills, cultural diversity, and the nondiscrimination requirements of the Consent Decree. The NJSP also will take steps to continue to improve its trooper coach program for new troopers. The Independent Monitor selected by the parties will evaluate all training currently provided by the NJSP regarding traffic stops, and will make recommendations for improvements.

7) *Auditing by the OAG (§§110-113)*: The OAG will have special responsibility for ensuring implementation of the Consent Decree. The OAG will conduct various audits of NJSP

performance, which will include contacting samples of persons who were the subject of a NJSP traffic stop to evaluate whether the stops were appropriately conducted and documented. The OAG also will audit NJSP implementation of the Management Awareness Program, and procedures used for receiving, investigating, and resolving misconduct allegations.

8) *NJSP Public Reports (§114)*: The NJSP will issue semiannual public reports containing aggregate statistics on certain law enforcement activities, including traffic stop statistics.

9) *Independent Monitor (§§115-121)*: An Independent Monitor, who will be an agent of the court, will be selected by the United States and the State of New Jersey to monitor and report on the State's implementation of the Consent Decree. The responsibilities of the Monitor will include evaluating samples of trooper incident reports, supervisory reviews of incidents, and misconduct investigations, supervisors' use of the Management Awareness Program, and the use of non-disciplinary procedures to address at-risk conduct.

10) *Consent Decree Term (§131)*: The basic term of the Consent Decree will be five years, however, based on the State's record of compliance, the United States and the Independent Monitor may agree to a request by the State to shorten the term of the Consent Decree if the State has been in substantial compliance for at least two years.

Implementation of the Computer Aided Dispatch System ("CAD") was completed on February 19, 2001 when the Garden State Parkway went online. CAD requires a trooper to report the following information in connection with every motor vehicle stop: name and identification of troopers initiating the stop; names and badge numbers of troopers participating in the stop; gender, race and birthdate of driver; whether a summons or warning was issued; and the category of violation and the reason for the stop (*i.e.* moving violation, non-moving violation, probable cause, be on the lookout, etc.). New protocol was also adopted requiring troopers to complete a motor vehicle stop form when troopers call for a motorist to exit their vehicle, when motorists are frisked or searched, or when a consent search is requested. Implementation of the Management Awareness Personnel Performance System ("MAPPS") is ongoing and is the final

major element needed to achieve full compliance with the Consent Decree. MAPPS is a state-of-the-art computer data gathering system that will track individual trooper performance with an ability to identify and modify potentially problematic behavior, and promote best practices.

Also in February 2001, the State moved to dismiss 76 criminal cases and one case involving traffic violations only. Many of the cases involved multiple defendants. The total number of defendants affected by the dismissal was 128. The cases involved NJSP motor vehicle stops from as early as September 1988 and as late as March 1999. The cases were broken down by county as follows: Bergen, 30 cases; Burlington, seven cases; Camden, two cases; Essex, one case; Gloucester, 14 cases; Hunterdon, four cases; Mercer, three cases; Middlesex, 11 cases; Monmouth, one case; and Salem, three cases.

The Consent Decree required federally appointed monitors to issue quarterly reports assessing the State's compliance efforts. Two such reports have been issued to date. Although the State is not yet in full compliance with the dictates of the Consent Decree, the monitors' were impressed with the commitment, focus, energy and professionalism exhibited by members of the NJSP and OSPA in their efforts to implement the changes mandated by the Consent Decree. As of April 2001, the monitors found the State to be at level one of the policy compliance with 89 of 96 potential tasks or 92%. The State as of the date of this Report is at level two, or full compliance, with respect to 54 of the potential tasks.

The Final Report contained a detailed analysis of then existing NJSP procedures for processing citizen and internally generated complaints against NJSP members. The Final Report made several recommendations to improve the procedures for processing such complaints.

(Final Report at 123-160) Virtually all of those recommendations were ultimately implemented and many of them are reflected in the Consent Decree.

The Consent Decree also significantly changed the procedures involved in addressing complaints involving NJSP members. Essentially, the most significant changes affecting the receipt, investigation and disposition of complaints involving NJSP members were in the following areas: (1) public information and outreach; (2) complaint receipt procedures; (3) creation of the OPS, whose duties include those previously performed by the former IAB; (4) creation of the OSPA within the OAG; and (5) appointment of the Independent Monitoring Team ("IMT") under the Consent Decree.

In order to assure the public that complaints are welcome and that they will be fully and fairly investigated, the NJSP implemented a public information and outreach program.

To date, this program has consisted of initiatives, including the following:

- 1) Implementation of a multi-copy, easy to read and understand compliment/complaint form that is available at any NJSP station, NJSP Headquarters and other public locations. The form is available in English and Spanish;
- 2) Posting of "plain language" signs in every station that clearly explain the compliment/complaint procedure (English and Spanish);
- 3) Production of an easy to read information card (English and Spanish) that explains the compliment/complaint procedure, which is available at NJSP stations, from individual troopers patrolling the highways, and at other public locations;
- 4) Creation of a new compliment/complaint Web Page Site accessible via the NJSP Internet Home Page at [www.njsp.org](http://www.njsp.org);
- 5) Creation of a new, centrally located NJSP field office in Freehold, which allows NJSP investigators centralized access to respond to complaints and to conduct investigations anywhere in the State; and
- 6) Radio broadcast advertising the existence of the toll free compliment/complaint hotline.

The effectiveness of these public information and outreach efforts may be reflected, in part, through the increase in citizen complaints received and processed by the OPS.

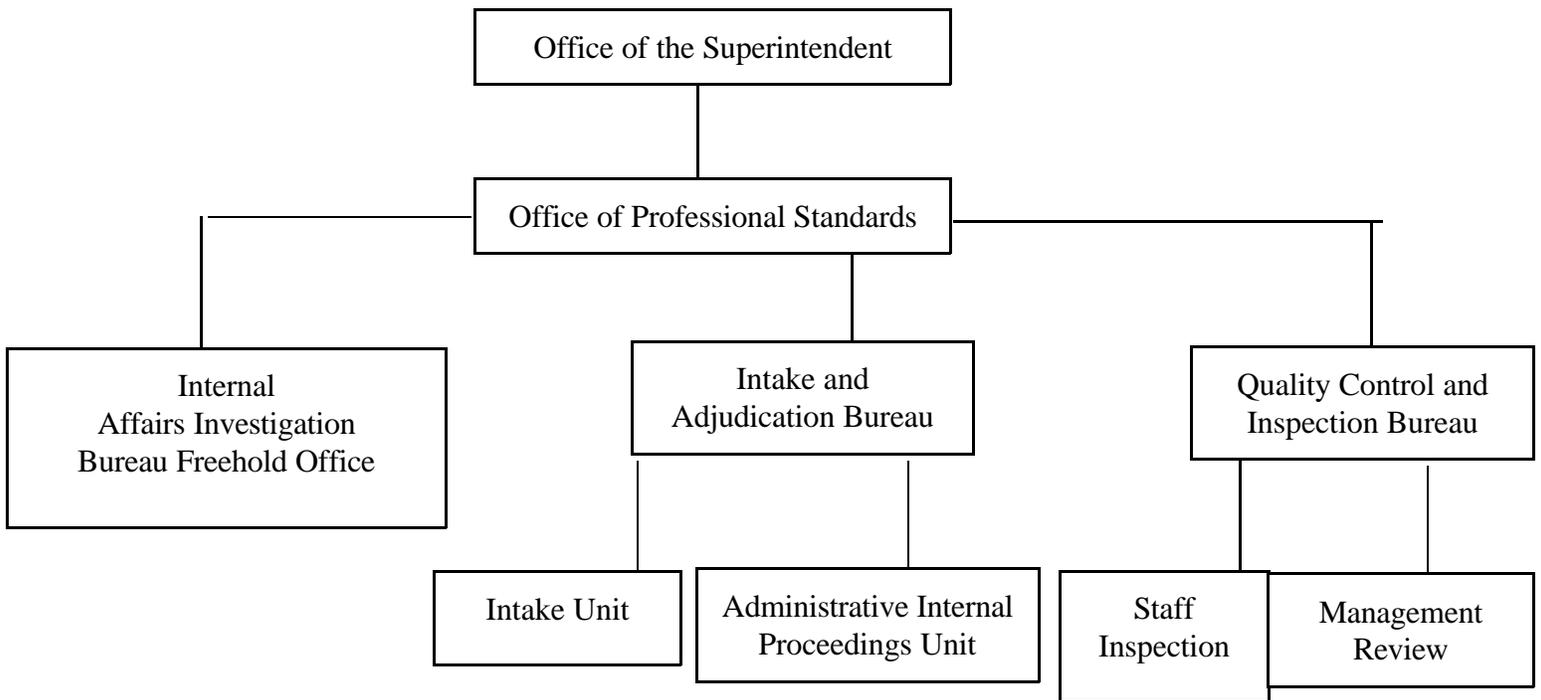
Seeking to make the complaint process more accessible to both members of the public and the NJSP, substantial revisions to the compliment/complaint receipt procedures have been implemented, including the following:

- 1) Compliments/complaints are now accepted 24 hours per day, 365 days a year;
- 2) Creation of a new compliment/complaint toll-free telephone number at: 1-877-253-4125;
- 3) Compliments/complaints are accepted in person, by mail, by telephone, or by facsimile;
- 4) Compliments/complaints may be submitted anonymously and by third parties (persons other than those who interacted with the NJSP member); and
- 5) Allegations of misconduct may be communicated by NJSP members directly to the OPS or the OAG, rather than exclusively through the chain of command.

In the Final Report, the organizational structure of the IAB was outlined. The Final Report recommended the creation of the "State Police Professional Standards Bureau," whose duties were to include those previously performed by the former IAB. (Final Report at 123-130) This recommendation was implemented through the creation of the OPS. The OPS is headed by a Major who reports directly to the Superintendent and consists of three bureaus -- the Internal Affairs Investigation Bureau ("Investigations"), the Intake and Adjudication Bureau ("Intake"), and the Quality Control and Inspection Bureau ("Inspection"). Essentially, Investigations conducts investigations pertaining to allegations of criminal and administrative misconduct. Additionally, this bureau monitors investigations that have been delegated to non-OPS investigators. Intake is responsible for the intake and documentation of all complaints made to or forwarded to the OPS. This bureau also performs the critical function of characterizing

complaints in order to ensure that they are properly assigned to OPS or OAG investigators, and not improperly delegated to non-OPS/OAG investigators. Also, Intake includes an Administrative Internal Proceedings Unit that prepares and serves formal charges for disciplinary hearings. Finally, Inspection consists of both the Staff Inspection Unit and the Management Review Unit. The Staff Inspection Unit conducts periodic inspections to ensure that the activities of the NJSP are conducted in accordance with the NJSP’s policies, rules, regulations and orders. The Management Review Unit is responsible for the design, implementation, documentation, evaluation and improvement of the NJSP’s internal controls. An organizational chart of OPS follows:

*OPS Organizational Chart*



Creation of the OPS has been accompanied by a significant increase in staffing responsible for the receipt, investigation and disposition of misconduct investigations. As

compared to the 1998 staffing levels analyzed in the Final Report, the number of detectives performing misconduct investigations and assigned to the OPS has increased from seven to 23. Moreover, the Superintendent has authorized an additional four detectives to be assigned to the OPS. It is anticipated that these detectives will commence this assignment in June, 2001. Furthermore, an additional 10 detectives have been temporarily detailed to the OPS. Finally, in a further effort to address the timeliness of "backlogged" misconduct investigations, the Superintendent has authorized the assignment of approximately 150 misconduct investigations to non-OPS investigators. These investigations are to be conducted under the supervision of the OPS and subject to the monitoring of both the OAG and the IMT.

In the Final Report, the Review Team recommended the creation of a "State Police Unit" within the OAG that would be responsible for, *inter alia*, oversight over the investigation of misconduct by members of the NJSP. (Final Report at 59-60) In response to this recommendation, the OSPA was created within the OAG. Certain duties of the OSPA are memorialized in the Consent Decree and include auditing the manner in which the State receives, investigates and adjudicates misconduct allegations. In performance of these responsibilities, the OSPA has performed functions including the review and approval of substantial revisions to NJSP procedures affecting the receipt, investigation and adjudication of misconduct allegations. Moreover, the OSPA reviews each completed misconduct investigation for thoroughness and completeness. Presently, the OSPA is staffed with five attorneys, four investigators, two detailed NJSP members, and three support personnel.

Pursuant to the Consent Decree, the IMT was selected to monitor and report upon the State's implementation of the Decree. (Consent Decree at ¶¶115-119) The IMT's jurisdiction extends to "review and evaluate" the "quality and timeliness" of misconduct

investigations and disciplinary actions. (Consent Decree at ¶119) The IMT is an agent of the United States District Court that files periodic reports detailing the State's compliance with and implementation of the Decree. In these reports, the IMT has consistently determined that misconduct investigations are conducted in a thorough and fair manner. Moreover, the IMT has consistently determined that misconduct investigations are conducted in accordance with the substantive requirements of the Consent Decree including:

- 1) prohibition of any member who has a conflict of interest from participating in a misconduct investigation (Consent Decree at ¶75);
- 2) written or recorded interviews are maintained as part of the investigative file (Consent Decree at ¶76);
- 3) no group interviews are conducted during misconduct investigations (Consent Decree at ¶76);
- 4) civilian interviews are conducted at a convenient time and place (Consent Decree at ¶77);
- 5) propriety of all trooper conduct, in addition to that specifically alleged, is assessed during a misconduct investigation (Consent Decree at ¶78);
- 6) findings are made based upon a preponderance of evidence standard (Consent Decree at ¶81);
- 7) Mobile Video Recorder ("MVR") tapes are reviewed as part of the misconduct investigation as appropriate (Consent Decree at ¶82);
- 8) circumstantial evidence is considered during misconduct investigations as appropriate (Consent Decree at ¶83);
- 9) no automatic preference is accorded to a trooper's statement over a civilian's statement (Consent Decree at ¶83); and
- 10) no automatic judgement is made that there is insufficient evidence to make a determination where the only or principal information of that incident is the conflicting statements of the accused trooper and civilian (Consent Decree at ¶83).

The IMT has repeatedly determined that the State has implemented the public information initiatives and the complaint receipt procedures. (Consent Decree at ¶¶58-62)

Although some of the most critical reforms remain incomplete, particularly the MAPPS system and the improved accountability and supervision that will rely upon MAPPS,

there has been significant progress during the first 15 months under the Consent Decree. Nevertheless, consent to search statistics for 2000 reveal that racial profiling persists. A traffic population study conducted pursuant to the Consent Decree concluded that white motorists comprised 60% to 65% of the drivers on the southern end of the Turnpike, while blacks comprised 32% and Hispanics comprised 8%. Troop D consent search numbers revealed that whites were subjected to consent searches 19% of the time, while blacks were 53%, Hispanics 24%, and Asians 3%. These numbers are lower than the numbers for 1994 – 1996, but on par with the numbers presented in the Interim Report. AG Farmer asked that each case be scrutinized to determine whether the report reflected the presence of probable cause as opposed to reasonable suspicion, with probable cause being defined for purposes of the analysis as only plain view contraband, plain smell of contraband, or admission that contraband was present. The results were that 54% of consent searches of whites reflected one of these three probable cause factors, but these factors were present in only 26% of consent searches of blacks and 8% of consent searches of Hispanics. (April 3 at 15–22)

These statistics demonstrate that consent searches of whites are based on probable cause at more than double the rate for blacks and more than six times the rate for Hispanics. Consent searches for black and Hispanic motorists are far more likely to be based upon the lower quantum of proof. This disparity is further reflected in the find rates, or seizures resulting from consent searches, which are: 25% for whites; 13% for blacks; and 5% for Hispanics. Thus, consent searches are twice as likely to yield seizures when conducted for whites as opposed to blacks, and five times as likely for whites as for Hispanics. Consent searches of Hispanics yield nothing 95% of the time. Finally, it was determined that among those troopers who had four or more consent searches in 2000, 80% of the motorists those troopers searched were black or

Hispanic, and those searches resulted in lower-than-average find rates. AG Farmer correctly noted that "the process has been slow and painful. It will continue to be. It's clear we have not solved the problem. We have taken steps to address it that are a model for the nation." (April 3 at 21-22)

Col. Dunbar testified that racial profiling is a decades old problem and that for some time there has been a "disconnect" between the leadership of the NJSP and the OAG. (April 3 at 141-142) However, there now exists a healthy give-and-take between the OSPA and the NJSP. Col. Dunbar acknowledged though that there exists a "very small, very vocal cell of individuals that believe there is no need for change. This small group will do whatever is possible to eliminate disappointment and return to the past. Frankly, they are bullies and enjoy being bullies. . . . I recognize what they are and know they have no place within the NJSP. They will certainly invoke the term 'morale' as their rallying call." (April 3 at 148) Col. Dunbar, however, stated that his "number one recommendation" to the Committee was to not allow morale or the issue of morale to cloud the Committee's inquiry. (April 3 at 201)

Col. Dunbar testified that discipline has been increased. Disciplinary actions were initiated in connection with the tampering with MVRs. Subsequently, compliance with SOPs concerning MVRs increased. There also has been a dramatic increase in the number of allegations warranting internal affairs investigations. (April 3 at 153-155) In 1998, there were 225 cases, in 2000, there were 584 cases and the projection for 2001 is 900 cases. (April 3 at 160-161) Four-fifths of the cases are from civilians, who can now lodge complaints, compliments or feedback using a 24-hour toll-free hotline. The hotline was mandated by the Consent Decree and is operated by the OPS.

Col. Dunbar was perplexed by the situation at the Moorestown and Cranbury stations. Despite having changed the commanders and the road troopers assigned to those stations, they remain different than the other stations and racial profiling persists. (April 3 at 176 –187) Finally, Col. Dunbar suggested that the NJSP should remain under the auspices of the OAG and that the Superintendent of the NJSP should not be elevated to a cabinet-level position.

*Table No. 1: Timeline Of The Release Of Data Describing The Racial Breakdown Of Stops And Searches On NJ Turnpike By The NJSP*

<b>Date Released</b>	<b>Description of Data</b>	<b>Dates Covered by Data</b>	<b>Compiled By</b>	<b>Reported In</b>
Mar.29, 1996	Racial breakdown of summonses issued by Perryville and Washington troopers	Selected dates in 1996: Jan.13, Jan.23, Feb.9, Feb.28, Mar.11, Mar.14.	Lt. F. Hinkle, NJSP	Memo to Capt. R.E. Touw, NJSP
Apr.15, 1996	Racial breakdown of stops and searches by Moorestown troopers	1995	Lt. B.M. Gilbert, NJSP	Memo to Capt. M.M. Silvert, NJSP
Feb.1997; Apr.20, 1999	Racial breakdown of consent searches and probable cause searches by Moorestown, Cranbury and Newark troopers	Consent: Jan.Apr.1994, Dec.1994, all but Feb. 1996 (Moorestown). Jan.Mar.1994, all but Feb.1996 (Cranbury). Jan.Jun.1994, Jan.Jun. 1996 (Newark). Prob. Cause: 1994-1996 (Cranbury).	Sgt. Thomas Gilbert, NJSP; included in State Police Review Team compilation	Memo to Colonel C.A. Williams, NJSP; Interim Report (pp.2627)
Jun.6, 1997	Racial breakdown of stops and consent and probable cause searches by Cranbury and Moorestown troopers	May 1997	Lt. Anthony Farinella, NJSP	Colonel Carl A. Williams, NJSP
Jul.10, 1997	Racial breakdown of consent and probable cause searches and arrests by Cranbury and Moorestown troopers	30 sample dates 1995-1996; Apr-May 1997	Sgt. Thomas Gilbert, NJSP	Colonel Carl A. Williams, Lt. D.E. Blaker, NJSP
Feb.20, 1998	Racial breakdown of stops and consent searches by Cranbury and Moorestown troopers	Apr. - Sept. 1997	Maj. A. Sparano, NJSP	Maj. R.D. Dunlop, Lt. Col. M.A. Fedorko, Col. C.A. Williams, NJSP

<b>Date Released</b>	<b>Description of Data</b>	<b>Dates Covered by Data</b>	<b>Compiled By</b>	<b>Reported In</b>
May 19, 1998	Summary of various NJSP audits with racial breakdowns of stops, searches and arrests by troopers at various stations	Audits completed on various dates in 1996 and 1997	Lt. A. Sacchetti, NJSP	Capt. R. Van Tassel, NJSP
Nov.25, 1998	Racial breakdown of stops and consent searches by Moorestown and Cranbury troopers	Apr.Sept.1998	Capt. Cartwright, NJSP	Maj. R.D. Dunlop, Lt. Col. M.A. Fedorko, Col. C.A. Williams, NJSP
Feb.9, 1999	Racial breakdown of Turnpike stops	Jan.Feb.1997	Office of Attorney General	StarLedger
Apr.8, 1999	Racial breakdown of Turnpike arrests	Two months of 1997	Office of Attorney General	StarLedger
Apr.16, 1999 and Apr.20, 1999	Racial breakdown of consent searches on Turnpike	1996, 1997, 1998, Jan.Mar.1999	NJSP	Power Point presentation including charts; footnoted in Interim Report (p.27)
Apr.20, 1999	Racial breakdown of stops by Moorestown and Cranbury troopers	Apr.1997Nov.1998 (excluding Feb.1998)	State Police Review Team	Interim Report (pp.2526)
Apr.20, 1999	Racial breakdown of searches by Moorestown and Cranbury troopers	Apr.1997Feb.1999	State Police Review Team	Interim Report (pp.2627)
Apr.20, 1999	Racial breakdown of arrests by Cranbury, Moorestown and Newark troopers	19961998	State Police Review Team	Interim Report (pp.2829)
Apr.30, 1999	Racial breakdown of arrests on Turnpike	Apr.1997Mar.1998	Office of Attorney General	StarLedger
Jun.27, 2000	Racial breakdown of stop, search and arrest data by all State Police; misconduct data	Jan.Apr.2000	Office of Attorney General	First Semiannual Report Pursuant to Consent Decree
Jan.10, 2001	Racial breakdown of stop, search and arrest data by all State Police; misconduct data	MayOct.2000	Office of Attorney General	Second Semiannual Report Pursuant to Consent Decree

<b>Date Released</b>	<b>Description of Data</b>	<b>Dates Covered by Data</b>	<b>Compiled By</b>	<b>Reported In</b>
Apr.3, 2001	Racial breakdown of traffic survey, stops and searches on Turnpike	2000	Office of Attorney General	Testimony of AG John Farmer to Senate Judiciary Committee

Table No. 2: OAG's Aggregate Statistics On Stops, Searches, And Arrests (1994-2000)

<b>Data</b>	<b>Dates</b>	<b>Station</b>	<b>White%</b>	<b>Black%</b>	<b>Hispanic %</b>	<b>Asian %</b>	<b>Other %</b>	<b>Total</b>
Stops	Apr.97 – Nov. 98	Cranbury	60.3	24.6	8.2	3.9	3.0	36,645
		Moorestown	58.8	28.7	5.9	3.9	2.7	50,844
		Total	59.4	27.0	6.9	3.9	2.8	87,489
	Jan. - Oct. 2000	Cranbury	58.0	23.4	10.9	6.8	0.9	14,760
		Moorestown	53.1	30.6	8.1	7.3	0.9	19,235
		Newark	63.4	16.4	13.2	6.2	0.7	14,198
		Other units	64.6	19.7	9.6	5.2	1.0	22,041
		Total	59.8	22.8	10.2	6.3	0.9	70,234
Searches	1994 – 1999 (various dates)	Cranbury	24.8	52.4	21.4	0.6	0.8	500
		Moorestown	18.9	53.7	26.1	0.7	0.6	693
		Total	21.4	53.1	24.1	0.7	0.7	1,193

<b>Data</b>	<b>Dates</b>	<b>Station</b>	<b>White%</b>	<b>Black%</b>	<b>Hispanic %</b>	<b>Asian %</b>	<b>Other %</b>	<b>Total</b>
	2000 (consent searches)	Cranbury	32	44	24	0	n/a	90
		Moorestown	19	53	25	3	n/a	147
		Newark	47	26	24	3	n/a	34
		Total	27	46	25	2	n/a	271
Criminal Evidence Found	2000	Total	17	8	10	n/a	n/a	172,900
Arrests	1996 – 1998	Cranbury	29.4	67.0	n/a	n/a	3.6	779
		Moorestown	34.1	61.4	n/a	n/a	4.5	883
		Newark	33.3	58.6	n/a	n/a	8.2	1,209
		Total	32.5	61.7	n/a	n/a	5.8	2,871
	May - Oct. 2000	Cranbury	31.2	30	38.8	0	0	80
		Moorestown	43	44.3	9.4	0.9	0.9	106
		Newark	48.8	32	17.9	1.2	0	84
		Other units	20	70	10	0	0	10
		Total	40.7	37.5	20.8	0.7	0.4	280

## **2. Evidence From Witnesses Who Requested, Or Were Invited to Testify At The Hearings**

The Committee made numerous public announcements that it would entertain testimony from interested parties and members of the public who have relevant information pertaining to racial profiling by the NJSP. As a result, the following individuals testified at the hearings: Sgt. Vincent Bellaran; Ivan Foster; Laila Maher, Esq.; Felix Morka, Esq.; Ronald Thompson, Esq. and Regina Waynes Joseph, Esq. from the Garden State Bar Association; Assemblyman Joseph Charles, Jr., Senator Wayne Bryant, Assemblywoman Nia Gill, Assemblyman LeRoy Jones, and Assemblywoman Nellie Pou from the Caucus; Trooper Emblez Longoria; SFC Robert Watkins; Det. SFC Joseph Soulias; Renee Steinhagen, Esq.; Sgt. Yusuf El-Amin; Trooper Gregory Sanders; Trooper Mark Stephens; Chf. George Pugh; Det. Andre Lopez; Lt. Carmelo V. Huertas; Trooper Ed Lennon; Professor James Fyfe; and Sgt. James Fennessy.<sup>16</sup> Certain of these witnesses testified about the real-life impact of racial profiling. Their testimony shifted the focus from statistics and organizations responses to actual encounters with racial profiling and its effects on individuals.

Ms. Maher and Mr. Morka are attorneys who were stopped by two troopers on the Turnpike in the early morning of January 16, 1996, while travelling from Washington, DC to New York. (April 9 at 214–227) Mr. Morka said that as he was taking his credentials from his pocket, one of the troopers reached into the vehicle and violently pulled Mr. Morka from the vehicle. Ms. Maher exited the vehicle to view what was happening and she said the other trooper

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<sup>16</sup> Every individual that requested an opportunity to testify about racial profiling and the NJSP was allowed to do so. However, a few other individuals that contacted the Committee and/or special counsel were not given an opportunity to testify because they did not possess information about racial profiling and the NJSP. Their complaints involved issues other than racial profiling and agencies other than the NJSP. Each of these individuals was asked for permission to forward their complaints to the OAG for further investigation.

put a gun to her head, then threw her against the car and threatened to arrest her if she did not get back into the vehicle. As Ms. Maher attempted to find the vehicle registration, she was subjected to further abusive behavior. Ms. Maher and Mr. Morka testified that they repeatedly asked why they were pulled over and what had they done wrong and that the troopers refused to respond. Moreover, they said the troopers refused to give their names when requested and instead gave Mr. Morka a speeding ticket and laughed as they returned to their squad car.

Ms. Maher and Mr. Morka said that when they attempted to file a complaint they encountered significant resistance from an officer at the local station. They testified that the trooper refused to give them a complaint form, and reluctantly gave them a legal pad on which to write their story. They each received a call from an investigator and were later informed in writing that their complaint could not be substantiated.

Ms. Maher testified that ever since her experience she is fearful of law enforcement. Ms. Maher and Mr. Morka filed a civil class action lawsuit against the NJSP. The trial court denied class certification and that denial is currently being considered by the New Jersey Supreme Court.

The Committee heard a great deal of testimony from members of law enforcement. Sgt. Bellaran, a member of the NJSP for 24 years who is of Hispanic and Filipino descent, detailed his successful fight against the LPS in the discrimination lawsuit he filed against the NJSP in 1991. (April 9 at 143-199) Sgt. Bellaran testified that he was subjected to retaliation within the NJSP after he obtained a favorable ruling in 1998 concluding he had been subjected to discrimination as a result of a racially hostile work environment. He subsequently filed another EEO complaint in 1999 based on retaliation.

Sgt. Bellaran testified about certain disturbing techniques that he and other troopers have employed while on road patrol. Some of those techniques are: the use of coercion to obtain a motorist's "consent" to search a vehicle; "ghost stops," or the failure to call in a stop and the destruction of the corresponding consent search form to hide the occurrence of a stop and search; and the use of tools by one trooper to dismantle and search a vehicle without the driver's permission while another trooper distracts the driver and occupants, or even takes them away from the scene.

Trooper Longoria, a 13 year veteran of the NJSP, testified that while assigned to Troop D he was repeatedly pressured to make profile stops because the troopers at Troop D produced "big numbers" and he was expected to do the same. (April 10 at 68-74) While on patrol as a young trooper, he witnessed other troopers engaging in spotlighting<sup>17</sup> to determine the race of drivers during evening hours, ghost stops, searches of vehicles without probable cause or driver consent, and the use of racist remarks. Trooper Longoria detailed the pressure he felt to make arrests and the tension that existed at Troop D after Sgt. Bellaran obtained a favorable decision in his discrimination suit. Trooper Longoria testified that when he began speaking out against the "numbers game" he was labeled a complainer, transferred several times, and was subjected to other acts of retaliation. Ultimately, Trooper Longoria filed a discrimination complaint against the NJSP.

Trooper Mark Stephens offered similar testimony. (April 10 at 264–276) As a young road trooper stationed in Troop C and Troop D, he said senior troopers advised him to remove his nametag (to avoid identification) and then proceeded to stop and search black and

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<sup>17</sup> "Spotlighting" is patrol tactic used at night to ascertain the race of a vehicle's occupants. This tactic involves a trooper parking his patrol car on the side of the highway and shining the patrol car's spotlight across the highway to illuminate vehicles as they drive by the patrol car.

Hispanic drivers, without any observed motor vehicle infraction. Moreover, he testified that the senior troopers repeatedly failed to call in stops.

SFC Robert Watkins was involved in the implementation of CAD and the Records Management System ("RMS"). (April 10 at 83-103) He stated that delays and problems with the contractor led him to complain on several occasions to his supervisors and to Col. Dunbar's office. He said his complaints generated retaliation, and his office was searched and he was removed from his Project Manager position. According to SFC Watkins, almost three years have passed since the contracted 1998 completion date for CAD RMS, and the system is still not fully implemented. The Committee is concerned, to say the least, because CAD RMS is essential to the completion of MAPPS, and is an integral part of the plan to more effectively supervise road activity by the NJSP, improve accountability, and eliminate racial profiling.

Renee Steinhagen, Esq., Executive Director of the Public Interest Law Center of New Jersey, represented 14 black NJSP troopers in their challenge of several NJSP personnel practices, including promotions, specialist assignments, police training opportunities and discipline. Ms. Steinhagen and two of her clients, Sgt. El-Amin and Trooper Sanders, testified about the OAG's unwillingness to respond independently to claims of racial bias in the NJSP. (April 10 at 201–220) Ms. Steinhagen testified that all the black troopers appearing on the Smith Special were transferred from the Moorestown station. Ms. Steinhagen transmitted a copy of the Smith Special to the DOJ on March 25, 1999, which presumably was the first time the DOJ received the Smith Special as it was not produced by the OAG, despite its being relevant and responsive to the DOJ investigation.

Sgt. El-Amin read a letter that he wrote 13 years ago complaining about racial profiling and the disparate treatment of minorities by the NJSP. That letter was originally sent

anonymously to the press and the NAACP. (April 10 at 221–224) Sgt. El-Amin also presented the Committee with copies of racist and derogatory cartoons and signs that were posted at various NJSP stations.

Trooper Sanders detailed how as a young African-American trooper, the senior African-American troopers advised him that no matter what happened he needed to "keep [his] mouth shut" until he had five years on the job, because until then he could be terminated without cause. (April 10 at 231-243) After complaining about racial issues at the Newark station, he said a watermelon was placed in his locker and "rat" was written next to his name on personnel work schedules. Trooper Sanders also complained to his supervisors about racial profiling. He testified he was subjected to additional retaliation and was denied certain jobs that he applied for within the NJSP. Trooper Sanders also showed the Committee a T-shirt with a logo of the "ten-percenters." The T-shirts were apparently printed by a subgroup of troopers in response to Col. Dunbar's public statements that he believes only a small number of troopers, or 10 percent, are at the root of the racial profiling problem.

The Committee also heard testimony from Det. Lopez and Lt. Huertas, Hispanic members of the NJSP, who were accompanied by 15 minority and non-minority troopers in a show of support for their testimony. As a 14-year veteran, Det. Lopez was saddened by and took issue with certain testimony before the Committee that could lead people to conclude that the NJSP is a structured racist organization. (April 18 at 145–149) As a minority trooper, Lt. Huertas said he has felt the "sting of racism" both within the NJSP and from society. (April 18 at 149–154). Lt. Huertas was also distressed that the NJSP was being painted "as an organization fraught with racism . . . an organization whose motto, Honor, Duty, Fidelity, was corrupted." He did not deny that certain members of the NJSP engaged in racist behavior. However, to his

knowledge, he stated that there was no conspiracy to keep minorities out of specialist positions or from being promoted. He testified that the vast majority of promotions were based on performance. He also testified that the placement of racially insulting signs was not commonplace or condoned. He said most members of the NJSP "are honest, hardworking individuals. Dignity demands that they should be recognized. . . . Dignity demands that this Committee not characterize all troopers as being part of the problem. . . . A broad stroke of the brush has tainted both minority and nonminority members, and in doing so, it has also tainted me." Lt. Huertas suggested that mentoring programs should be put in place to help develop competent minority and non-minority troopers and that the NJSP should also reward troopers for service, not numbers. Finally, Lt. Huertas suggested that no one should profit from racism and that those who have taken legal action against the NJSP should donate whatever compensation they receive to non-profit organizations.

Sgt. Fennessy testified that he wrote a law review article about racial profiling and discriminatory law enforcement practices that was published in 1999. (April 18 at 139–144) To his knowledge, no one at the NJSP criticized him or retaliated against him. Rather, some time later AG Farmer contacted Sgt. Fennessy, arranged for him to interview with and ultimately work for the OSPA. Sgt. Fennessy discussed the commitment to reform shared by the NJSP and the OAG and his belief that the reforms are sound and are taking hold.

Trooper Lennon, President of the State Troopers Fraternal Association of New Jersey ("STFA"), testified that he was unaware of any trooper being disciplined as a result of the evidence that AG Farmer revealed during the Committee hearings that established that racial profiling continues to persist. (April 18 at 163–178) If such evidence exists, he represented that the STFA supported counseling, further training, or discipline. Trooper Lennon stated that

troopers "should not be assumed guilty, however, based upon accusations or statistics" and took issue with prior testimony from troopers and the public stating that, "much of what you heard was secondhand, innuendo, out of context, and ancient history."

Trooper Lennon urged the Committee not to "succumb to the pressure of drafting reams of regulations when we have the framework to do the job right now." Referring to the "United States and New Jersey constitutions," "Federal and State law," "civil rights statutes," the Consent Decree, "internal rules and regulations" and the NJSP "oath," Trooper Lennon recommended that the enactment of new laws is not the way to prevent racial profiling. Moreover, Trooper Lennon requested that the Committee not ban consent searches. He said troopers need to continue to use their own judgment and intuition, coupled with the mandates of relevant case law and internal regulations. Trooper Lennon also embraced the use of sting operations to ensure that troopers were not abusing their discretion to conduct consent searches. Finally, the Committee was advised that the STFA supports the passage of pending legislation requiring the NJSP to investigate and bring charges within 45 days of the receipt of a complaint against a trooper. Local police departments have a similar procedure in place.

The Committee heard testimony from five members of the Caucus: Assemblyman Charles, Senator Bryant, Assemblywoman Gill, Assemblyman Jones, and Assemblywoman Pou. (April 10 at 3-67) Assemblyman Charles recounted the Caucus' series of hearings on racial profiling in the Spring of 1999 that explored the issue, identified where there were institutional problems responsible for unconstitutional practices, and determined appropriate legislative responses. Assemblyman Charles said that those 1999 hearings led to inescapable findings, which are contained in the Caucus' report. The Caucus concluded in 1999 that racial profiling and employment discrimination were systemic, condoned and rewarded within the NJSP. He also

testified that the Caucus found that institutional policies and practices regarding assignments, tenure, and promotions had not materially improved since the 1975 federal Consent Decree, and that nepotism, favoritism and discrimination play too significant a role in those matters.

Assemblyman Charles also reported that the Caucus concluded that the failure of the AG to properly supervise the NJSP led to persistent violations of the civil rights of minority motorists, and fundamental internal structural reforms were needed. Assemblyman Charles testified that AG Verniero and Acting Supt. Fedorko declined to testify before the Caucus during the 1999 hearings. In addition, the Caucus requested data concerning NJSP stops for preceding years, and was told that that information did not exist. (SJC-7 and SJC-8) As a result of the Caucus' hearings in 1999, and the Committee's hearings in 2000, the Caucus requested that Justice Verniero resign.

Assemblyman Charles also testified that in 1999, the Caucus made recommendations and proposed legislation it believed was needed, including: recruiting the next Superintendent from outside the organization; establishing racial profiling as a third degree crime; establishing a civilian review board; establishing an Office of Independent Prosecutor; making it a crime to tamper with or disable road vehicle cameras; and establishing criminal penalties for civil rights violations. He urged the Committee to take corrective steps to end discriminatory practices by the NJSP. He said the 2000 consent search statistics clearly show that reforms to date, which have been largely administrative, have not been successful in changing behavior. He also testified that the Caucus was concerned that minority troopers were foreclosed from opportunities within the NJSP because promotions took place last year prior to the institution of needed reforms. Assemblyman Charles recommended permitting searches only when probable cause exists.

Senator Bryant testified that the Caucus decided to conduct its own hearings in 1999 after Senate President DiFrancesco and Assembly Speaker Collins denied requests by the Caucus to conduct bipartisan, bicameral hearings on racial profiling. He said none of the bills proposed by the Caucus have been acted upon. He testified that the Committee's hearings did not come until five years after the Soto ruling, three years after the Turnpike shooting, and 15 months after the Consent Decree. Senator Bryant was critical of AG Farmer for failing to publicly report consent search statistics every six months, as required under the Consent Decree, and said that repeated failures of leadership by State officials to address problems of racial profiling require fundamental institutional reforms, including creation of an independent prosecutor and giving citizens a role in monitoring NJSP activities. He expressed concern that minority troopers were being denied training and opportunities that lead to promotions, and that one recent graduating class of troopers had no minority members. Senator Bryant was also highly critical of AG Verniero's actions in response to the DOJ investigation and his failure to address discrimination issues after a federal court concluded in 1998 that Sgt. Bellaran had been the victim of a racially hostile and discriminatory work environment. Senator Bryant called on the Committee to approve the reforms proposed by the Caucus in 1999. He said that the Committee had clearly established that Justice Verniero did not take action in the face of clear evidence that racial profiling was a problem, the Legislature was obligated to right the wrong it committed when it confirmed him, and that if Justice Verniero refuses to resign he should be impeached.

Assemblywoman Gill testified that the evidence clearly demonstrated that the OAG is incapable of monitoring and supervising the NJSP on issues of racial profiling and discriminatory practices, and the NJSP has shown it is unwilling to supervise itself. Instead, she said, the supervisory role of the AG was inherently in conflict with the AG's constitutional

mandate to protect citizens' constitutional rights that have been violated by the NJSP. As a result, Assemblywoman Gill said the inherent conflict should be eliminated by establishing a special prosecutor to handle investigations into individual rights violations. Furthermore, she called for enactment of the Caucus' recommendations from 1999, and highlighted bills that would establish racial profiling as a crime and create a civilian review board.

Assemblyman Jones testified about the failure of the Legislature to act in 1998 on a resolution he sponsored, along with Senators Wynona Lipman and Shirley Turner, to create a bicameral, bipartisan legislative task force to investigate racial profiling and minority appointments within the NJSP. He testified that the Caucus' legislative proposals would foster accountability and restore confidence in the NJSP. Assemblyman Jones commended the minority troopers who testified before the Committee, and said that in many cases, minority troopers are frustrated, angry and dispirited by the hostile environment that exists within the NJSP, and said that the Caucus hearings made it clear that external problems of racial profiling could not be resolved until internal problems within the NJSP were addressed.

Chairman Gormley commented that he made efforts in 1999 to examine the issue of racial profiling, but when AG Farmer released the racial profiling documents in 2000, he took the opportunity to conduct an extensive Committee investigation that involved a review of the 100,000 pages of documents, 160 hours of sworn interviews, and 60 hours of public hearings. He also commented that he and Senator Bryant had been working together on civil rights legislation, but that he wanted to wait until after the hearings before moving forward on the bills.

Assemblywoman Pou testified that although AG Verniero testified in 1999 that the problem of racial profiling had not "crystallized" in his mind until after the Turnpike shooting in 1998, evidence now indicated that he chose to ignore facts brought to his attention at least a year

earlier. She said that had those facts been known in 1999, as well as the evidence that he withheld vital information from the DOJ, he probably would not have been confirmed. She called upon the Committee to act on the Caucus' legislative recommendations.

Mr. Thompson and Ms. Joseph, representatives of the Garden State Bar Association, testified about their personal encounters with racial profiling and the need for reforms. Mr. Thompson suggested that the lack of diversity in the NJSP and the OAG translated into a "lack of diverse ideas, viewpoints, and beliefs. . . . Diversity promotes the infusion of different experiences and the lessons learned from those experiences." (April 9 at 231) Mr. Thompson called upon the Committee to adopt the Caucus' legislative recommendations. Ms. Joseph joined Mr. Thompson's suggestion that there is a correlation between racial profiling and the lack of diversity in the NJSP and the OAG and called for diversity in the management levels of those organizations. (April 9 at 245 and 246)

The Committee heard testimony from AAG Cronin, who was appointed in September 1999 to head the OSPA. (April 18 at 1-93) AAG Cronin testified that under the Consent Decree, the OSPA is charged with ensuring implementation of the terms of the Consent Decree, auditing the manner in which the State receives, investigates and adjudicates misconduct investigations, auditing NJSP use of MAPPS, auditing trooper performance in motor vehicle stop requirements, providing technical assistance and training to the NJSP on these matters, conducting certain misconduct investigations, and providing legal advice to the superintendent and other NJSP members. He said his office also reviews lesson plans for new training requirements that are mandated under the Consent Decree. AAG Cronin testified that the Consent Decree is to remain in force for five years, providing that the court finds the State in

substantial compliance for two years, and that the State can petition to dissolve the Consent Decree sooner if it reaches compliance sooner.

AAG Cronin testified that under the Consent Decree, the OPS receives all misconduct complaints against NJSP members, conducts those investigations, and has the authority to investigate cases where there is a conflict of interest by NJSP officials, or where certain types of allegations have been made such as discriminatory motor vehicle stops or excessive use of force. Once charges against a trooper are reviewed by the OPSA for legal sufficiency, a deputy attorney general assigned to the OPSA prosecutes the case in an administrative hearing before the Superintendent. The OPSA also reviews all closed misconduct investigations.

AAG Cronin detailed the efforts to implement the MAPPS system, as required by the Consent Decree in ¶¶ 40-53, 108. As reported in the April 2001 Monitor's Report, the State has so far failed to comply with these 14 important provisions because the MAPPS system remains incomplete. The April report indicated that the expected delivery date of the system had been further delayed, and moved back, from May 2001 to November 2001. Under the Consent Decree, MAPPS was to have included all motor vehicle stop data as well as information about civilian compliments and complaints, misconduct investigations, criminal arrests and charges, civil lawsuits alleging misconduct while on duty, civil lawsuits alleging off-duty conduct involving racial bias, violence or threats, interventions by management, and information about a trooper's training. (Consent Decree at ¶ 41)

AAG Cronin said the data collection will allow NJSP managers to gather information and respond to it in a timelier manner. The Consent Decree required the State to publicly report comprehensive traffic stop data on a semi-annual basis. (Consent Decree at ¶ 114)

AAG Cronin said the State had not been reporting all the information required, including data about post-stop activity such as consent searches, because current technology did not allow the State to capture all of the data. He testified that as modifications to CAD are made, additional data, such as the reason for traffic stops, would be reported as required. AAG Cronin said that the consent search statistics detailed by AG Farmer before the Committee in April were compiled by hand, and that is why that data was not reported in June 2000 and January 2001, as required under the Consent Decree.

AAG Cronin testified that motor vehicle stop data would be gathered from CAD and from stop reports contained in RMS. The CAD system contains information communicated over the radio, and includes information such as the reason for the stop and the race or ethnicity of the occupants. A motor vehicle stop report is filed only if someone in the vehicle is asked to exit the vehicle. AAG Cronin also testified that the RMS system was not expected to be completed until late 2001 or early 2002, but the portions required for the implementation of MAPPS will be ready by Fall 2001.

Table No. 3: Electronic Monitoring Systems of NJSP

Program	Description	Initiated By	Deadlines Missed	Implementation Date
MAPPS(Management Awareness Personnel Performance System)	Electronic file on each individual trooper: stops, searches, misconduct complaints, training, etc., to enable monitoring, promotion and discipline	Interim Report; more detailed plan in Consent Decree ¶ 40 et al.	May 2001 (scheduled completion)	Nov. 2001 (projected)
CAD(Computer Aided Dispatch System)	Central file of information from all stops called in by troopers	January, 1995 State Request For Proposal issued. Contract awarded June, 1996. Later again called for in Interim Report.	June 1997 (per contract)	Feb. 19, 2001
RMS(Records Management System)	Unified report system and Central file of all complaints, compliments, etc. concerning troopers	January, 1995 State Request For Proposal issued. Contract awarded June, 1996. Later again called for in Interim Report.	June 1998 (per contract)	Late 2001/ early 2002 (projected)

Under the Consent Decree, supervisors must review motor vehicle stop reports within 14 days. (Consent Decree at ¶ 35) The State was not in compliance with this requirement in the Monitors' Third Report because reports were taking an average of 16 days, and as long as 51 days, to be reviewed. The Consent Decree also requires the NJSP to use MVRs to record all traffic stops, and requires supervisors to randomly review the tapes. (Consent Decree at ¶ 34) The State was not in compliance with this requirement because the monitors' review of 158 tapes found that 118 had one or more problems. Most of the failures involved video recorders being turned on too late, or failure to activate the audio recording equipment. The Consent Decree also

requires supervisors to review the video recordings on a random basis. (Consent Decree at ¶ 36) The State remained out of compliance with this requirement in the Monitors' Third Report because it did not yet have a formal policy in place and the monitors found the quality of supervisor reviews varied widely. The monitors reported that in their own review of five searches that raised concerns, at least one had been reviewed by the trooper's supervisor, who had failed to raise any concerns. AAG Cronin testified that the policy for supervisor review was under development, but that the State wanted to commence reviews without waiting to have a formal policy in place.

When questioned about why the minority stop rate remained disproportionately high, AAG Cronin testified that the State was conducting a speed survey (violation survey) on the southern end of the Turnpike to determine whether differing driving behaviors may explain disproportionate stop rates. In response to questioning by Senator Furnari, AAG Cronin testified that to date, there have not been any substantiated internal investigations regarding racial profiling. He testified that as a result of reviewing videotapes of motor vehicle stops, his office has recommended that discipline be pursued in some cases, but none of those investigations has been completed.

Senator Zane voiced doubts about the effectiveness of steps taken to eradicate racial profiling in light of statistics indicating that the rate at which minorities were searched remained disproportionately high in 2000. In response, Capt. Leonardis, Commandant of the NJSP Training Academy in Sea Girt (the "Academy"), listed steps aimed at making cultural changes within the NJSP through improved training: in-service training on search and seizure issues; training on ethics, constitutional issues and cultural awareness; supervisor training on the

MAPPS program; trooper coach training; and a shift in training to emphasize critical thinking skills and the utilization of smaller classes. (April 18 at 75-78)

AAG Cronin acknowledged that the State has failed to complete misconduct investigations within the 120 days as required under the Consent Decree. In addition to increasing the size of the OSPA, AAG Cronin said the State also was considering removing minor and routine administrative violations (e.g. failure to wear a hat) from the discipline system, and handling those matters as performance issues. He acknowledged that the number of IAB complaints is climbing dramatically, from 225 in 1998 to a projected 900 in 2001, and said it may be partly due to Consent Decree requirements making it easier for citizens to file complaints. AAG Cronin acknowledged that none of the troopers who were identified in 1999 during the Troop D audit as having significant record-keeping discrepancies has been disciplined. Other witnesses before the Committee indicated that in at least one case, the records discrepancies uncovered by the Troop D audit approached or exceeded the level identified in the Hogan and Kenna Falsification Indictment. AAG Cronin testified that internal investigations have been completed in three cases resulting from the Troop D audit, but none of those cases is among those most egregious.

While AAG Cronin cautioned against eliminating consent searches, contending the reforms should have an opportunity to work, he also acknowledged he was concerned that the 2000 consent search statistics indicate consent searches are not being used effectively. He said the statistics showing a disproportionately high minority search rate, and a disproportionately low contraband find rate from those searches, indicate that "there may still be continuations of old concepts linking minority status to criminality, which is troubling."

When asked whether serious misconduct investigations could be undertaken by an office of professional responsibility that is outside of the NJSP, AAG Cronin responded that, theoretically, such an approach would not present problems. He added, however, that his office's review of investigations conducted by the OPS has concluded that the investigations were thorough and fair. When asked whether the current system, under which the Superintendent makes final discipline decisions, is wise and whether such decisions should be made by an administrative law judge or official outside of the NJSP, AAG Cronin responded that the existing structure giving the Superintendent ultimate authority over discipline was essential, because the ability of the Superintendent to impose discipline was important to his ability to maintain order.

Dr. James Fyfe, a professor of criminal justice at Temple University and a former New York City police lieutenant, testified in support of making the AG a constitutionally elected office, as it is in 43 states, and making the NJSP Superintendent a cabinet level position that reports directly to the Governor. (April 18 at 94-138) Dr. Fyfe testified that an elected AG would promote independence from the governor, minimize conflicts of interest, and result in independent oversight over the NJSP by essentially serving as an independent prosecutor. Members of the Committee voiced concerns about the prospect of an elected AG engaging in partisan politics and fundraising.

Dr. Fyfe questioned the existing system under which an office in the OAG and one in the NJSP each bear responsibility for investigating serious misconduct allegations, and said it is difficult to fix responsibility when there are multiple offices responsible for such investigations. Regardless of how the AG is selected, Dr. Fyfe said the function of the Attorney General should be separate from that of the NJSP and the head of the NJSP should report directly to the Governor, which is the way it is structured in virtually every other state. Dr. Fyfe also was highly

critical of the conduct by the OAG in the Soto case, in which he was a defense witness, and said he believes the State was not forthcoming with data and information about training that was requested by the defense.

Dr. Fyfe also testified that to accomplish true reform, and to make changes in the culture of a police organization, the NJSP Superintendent must be a strong leader who is given broad authority to hire and fire individuals, enact changes, conduct internal investigations, and promptly administer corrective actions. He said that studies have shown that the best predictor of a police officer's conduct is the "philosophy and expectations of the boss." He stated that it is also advisable to require all officers to spend some time working in the IAB, so they bring that understanding with them when they move on to command positions.

Dr. Fyfe testified that consent searches should be ended, because they pose a real threat to Fourth Amendment rights and because they are not an efficient law enforcement tool. He said consent searches were always suspect, that uniformed police officers should rarely make arrests for possessory crimes that are not associated with arrests for other offenses, and that in many progressive police agencies, such arrests are regarded as a sign that an officer may be in trouble. He said waivers of the Fourth Amendment are valid only when they are made voluntarily and intelligently, and police managers should be skeptical of police officers who say they found drugs in a motorist's trunk after they were given consent to search. He believed far more credible are the accounts of individuals who were subject to consent searches and who said they did not know they could refuse the search and were told that if they did not consent, they would be detained while the trooper obtained a warrant:

I think the way to deal with it is just to say you can't do it. It's not a -- 271 consent searches have produced evidence in what, 12 to 15 percent of the cases. So you're talking about losing 30 arrests in a state this size. And we don't know how much drugs were seized in

those arrests, but it doesn't seem to me that it's making a difference in the quality of life for Jerseyans or the safety of the public. Instead, what it is doing is creating enormous tensions.

\* \* \*

I've worked on about 500 civil rights cases. Some of the most egregious civil rights violations with the most tragic consequences come about because a police officer attempts to get around the Fourth Amendment, with the encouragement of their bosses, who are not interested in how they do it, but are only interested in the results. So I think the way to deal with that is to say if you're a State Trooper in New Jersey, 'Your primary responsibility is to make sure that the highways are safe. We certainly want you to be a vigorous enforcer of the law. We want you to be properly aggressive. But we don't want you spending your time trying to figure out how to get your hands into people's pockets.'

(April 18 at 113, 115) When asked about alternative methods for independent oversight of the NJSP, Dr. Fyfe said appointment of a special monitor was one option, but it carried the risk that the monitor would become part of the system, and thus less independent. He discounted claims by Col. Dunbar that profiling activity was largely unwitting: "I don't know how it could be unwitting here in New Jersey after all we've been through over the last several years. But the job of training is to make sure that officers understand that that kind of unwitting racism is not tolerated." He said that if strong action were taken in a few cases involving troopers engaged in profiling, behavior would change very quickly. And, while counseling is appropriate earlier in a trooper's career, Dr. Fyfe said, "if you find someone who is acting out some racist beliefs on the highway, he has no place on the job." Dr. Fyfe also acknowledged that it was difficult to prove abuses of professional discretion in a criminal forum, and administrative action may be more appropriate.

Dr. Fyfe also recommended proactive testing to monitor police conduct on the road and identify misconduct, such as ghost stops or invalid consent searches. He suggested

placing young black men in older cars on the roadways, and measuring how police conduct themselves when those individuals are pulled over:

If you want to find bad cops, you're not going to do it by trying to reconstruct what happened later. You have to manufacture those incidents and see what happens. And that's been done in New York City and in other places. And it only has to be done a few times, and the culture changes because every trooper knows, 'I don't know who this guy is I'm pulling over. He may be reporting directly to the Attorney General. He may be reporting to a committee of the State Senate. And I better treat him right.' So that changes things very quickly.

The New York City Police Department does 700 stings a year on its officers. And that's one way to make sure that this kind of conduct doesn't occur.

(April 18 at 112)

## **RECOMMENDATIONS**

As a result of its investigation, the Committee believes that the Consent Decree is critical to the eradication of racial profiling. Additional steps are needed, however, to compliment the provisions of the Consent Decree and to ensure that reforms continue after the Consent Decree expires.

### **Suggested Reform No. 1: Prohibit Consent Searches By Executive Order**

Consent searches came to the forefront during this investigation. Indeed, consent search data was critical to the Interim Report's determination that racial profiling is "real -- not imagined."

Under the United States Constitution and decisions of federal courts, a law enforcement officer may search a vehicle, without probable cause to believe that the vehicle contains weapons or contraband, if the vehicle's owner waives the right to resist the search by giving consent. See Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973). The United States Supreme Court has determined, as a baseline, that a motorist's consent to search is valid if the consent is reasonable and voluntarily given. See Ohio v. Robinette, 519 U.S. 33, 3940 (1996). Further, the Supreme Court held that the Fourth Amendment does not require a law enforcement officer to inform a motorist of the right to refuse prior to asking for consent to search the motorist's vehicle. See Schneckloth, 412 U.S. at 227. As a result, where a motorist gives consent to search, a law enforcement officer enjoys wide discretion to search a vehicle despite a lack of probable cause.

In New Jersey, statistics from as early as 1994 reflect that minority motorists are subject to consent searches at inordinately high, indeed, disparate rates. According to SFC Gilbert's 1997 Memorandum to Col. Williams, minority motorists accounted for over 80% of

consent searches conducted on the Turnpike during periods documented between 1994 and 1996. Of motorists searched by troopers assigned to the Cranbury and Moorestown stations, nearly nine of ten were minorities.

The Interim Report concluded that consent searches were fraught with discriminatory enforcement. Based upon a review of data from 1994 through 1998, the Interim Report concluded, "We are thus presented with data that suggest that minority motorists are disproportionately subject to searches (eight out of every ten consent searches conducted by troopers assigned to the Moorestown and Cranbury stations involved minority motorists)." (Interim Report at 7)

In 2000, the Appellate Division held that "a law enforcement officer making a routine traffic stop cannot ask for a consent to search without at least an articulable suspicion." State v. Carty, 332 N.J. Super. 200, 205 (App. Div. 2000). This heightened standard was required by the State Constitution, the Court wrote, as well as by the reality of the dynamic between motorists and troopers: "Requests to consent to an automobile search are obviously, as a matter of common experience, likely to be complied with." Id. at 207. The Court also noted with approval that this "articulable suspicion" standard was already imposed upon troopers by the Consent Decree; by the OAG through the Interim Report; and by NJSP SOPs. See Carty, 332 N.J. Super. at 206.

These efforts to hold troopers to a higher standard for consent searches, however, have produced little positive results. While the courts and the Consent Decree have attempted to limit troopers' discretion to solicit consent, troopers continue to subject minority motorists to consent searches at far higher rates than whites. For the year 2000, AG Farmer reported that minority motorists accounted for 71% of consent searches conducted on the Turnpike, while

these minority motorists totaled no more than 33% of the turnpike travelers. In fact, minority motorists accounted for a staggering 78% of consent searches conducted by troopers from the Moorestown station in 2000, a number that has changed little over the six years that these statistics have been collected. (April 3 at 16-20)

Not only were minority motorists subject to a disproportionate number of consent searches, but those searches were far less likely to be based on probable cause, and far less likely to result in seizures of contraband. AG Farmer acknowledged that consent searches yield little in the way of contraband, thus essentially supporting the argument that are of little utility but present significant risks:

**Senator Lynch:** It seems to me the consent to search falls into the category of weighing this on a risk utility basis and I think you alluded to something similar to that earlier. And the risk here is trampling on people's rights. And the utility is what are you getting out of it. And forgetting the fact that you have all this compilation of stops and searches and so forth and so on, in the consent to search category, what are you retrieving in terms of contraband out of these consent to searches, and have you -- do you have any analysis of that?

**AG Farmer:** \* \* \* I don't have it with me, but I can provide it to you. The general answer is, is very little.

(April 3 at 79-80)

Prof. Fyfe also presented some sobering thoughts on the unchecked power of troopers in consent searches situations, and the resulting temptation to abuse the practice. Based upon his research and his personal experience as a police officer, Prof. Fyfe stated the following:

There is no Miranda warning equivalent for consent searches, and troopers who ask motorists for consent to search on the side of lonely roadways must meet no such requirement. Instead, there is only the trooper's claim that, in effect, people who know that their cars contain drugs have, in effect, voluntarily told troopers to, "Go ahead, and look all you want, Officer." I spent nine years patrolling

New York City streets and have been studying police all over this country for the last 38 years, and I find that scenario very unlikely.

Instead, I find much more credible the testimony of scores of people, innocent and otherwise, who have testified in New Jersey over at least the last 12 years about the circumstances in which they underwent consent searches on the side of the Turnpike.

These people generally indicate that they had no idea that they could refuse to undergo a search -- that they were told that if they did not consent to a search, they would be detained at the side of the road for hours while troopers went about the process of obtaining a warrant or even that they and their cars were searched without being asked anything.

\* \* \*

New Jersey should put an end to consent searches.

(April 18 at 107-108) It should be noted, however, that though there is no Miranda warning equivalent for consent searches, the NJSP requires troopers to advise motorists that they have a right to refuse, obtain written consent before commencing a consent search, and record the exchange on the MVR, which is available for later review to determine voluntariness.

Overwhelming evidence demonstrates that, despite some law enforcement officials' continued faith in consent searches, those searches produce negligible positive results, or "finds." Based upon a sample of searches conducted in 1995 through 1997, the Review Team found that consent searches resulted in an arrest (the "hit rate") no more than 32% of the time, and perhaps in as few as 19% of the consent searches conducted. A small sample for those years showed the hit rate to be 13.5% for black motorists and 38.1% for Hispanic motorists. (Interim Report at 28)

More troubling is the fact that, since release of the Interim Report in 1999, hit rates for minority motorists have declined while consent search rates remain virtually the same. AG Farmer reported that in 2000, consent searches of black motorists resulted in a seizure 13% of the time, less than half of the 25% hit rate for white motorists during that year. Consent searches of Hispanic motorists generated a seizure only 5% of the time. (April 3 at 17) In

essence, by extracting consent from minority motorists at higher rates than whites, troopers continue to make more searches of people less likely to be committing crimes. As AG Farmer explained, "Not only is the use of race or ethnicity as a factor in making a decision to ask for consent subject to abuse based on prejudice, it is also quite simply bad law enforcement." (April 3 at 17-18)

Finally, while consent search statistics are no less reflective of discriminatory enforcement in 2001 than they were in 1994, the overall number of consent searches has dropped precipitously in the last few years. The total number of consent searches dropped from 440 in 1999 to 271 in 2000. According to data recently released by the NJSP, these numbers will drop significantly in 2001 if Moorestown's early numbers are an indication: at that station, consent searches during the first quarter of the year dipped from 163 in 1999 to 150 in 2000, and then plummeted to eight in 2001. See "New Jersey Turnpike Data Show Decline in Searches," New York Times, April 23, 2001.

The reason for this decline is not clear. However, it is evident that effective law enforcement in New Jersey does not depend on consent searches, as the relatively small number of seizures derived from consent searches suggests: 37 seizures resulted from the 271 consent searches in the year 2000. (April 3 at 17-18) As Dr. Fyfe explained, "So you're talking about losing 30 arrests in a state this size. And we don't know how much drugs were seized in those arrests, but it doesn't seem to me that it's making a difference in the quality of life for Jerseyans or the safety of the public. Instead, what it's doing is creating enormous tensions." (April 18 at 113)

Some concern was expressed over the suggestion that consent searches should be eliminated. AG Farmer testified that consent searches are a useful tool and cited a case in which a terrorist on his way to New York was stopped and a consent search revealed explosives. AG

Farmer testified that "if you had a doctrine that prohibited consent searches, you might lose tens of thousands of people in a case like that." (April 3 at 33, 49, 80-81) The case AG Farmer was referring to was U.S. v. Kikumura, 706 F. Supp. 331 (1989). Kikumura, however, did not involve a consent search, it involved a probable cause search. The NJSP trooper who stopped Kikumura for a motor vehicle violation saw in plain view several cylinders of gunpowder and lead shot in the backseat of Kikumura's vehicle and the trooper subsequently conducted a probable cause search. Kikumura, 706 F. Supp. at 331. Though the Kikumura case is not directly on point, AG Farmer did present the view that banning consent searches could pose a limitation on law enforcement's ability to prevent the commission of crime.

Based upon the foregoing, as well as the review of other testimony and documents during the course of this investigation, the Committee finds that the possible utility of consent searches is outweighed by the violations of civil rights accompanying their abuse. The information gathered by the Committee suggests that consent searches produce marginal law enforcement gains, and that efforts to curb discriminatory use of these searches have produced little results. Therefore the Committee recommends the immediate prohibition of consent searches by Executive Order.

The Executive Order should mandate prohibition of consent searches for motor vehicle stops made in connection with N.J.S.A. Title 39 violations on all highways on which a 65 miles per hour speed limit has been imposed, to wit: NJ Route 18, NJ Route 55, Interstate 78, Interstate 80, Interstate 195, Interstate 287, Interstate 295, Atlantic City Expressway, Garden State Parkway, and the Turnpike. See N.J.S.A. 39:4-98.4. The Executive Order should also provide that, subsequent to the consent search ban, if the OAG or NJSP seek to reinstate the use of consent searches they shall provide information to the Committee demonstrating that sufficient

safeguards exist to monitor the use and prevent the abuse of consent searches. The Committee shall consider that information and make a recommendation to the Governor on whether the use of consent searches should be reinstated; and, if so, whether additional safeguards are necessary. If consent searches are reinstated, sting operations should be conducted to ensure that troopers are not abusing their discretion to conduct consent searches.

Part of this suggested reform is driven by the fact that the CAD RMS and MAPPS systems have not yet been fully implemented. These systems, when fully operable, will allow the NJSP and the OSPA to, among other things, comprehensively monitor all stops and all activity that occurs subsequent to stops. Almost three years have passed since the proposed completion date and the CAD RMS is still not fully implemented. The Committee is concerned, to say the least, because CAD RMS is an integral part of the plan to eliminate racial profiling.

## **Suggested Reform No. 2: Independent Oversight Of The LPS**

### 1. Learning From History: The Need For Structural Changes In NJSP Oversight

The Committee recommends creation of an independent review system to handle misconduct investigations of law enforcement personnel within the LPS.

It became clear during the Committee's investigation that one of the central challenges to implementing meaningful and lasting reforms are the frequent disruptions in leadership, and the lack of continuity of oversight and accountability, within the NJSP and the OAG.

Throughout the 1990s, there was an exceptionally rapid turnover rate within the upper levels of NJSP management. For example, in a four-year period, from 1994 through 1998, five different individuals served as Lieutenant Colonel/Executive Officer. There were also frequent changes in the leadership of the IAB, another critically important position. These high level NJSP managers at times relied upon a working relationship with the FAAG, but there was little more stability to be found in that position. From 1994 through 1999, four different individuals served as FAAG. Some were involved in NJSP affairs, and some were not. In sum, during the critical years following the Soto decision, while the tenure of AG Verniero and Col. Carl Williams was unbroken, their top aides came and left.

Such frequent changes in leadership create the danger that leaders will not be invested in the long-term and systemic health of their organization because they will not be held accountable individually in the long-term. The Committee heard testimony from NJSP officials who repeatedly received clear evidence of potentially serious problems, including racial profiling, yet no action was taken to address these problems.

Frequent disruptions among top managers also creates the potential for difficult and controversial issues, such as racial profiling, to be ignored or concealed, or managed with only short-term goals in mind, rather than confronted and handled with openness and courage. In the extreme, it can cultivate a culture of denial, driven by political considerations and an unwillingness to tackle difficult issues in a serious manner. Finally, it can create a mind set among the rank and file that reforms are only temporary, and will not outlast those who put them in place.

Clearly, this potential for frequent disruptions in leadership makes it far more likely that once the scrutiny of the federal monitors ends, needed reforms may not be maintained and adjusted as needed.

Indeed, if there is any single lesson to learn from New Jersey's experience with racial profiling throughout the 1990s, it is this: We will fail at resolving difficult issues within the NJSP, such as addressing racial profiling, confronting cultural issues, implementing training, striving toward diversity, or ensuring effective internal affairs procedures, unless there is sustained attention dedicated to those issues.

There is vivid proof in the record before the Committee that the issue of racial profiling was mishandled throughout the 1990s. After the Soto decision, other defendants were bringing other suppression motions. The Littles Committee was formed to respond to the decision and the new litigation cropping up in other counties. The Littles Committee recommended and planned for enhanced search and seizure training. This committee also recommended new internal procedures to require troopers to record the race of motorists on their patrol charts in order to make badly needed improvements to record-keeping, and to give line supervisors the information they need to keep informed about the activities of road troopers and

to supervise them effectively. The Littles Committee believed the records of the troopers in the Soto case should be examined to better gauge the viability of the State's appeal and it endorsed a new inspection audit process that would provide a mechanism to examine trooper conduct for potential problems.

These were modest, but meaningful, reforms. The Littles Committee, however, was disbanded after only a few meetings, and its recommendations were for the most part forgotten: the search and seizure training was never implemented; the record-keeping reforms were not implemented for more than two years, and only after the Turnpike shooting; the examination of the arrest records of the troopers in the Soto case raised questions about the viability of the appeal, but OAG officials claimed ignorance about those findings; for a short period of time some inspection audits were undertaken, but when audits of the Moorestown barracks in 1996 revealed minorities were stopped and searched at disproportionately high rates, those findings were not acted upon.

Within the OAG and the NJSP, the widely held view was that the statistics in Soto were flawed and the ruling was dismissed as an aberration. Officials within the OAG and the NJSP, however, recognized the need for more reliable statistics, and the long overdue need to computerize traffic stop data. Indeed, the NJSP issued a request for proposals in January 1995. In June 1996 the State awarded a contract to a private vendor to develop CAD RMS. The contract deadline was June 1998. But CAD was implemented late and was plagued with problems and despite the terms of the contract, RMS was never implemented. As late as mid-1999, the State still did not have the ability to search CAD to retrieve statistical information.

At the time of the writing of this report, implementation of RMS remains incomplete. The State also remains out of compliance with the Consent Decree requirements to

institute MAPPS, an even more comprehensive computerized system to monitor trooper activity, although it has spent \$36 million on technology improvements since fiscal year 2000. The delivery date for MAPPS, initially promised for May 2001, has been moved back six months to November 2001. As a result, the OAG has not complied with the Consent Decree requirement that it report comprehensive traffic stop statistics, including consent search statistics, every six months. When AG Farmer reported to the Committee in April 2001 that minority consent search rates remained distressingly high in 2000, he was essentially reporting on statistics that were required to be made public on an ongoing basis, beginning eight months earlier.

In early 1999, the Troop D audit identified a number of troopers who had significant levels of discrepancies in their record keeping, and in at least one case, those discrepancies rose nearly to the level of records falsification. But at the time of this report, no disciplinary action had been taken against any trooper as a result of the Troop D audit. Indeed, the Committee learned that only when it conducted its own investigation, was there renewed activity by the NJSP to resolve those outstanding cases that had languished for two years, and subsequently investigators were added.

The pace of internal investigations has also troubled the independent monitors, and in this regard the State has consistently failed to fulfill all the requirements of the Consent Decree. The Consent Decree originally required the State to complete misconduct investigations within 45 days. After failing to meet that standard, the State renegotiated the requirement and it was changed to 120 days. In their April 2001 report, the independent monitors found that none of the 15 misconduct cases examined had been completed in 120 days. Instead, the cases had taken between six and 16 months to complete.

The evidence is compelling that there is a need for permanent independent oversight of law enforcement activities by State agencies. Throughout the 1990s, clear warning signs of problems within the NJSP were ignored. Reforms were delayed or abandoned midstream, or put off before they even began. When faced with significant statistical and anecdotal evidence of the racial profiling problem, the NJSP and the OAG failed to act until interceding outside events left them no choice but to act. Indeed, were it not for the likelihood of a lawsuit by the DOJ, the upcoming oral arguments in the Soto appeal, and the controversy surrounding the nomination of Peter G. Verniero to the Supreme Court, it appears unlikely that the Interim Report would have ever been written.

For these reasons, the Committee recommends that a new system be created to provide independent oversight of law enforcement activities by the LPS. This oversight should not be limited to the NJSP, but should include all divisions within the LPS, including the CJ. This oversight should be designed to ensure that citizen complaints of misconduct involving either statutory or constitutional violations be handled fairly, thoroughly and expeditiously.

The Committee recognizes that the Consent Decree provides a system for the NJSP to handle citizen complaints of trooper misconduct. This system includes the OPS within the NJSP, the OSPA within the OAG, and the independent monitors. It is the Committee's recommendation that this system be modified, expanded, and made permanent. This recommendation is based partly on the fact that with the expiration of the Consent Decree, the independent monitors and other important aspects of the current system established by the Consent Decree will also expire.

## 2. Oversight Of The NJSP Under The Consent Decree

The Consent Decree currently provides for a three-pronged system to handle complaints of misconduct by troopers, including claims of disparate treatment and excessive force. This “three-pronged” system consists of the OSPA within the OAG, the OPS within the NJSP, and the court-approved independent monitors. The NJSP also has the option of assigning less serious misconduct investigations to the chain-of-command supervisors or the IAB.

### A. Notification Of Misconduct

Under the Consent Decree, any citizen can file an oral or written complaint alleging trooper misconduct. The Consent Decree requires the NJSP to set up a 24-hour toll-free hotline, operated by the OPS, to ensure that complainants are not discouraged from making complaints and that all necessary information about each complaint is obtained. All misconduct complaints are handled by the OPS, although the OAG has access to all misconduct complaints.

The Consent Decree requires that the NJSP refer for investigation to the OAG and/or the OPS all incidents in which a civilian is charged by a state trooper with obstruction of official business, resisting arrest, assault on a state trooper or disorderly conduct, or where the prosecutor’s office dismisses the charges (aside from dismissals in connection with a plea agreement). (Consent Decree at ¶65) The NJSP is also required to notify the OAG of any claims against the NJSP alleging misconduct by a state trooper or other employee of the NJSP. The OAG is required to advise the OPS of such civil claims. (Consent Decree at ¶66)

The State also is required to implement a method by which it is notified of a finding in any criminal proceeding of a constitutional violation or misconduct by a state trooper. (Consent Decree at ¶67) The OPS is also to be notified if a trooper is arrested or criminally charged for any conduct, or if a trooper is named in a civil suit for any on-duty conduct (or acting

in his/her official capacity), or off-duty conduct where the suit alleges racial bias, physical violence or threats of physical violence. (Consent Decree at ¶68)

B. Professional Standards Bureau<sup>18</sup>

The OPS within the NJSP acts as the gatekeeper of misconduct complaints filed with the NJSP, and also implements the investigations component of the “three-pronged” system. All misconduct complaints filed with the NJSP go through the OPS. The OPS is composed of two sections: investigation and adjudication. The investigation section investigates the misconduct complaint and, if substantiated, the adjudication section adjudicates the complaint. The adjudication section is then responsible for drawing up the charges and specifications in order to place the trooper on notice that he or she has been charged with a substantiated allegation. The charges and specifications are then reviewed by the OSPA within the OAG for legal sufficiency. If approved by the OSPA, the trooper is then afforded a hearing before the Superintendent. A DAG assigned to the OSPA then prosecutes that allegation before the Superintendent.

The Consent Decree requires the OPS and the OAG to review all misconduct complaints as they are received to determine whether they should be investigated by the OPS or the OAG, or whether they should be delegated to a chain-of-command supervisor.

The Consent Decree tried to ensure that OPS staff were trained to handle trooper misconduct complaints. Under the Consent Decree, OPS staff are required to have prior investigative experience and training, analytic and writing skills, as well as cultural and community sensitivity. Moreover, OPS staff is required to undergo training in the following areas:

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<sup>18</sup> See Consent Decree at ¶¶70-92.

misconduct investigation techniques, interviewing skills, observation skills, report writing, and criminal law and procedures. (Consent Decree at ¶¶71-72)

There are also limitations placed on troopers assigned to the OPS. Troopers must recuse themselves from any investigation where there is a conflict of interest. Moreover, all written or recorded interviews are to be maintained as part of the investigative file. The investigating troopers are prohibited from conducting group interviews and from accepting a written statement from any state trooper in lieu of an interview. (Consent Decree at ¶¶75-76)

The Consent Decree also requires the NJSP to attempt to complete misconduct investigations within 45 days after assignment to an investigator. (Consent Decree at ¶87) This time period was later extended to 120 days. The Third Monitor's Report indicated that misconduct investigations are almost never resolved within 120 days, let alone 45 days. (Third Monitor's Report, April 12, 2001 at 86-87) The Monitor's Report also indicated that the average case is resolved in approximately 11 months and some have taken more than a year to resolve. (Third Monitor's Report, April 12, 2001 at 87) Despite provisions contained within the Consent Decree that provide for appropriate disciplinary procedures for troopers where misconduct charges have been substantiated, AAG Cronin indicated that no troopers have been disciplined for misconduct involving disparate treatment or excessive force since he became director of the OSPA in September 1999.

### C. The OSPA<sup>19</sup>

The second component of the three-pronged system is the OSPA, which is not independent of the OAG. The OSPA's primary involvement in the misconduct review process is

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<sup>19</sup> See Consent Decree at ¶¶110-113.

to review whether a complaint is properly characterized and to review the findings following the conclusion of an investigation.

The OSPA has multiple sections. One section ensures that the State is in compliance with the Consent Decree, while the other provides legal advice to both the Superintendent and the trooper subject to the allegation. This apparent conflict of interest has not occurred yet (because no troopers have had misconduct allegations substantiated), but the Committee is concerned about the potential for a conflict of interest. This problem is discussed in greater detail in the next section.

Once the OSPA concludes its review, the independent monitors then review the file. The OSPA is also responsible for auditing the NJSP's use of MAPPS, which is not yet implemented. The OSPA is responsible for auditing motor vehicle stops to determine whether traffic stops are conducted and documented in compliance with NJSP rules, regulations, and the Consent Decree. Finally, the OSPA is responsible for auditing how the NJSP receives, investigates and adjudicates misconduct allegations, and for providing legal advice to the NJSP.

#### D. Independent Monitor<sup>20</sup>

The third prong of the three-pronged system to handle trooper misconduct complaints is the independent monitors, who were collectively selected by the LPS, the NJSP, and the DOJ and approved by the United States District Court. The independent monitors are responsible for overseeing and reporting on the State's implementation of the Consent Decree.

The independent monitors are responsible for reviewing and evaluating:

- (1) the quality and timeliness of appropriate samples of misconduct investigations, disciplinary actions and interventions ordered as a result of a misconduct investigation;

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<sup>20</sup> See Consent Decree at ¶¶115-121.

- (2) the supervisory steps taken by the NJSP to review MVR tapes of motor vehicle stops on a random basis;
- (3) data contained in the MAPPs reports; and
- (4) appropriate samples of “consent to search” forms and reports, trooper MVR tapes, and stop reports and logs.

The monitors have the ability to require the NJSP to reopen a misconduct investigation if it is determined to be incomplete. As of this date, the independent monitors have not reopened any investigations, although they questioned the handling of two investigations. (Third Monitor’s Report, April 12, 2001 at 122-123)

Although the Committee is generally pleased with the system for handling racial profiling complaints that was implemented through the Consent Decree, the Committee has concluded that this system needs some adjustments. The Consent Decree only provided a mechanism to handle complaints of serious trooper misconduct involving claims of disparate treatment and excessive force. A similar mechanism is needed to handle serious misconduct complaints lodged by citizens against officials with any law enforcement agency within the LPS.

The Consent Decree charged the OSPA with the primary responsibility of adjudicating substantiated allegations of trooper misconduct forwarded by the OPS. According to AAG Cronin, in the approximately 17 months of its existence, the OSPA has not prosecuted a single trooper for misconduct as provided in the Consent Decree. Moreover, during the first 18 months that the Consent Decree was in effect, there were no troopers disciplined for misconduct as a result of allegations of excessive force or disparate treatment.

The Committee’s investigation also revealed a potential conflict of interest whereby the OSPA could provide legal advice to both the Superintendent of the NJSP (who presides over the trooper’s internal misconduct hearing) and the trooper who is being investigated for misconduct. Under the current system, once a serious trooper misconduct claim is

substantiated, the trooper who is the subject of the claim is afforded an administrative hearing before the Superintendent of the NJSP. Attorneys with the OSPA serve as the prosecutor, but the trooper may also request and obtain advice from LPS. This apparent conflict of interest was highlighted in an exchange between Senator Zane and AAG Cronin at the April 18, 2001 public hearing:

**Senator Zane:** \* \* \* I think what you're telling me is that you could be providing legal advice to the party that is bringing the charges. At the same token, through some scheme or whatever, you also could be providing legal advice to the party who is charged.

**AAG Cronin:** That is theoretically possible, but there are avenues where such a conflict arises where that specific advice, if you had the confluence of both charges against a specific trooper and a request for legal advice concerning the subject matter of those charges, could be referred to another arm of the Office of Attorney General.

(April 18 at 13) The Committee recommends that until the OPR is created, troopers should be afforded legal counsel from outside the LPS.

The Committee has concluded that this presents yet another reason for the creation of an independent body that is separate from the OAG to ensure that trooper misconduct complaints are adjudicated fairly and expeditiously.

### 3. The Committee's Recommended Reform

While some of the witnesses who testified before the Committee called for the use of a civilian review board, the Committee is not aware of any federal or state agencies that utilize civilian review boards. There are, however, many communities that utilize various types of civilian review boards to oversee their local law enforcement agencies.<sup>21</sup> These review boards

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<sup>21</sup> Some communities that utilize a variation of a civilian review board are: Berkeley, California; Flint, Michigan; Minneapolis, Minnesota; Orange County, California; Portland, Oregon; Rochester,

vary in the level of oversight they provide. Some review boards investigate allegations of police misconduct and recommend actions to the chief or sheriff, while others review findings of internal police investigations and recommend to the chief or sheriff as to whether the findings should be approved or rejected. Moreover, there are other review boards that employ an independent auditor or monitor who is charged with ensuring the integrity of investigations undertaken by the chief or sheriff in response to civilian complaints lodged against law enforcement personnel.

While no state model exists for independent review of investigations into allegations of misconduct by law enforcement, such a model does exist on a federal level. Within the Department of Justice, misconduct investigations into DOJ attorneys and law enforcement personnel are conducted by the DOJ's Office of Professional Responsibility (which also monitors the Federal Bureau of Investigation's and the Drug Enforcement Administration's respective Offices of Professional Responsibility). The DOJ's Office of Professional Responsibility has the authority to investigate other matters as directed by the United States AG, and the head of the Office, the Counsel of Professional Responsibility, reports annually to the AG.

The Committee believes that the DOJ model, supplemented by an Independent Review Board comprised of a former judge, a former law enforcement official, and a citizen with expertise in civil rights, provides a better model for overseeing misconduct investigations stemming from citizen complaints. Furthermore, this model provides a uniform oversight mechanism for all law enforcement personnel within the OAG, and not just the NJSP.

The Committee, therefore, proposes adopting a permanent and independent review system to handle citizen complaints of misconduct and constitutional violations by law

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New York; New York, New York; St. Paul, Minnesota; San Francisco, California; Philadelphia, Pennsylvania; and Tucson, Arizona.

enforcement personnel within the LPS. This independent review system would have broad authority to review and evaluate the quality and timeliness of misconduct investigations, as well as the effectiveness of internal affairs procedures within State law enforcement agencies.

The Committee proposes the creation of an Office of Professional Responsibility ("OPR"), to be headed by a Director, and the creation of a three-member independent review board (the "Board"). The OPR would be housed in but not of the OAG, and would be headed by a Director who is appointed by the Governor, with the advice and consent of the Senate. The Director would report directly to the AG and the Board, and would also report semi-annually to the Senate and Assembly Judiciary Committees.

A. The OPR

The OPR would assume the disciplinary functions of the OSPA after the expiration of the Consent Decree, as well as some of the functions of the existing OPS within the NJSP. The OPR, however, would have more expansive powers than the OSPA. For example, unlike the OSPA, the OPR could exercise the authority to investigate misconduct complaints. Additionally, unlike the existing OSPA, OPR's jurisdiction would not be limited to investigating serious trooper misconduct complaints, but would also include investigating complaints filed against all personnel within the LPS.

The OPR would review all citizen complaints of misconduct and constitutional violations, and would make a determination as to whether it intends to investigate the complaint itself or refer the complaint to the respective Division for internal handling. It is anticipated that less serious complaints, or complaints involving administrative violations, would be referred to each respective Division for internal review. The OPR would only handle the more serious misconduct complaints that involve allegations of constitutional violations, such as illegal

searches, and statutory violations that rise to a serious level. The OPR would refer all criminal violations to the CJ.

The OPR would be allotted a staff of three to five investigators and other administrators. For complex cases that require the use of additional investigators, the OPR would have the ability to use investigators from the CJ and the NJSP to conduct investigations. However, a Division's investigators would not investigate their own. For example, a CJ investigator would not investigate a misconduct complaint leveled against a CJ employee. Likewise, an investigator from the NJSP would not investigate a state trooper. All personnel subject to a complaint limited to the OPR would be afforded a hearing before an Administrative Law Judge, in order to ensure that the individual receives adequate due process.

The Director of the OPR would be required to report his findings to the Legislature on a semi-annual basis. This report would be comprehensive and detail the OPR's activities.

#### B. Role Of The Independent Review Board

The Board would oversee the OPR and consist of three members: a former judge, a former law enforcement officer, and a citizen with knowledge of and experience with civil rights issues. These members would be appointed by the Governor, with the advice and consent of the Senate, and would serve seven-year terms. The initial appointments would be for staggered terms of five years, three years and one year. The Board would have the authority to direct the reopening of any investigation as it deemed appropriate.

### C. Role Of The Existing OPS

The OPS in the NJSP would retain most of its current responsibilities as set forth in the Consent Decree.<sup>22</sup> The only major change would be with respect to the role its investigators would play under this new system.

The OPS would continue to act as the “gatekeeper” for trooper misconduct complaints, and would maintain its investigatory arm, although the OPS would only investigate those complaints referred to it by the OPR. The OPR would be notified of each and every complaint filed.

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<sup>22</sup> The Committee notes that negotiations with the DOJ may be required to ensure the integrity of the Consent Decree in order to accommodate the implementation of the Committee's recommendations.

### **Suggested Reform No. 3: Establish Deprivation Of Civil Rights As A Criminal Offense**

The Committee recommends establishing a new third degree crime of official deprivation of civil rights that would provide remedies under State law that are similar to federal law.

A public servant could be charged with this crime if, while acting in an official capacity or purporting to act in an official capacity, he acts with the purpose to intimidate or discriminate against an individual or group of individuals on the basis of race, religious principles, age, national origin, ancestry, marital status, affectional or sexual orientation, familial status, handicap, or sex. Such actions would be a crime if the public servant knowingly and willfully engages in conduct that: (1) subjects another to unlawful arrest, detention, search, seizure; or (2) denies or impedes another of any rights, privileges, or immunities secured or protected by the New Jersey Constitution, the U.S. Constitution, or the laws of the State of New Jersey.

Proof that a public servant made a false statement, prepared a false report, or failed to prepare a required report concerning the incident, would give rise to an inference that the public servant knew his conduct was unlawful. An act would be considered unlawful if it violated the New Jersey Constitution or the U.S. Constitution, or if it constituted a criminal offense under New Jersey law.

If the knowing and willful discriminatory action results in bodily injury it would constitute a second degree crime, and if the individual commits or attempts to commit murder, manslaughter, kidnapping or aggravated sexual assault in the course of the incident, it would constitute a crime of the first degree.

This reform would also create a new crime for a "pattern of official misconduct."  
A person commits the crime of a pattern of official misconduct if he commits two or more acts

that either violate the provisions of N.J.S.A. 2C:30-2 (Official Misconduct statute) or the provisions of this statute (Deprivation of Civil Rights). It would not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.

The "pattern of official misconduct" crime would be a second degree crime if one of the underlying acts is a second degree crime; otherwise, it would be a third degree crime, provided, however, that the presumption of a non-custodial sentence for first time offenders pursuant to N.J.S.A. 2C:44-1 would not apply. In all cases, the offense could not be merged with another underlying offense, and would be subjected to a separate sentence.

This reform essentially incorporates the substance of S. 856 (Turner/Bryant) and S. 862 (Bryant/Turner). In addition to the provisions of those bills, however, this reform would also provide the creation of an inference in certain circumstances that the public servant knew his conduct was unlawful, and would create a separate crime for a pattern of official misconduct.

#### **Suggested Reform No. 4: Generation Of A Report For Every Stop**

Until CAD RMS and MAPPS are fully operative, the Committee recommends that in addition to calling in all stops, the NJSP require the generation of a report for all stops, regardless of what occurs after the stop. Currently, a stop report is generated only when a trooper requests either the driver or a passenger to exit the vehicle. A stop report is not generated if only a summons or warning is issued to the driver and there is no other post-stop activity. Adoption of this recommendation will create a written report that is computer searchable once CAD RMS is fully operative.

### Additional Suggested Reforms

Numerous proposed bills are currently pending in the Legislature, almost all of which were proposed by members of the Caucus, concerning various aspects of racial profiling. Much of the proposed legislation contains provisions similar to mandates in the Consent Decree. The below chart sets forth coverage by the Consent Decree of proposed legislation currently pending before the Legislature.

*Table No. 4: Coverage By The Consent Decree Of Proposed Legislation To Address Discriminatory Practices Within The NJSP*

<b>Bill Number</b>	<b>Sponsor</b>	<b>Synopsis</b>	<b>In Consent Decree</b>	<b>Consent Decree Notes</b>
S328 A939	Rice/James co: Bryant Pou/Steele	Requires NJSP troopers to identify themselves, provide certain information.	No	
S329 A940	Rice/Turner/ co: Bryant/James WatsonColeman	Broadens affirmative action program in the NJSP.	No	Addressed in part through the NAACP Consent Decree
S650	Gormley/ Martin	Requires NJSP to file annual report concerning public complaints of misconduct.	¶ 49	Compiled by MAPPS.
S851 A931	James/Turner Steele/Pou	Requires NJSP to maintain certain records for 10 years.	¶¶ 4056	MAPPS data to be maintained indefinitely (not including videotapes).
S852 A947	James/Bryant Stanley	Establishes "Public Confidence Police Integrity" hotline.	¶¶ 62, 63, 65, 68, 69, 7387	Hotline and program similar to bill.
S853 A943	James/Bryant Stanley	Creates offense of tampering with electronic device in police patrol car.	No	

Bill Number	Sponsor	Synopsis	In Consent Decree	Consent Decree Notes
S854 A932	James/Bryant Jones	Requires NJSP applicants to undergo psychiatric testing for racial bias.	No	
S855 A932	James/Bryant Charles	Prohibits 4year college requirement for appointment to NJSP.	No	Currently covered by NAACP Consent Decree
S856 A942	Turner/Bryant co: James Jones	Creates offense of racial profiling.	No	
S857 A941	Turner/Bryant co: James Gill/Garcia	Requires NJSP to file reports on motor vehicle stops.	¶¶ 2933	
S858 A937	Turner/Bryant co: James Jones/Payne	Establishes civilian review board for NJSP misconduct.	No, but see ¶¶ 110113	OSPA given similar duties.
S859 A933	Turner/Bryant co: James Payne	Requires quarterly studies of NJSP motor vehicle stops.	¶¶ 48, 114	Requires semiannual reports.
S860 A945	Bryant/James Stanley	Requires NJSP superintendent to list and post certain employment titles.	No	
S861 A938	Bryant/James Jones/Payne	Creates independent prosecutor to investigate NJSP.	No, but see ¶¶ 7072	OPS given similar duties.
S862 A936	Bryant/Turner co: James Caraballo	Criminalizes deprivation of civil rights.	No	
S863 A934	Bryant/Turner co: James Gill	Requires NJSP to establish trooper performance database and early warning system	¶¶ 4056	Covered by MAPPS.
S864 A944	Bryant/Turner Tucker	Requires annual performance evaluations of NJSP.	No	
S865 A935	Bryant/Turner co: James CruzPerez	Makes NJSP employees subject to termination for unlawful conduct.	No	
SCR42 ACR54	Turner/Bryant Charles/Jones	Creates joint legislative committee for NJSP Oversight.	No	

The above chart demonstrates that a good deal of the proposed legislation is mooted by the mandates in the Consent Decree. However, the Committee is concerned that those mandates will expire upon dissolution of the Consent Decree. In addition, certain of the proposed bills would be mooted by some of the Committee's other recommendations. For example, the creation of the OPR and related reforms incorporate the principles and substance of S-858, A-937, S-859, A-933, S-861, and SJR-42. Therefore, as discussed below, the Committee recommends the passage of certain legislation that will assist the State in its efforts to eliminate racial profiling.

**1. NJSP Annual Reports Regarding Trooper Misconduct Complaints**

The Committee recommends final adoption of a reform that would direct the Superintendent of the NJSP to compile and submit to the Governor and the Legislature an annual report regarding complaints made by members of the public alleging misconduct by NJSP officers. Paragraph 43 of the Consent Decree requires the NJSP to comply with many of the requirements contained in this reform. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform passed the Senate (38-0) on December 14, 2000, but has not been considered by the Assembly.

**2. Maintenance Of Certain NJSP Records For At Least 10 Years**

The Committee recommends requiring the NJSP to maintain for a minimum of 10 years after their creation all logs concerning activity of patrol units, all tape recordings of radio communications between dispatchers and patrol units, and all videotapes recorded by cameras mounted in patrol vehicles. This reform would expand current NJSP procedures, which requires that all videotapes recorded by patrol cameras must be held intact for not less than 28 months. It would not impact the maintenance of all tape recordings of communications between dispatchers and patrol units that presently are maintained indefinitely. This reform incorporates the substance of S-851 (James/Turner).

**3. Establish A “Public Confidence Police Integrity” Telephone Hotline**

The Committee recommends establishing the "Public Confidence-Police Integrity" telephone hotline to receive and respond to calls concerning allegations or complaints of police misconduct from the public and from police officers who, for reasons of confidentiality or anonymity, are unable to report such allegations or complaints openly or in person to the

appropriate law enforcement officials or agencies. The hotline would be operated by the OPS and would require the OPS to notify the newly created OPR of the filing of all misconduct complaints.

The Consent Decree already requires the OPS to operate a hotline to receive misconduct complaints. This reform would make that term of the Consent Decree permanent by codifying it into statutory law. This reform also incorporates the substance of S-852 (James/Bryant).

#### **4. Creation Of An Offense Of Tampering With Electronic Devices In Patrol Cars**

The Committee recommends making it a crime of the fourth degree for a law enforcement officer to alter, destroy, conceal, remove or disable a camera or other monitoring device installed in a patrol vehicle, including any videotape or film used in such a device. This reform passed the Senate (40-0) on December 18, 2000, but has not been considered by the Assembly. This reform incorporates the principles and substance of S-853 (James/Bryant).

#### **5. Psychological Testing For Racial Bias Of NJSP Applicants**

The Committee recommends requiring the Superintendent of the NJSP to require applicants for NJSP membership to complete a psychological evaluation designed to reveal racial bias or insensitivity. The reform would require that the evaluation be developed and administered by an individual or entity independent of the NJSP.

The current selection process consists of a written examination, physical fitness test, background investigation and an oral interview. Applicants chosen for conditional employment are then required to undergo a medical and psychological examination and are subject to four psychological tests of mental fitness. This reform incorporates the principles and substance of S-854 (James/Bryant).

## **6. Motor Vehicle Stop Reports**

The Committee recommends requiring the NJSP to prepare and file reports on every motor vehicle stop they initiate, and to publicly report those aggregate statistics semi-annually. The reform would require the reports to contain detailed information about the stop, including among others, the grounds for the stop, the characteristics of the individuals stopped (utilizing at least the following categories: sex, race or ethnicity, and age), whether a search was undertaken and if so, the grounds for the search and the results of the search; and whether, as a result of the stop, a warning or summons was given. If anyone was taken into custody or arrested, the report must include the grounds for those actions. This reform would include any and all data collecting requirements set forth in the Consent Decree.

The Consent Decree already requires the NJSP to capture and report stop data. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law and would broaden them to include more information. This reform incorporates the substance of S-857 (Turner/Bryant).

## **7. Establish Trooper Performance Databases And Early Warning System**

The Committee recommends requiring the NJSP to establish a database of information on the performance of individual officers and troopers. The database would include information on motor vehicle stops, pursuits, searches, arrests, the use of force, citizen complaints, disciplinary actions and witnesses. The information would be used to develop a computerized “early warning system” to determine whether a pattern of unacceptable performance or behavior exists for individual officers and troopers. The reform also would require NJSP supervisors, at least quarterly, to conduct reviews and analyses of computerized

data and other information, including data on traffic stops and post-stop actions by race and ethnicity.

This reform duplicates some of the provisions of the Consent Decree that establishes MAPPs. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform incorporates the substance of S-863 (Bryant/Turner).

#### **8. Annual Performance Evaluations Of Members Of The NJSP**

The Committee recommends that the Superintendent of the NJSP or his designee annually evaluate each NJSP member's performance. Pursuant to ¶47 of the Consent Decree, the NJSP is required to develop a protocol specifying the manner in which supervisory and management reviews of individual state troopers are to be conducted and the frequency of such reviews. This reform would make that Consent Decree requirement permanent by codifying it into law. This reform incorporates the substance of S-864 (Bryant/Turner).

#### **9. Speedy Trial Act**

The Committee is concerned by the length of time that has passed since the indictment of Troopers Hogan and Kenna. The Turnpike Shooting occurred on April 23, 1998, the Falsification Indictment was released on April 19, 1999, and the Shooting Indictment was released on September 7, 1999. Three years have passed since the Turnpike Shooting and two years have passed since the release of the first indictment, the Falsification Indictment.

The ability of the State to convene grand juries began in 1970, however, no procedure was put in place to provide for the speedy resolution of criminal matters. The Committee recommends that the Legislature pass a Speedy Trial Act requiring that criminal cases

indicted by State grand juries be tried within 6 months of the indictment, unless good cause is shown. This Act will help promote swift justice.

**10. Justification Defense Jury Instruction**

The Committee recommends the adoption of a justification defense jury instruction for police officers that use deadly force to effect an arrest or prevent an escape. Such an instruction is used effectively in New York. The New York instruction provides a good example of a reasonable and fair instruction and a similar instruction should be read to grand and petit juries in New Jersey when appropriate. The Honorable Andrew J. Smithson, J.S.C., highlighted the need for such an instruction in his October 31, 2000 decision in State v. Hogan and Kenna, at 23–29.

**11. Funding For The OPR And OSPA**

Funding is needed to create the OPR. A Director, investigators, and support staff are needed, as well as facilities. Funding is also needed to provide additional support to the OSPA. The OSPA's inability to close investigations into complaints against the NJSP suggests that additional manpower is needed.

**12. Funding For Enhanced Training**

Central to the elimination of racial profiling is the training of new recruits and in-service training of members. Members of the Committee and counsel toured the NJSP's training facilities, the Academy. During the tour it became readily apparent that the current training facilities are not conducive to classroom training. Indeed, the Academy cannot conduct classroom training for groups larger than 50, which is necessary for training of the recruits and in-service training.

The State has committed itself to develop and provide an enormous amount of training to NJSP troopers and supervisors. Most of the elements to support this training effort, including policies, procedures, curricula, technology and staffing, have been developed. At this point, however, the NJSP appears to be lacking in its capacity to provide an educational setting in which to conduct this large and complex training program. The Academy is simply not adequate to support this effort.

Capt. Leonardis, the Commandant of the Academy, provided much insight into the operation of the Academy and its limitations. The training function at the Academy currently utilizes facilities shared with other agencies including the CJ, the Juvenile Justice Commission, the Department of Corrections, the Port Authority of NY/NJ, and the National Guard. Classroom, physical training, firearms, vehicle driving range, and dining facilities are at maximum usage and agency training needs often conflict. The NJSP training program has been significantly overhauled and has evolved into a progressive adult based learning system that emphasizes leadership and simulated problem solving paradigms. The Academy is severely lacking in classrooms and those that are available lack the enhanced technology necessary to meet current professional training needs. In addition, firearms, physical training, and vehicle driving facilities are either limited or not available at the Academy, and must be undertaken outside of this facility, which can be inefficient and cost prohibitive.

In recognizing this need, the Committee proposes expanding and updating the Academy. In order to develop a sound expansion plan for the Academy, the NJSP reviewed the Bergen County Police Academy because it exemplifies a modern state-of-the-art police academy with classrooms enhanced for advanced electronics and interactive distance learning communications in a fully functional and flexible building design.

Using Bergen County as a model, the NJSP estimated the construction costs to provide for an enhanced Academy to be \$11.2 million. This plan will include the construction of three separate buildings with eight classrooms and an amphitheater, an indoor 20-point firing range, a gymnasium and pool, and a vehicle driving range.

The NJSP has proposed construction of the three buildings at the Academy in a campus-like configuration. This plan consists of one 30,000 square foot building with classrooms, auditorium, firearms and other simulated situational training at \$4.8 million, one 15,000 square foot indoor 20-point firing range at \$3.0 million, one 15,000 square foot building with indoor pool, gymnasium and locker rooms at \$2.8 million, and a defensive driving track for \$600,000. Construction of the buildings could be phased and approached separately since each structure has a dedicated and distinct function.<sup>23</sup> The proposed additions to the Academy would be shared with the Department of Military and Veterans Affairs allowing for more efficient economies of the space. The Committee believes that the proposed enhancements will afford the State the means to establish a comprehensive and uniform training program and bring about a more organized, systematic and consistent methodology.

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<sup>23</sup> A schematic plan depicting the three building footprint of the proposed changes to the Academy is contained in the Appendix.