

Statement of Colonel Rick Fuentes, Superintendent
New Jersey State Police, before the Governor's Advisory
Committee on Police Standards
September 24, 2007

Thank you, Chairman Johnson, and distinguished members of this Committee. Since my last testimony before this Committee in October of 2006, much has occurred within the Division of State Police, and I look forward to sharing with you the continued success of the organization.

I will concentrate my opening comments on the anticipated areas of inquiry that were forwarded to my office on September 14 from Chairman Johnson.

On July 28, 2007, the State Police received an internationally-recognized law enforcement accreditation after more than a year of intense reviews and grading. The Commission on Law Enforcement

Accreditation (CALEA) awarded this accreditation at a meeting of their commissioners in Montreal, Quebec.

CALEA accreditation offers an unbiased, independent assessment of a candidate law enforcement agency by measuring that department against industry-accepted standards. The standards are promulgated by a law enforcement commission comprising members of the International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Sheriff's Association, and the Police Executive Research Forum.

Key to the receipt of CALEA accreditation is an organizational policy grounded in sound risk management. Once awarded, the CALEA accreditation process becomes embedded within a department's comprehensive risk management system. This system, which provides for the timely flow of relevant information to the Superintendent or

appropriate Command Staff members, encourages a cyclical approach to informed decision making.

The CALEA accreditation was the culmination of a two year process that included on-site inspections from a national team representing the commission. CALEA accreditation required that the State Police meet the 371 applicable standards set forth by the commission and rooted in law enforcement best practices. The standards cover the entire range of police activity, including internal affairs policies, recruiting, traffic enforcement, fiscal control, ensuring against bias-based policing, employee development, facility maintenance, and use of early warning systems, from amongst forty-two areas that are scrutinized.

Since last October, the Independent Monitoring Team issued its 15th and 16th reports.

The 15th report, issued in January 2007 and encompassing the first six months of 2006, indicated the State Police were 100% compliant with all tasks set forth by the decree. The Report also issued a warning for missing a meeting of the Risk Analysis Core Group, thereby delaying the completion of a Task 50 report containing the analysis of a calendar year's patrol-related data for a predesignated Troop. The Report noted that the missed deadline was the outcome of the Core Group's assignment to research and resolve two emergent, internal issues affecting the State Police. The sudden, increased workload caused by my tasking of the Core Group was anchored in a labor-intensive process of data retrieval and analysis. It also revealed gaps in Core Group technology and staffing that essentially prevented work along a dual track that would have satisfied the Task 50 and 51 meeting and report requirements of the 15th Report.

In recognizing the use of the Core Group as a critical problem-seeking and -solving mechanism within the State Police, the IMT noted in the

15th report that “the NJSP have taken the MAPPS system beyond the requirements of the consent decree, using it for more than a tracking and control device for motor vehicle stops, use of force, and complaints, and instead using it to identify systemic organizational issues and to craft solutions to those issues before they negatively impact the organization in a significant way.”

To address the issues raised by the IMT concerning the areas of workload, staffing, technology and information access identified in the 15th report related to Task 50 and 51, the State Police applied for a waiver to the state hiring freeze for a civilian analyst. The request was subsequently approved by the Department, and in April 2007 an analyst was hired and assigned to the Core Group. In March 2007, as a result of a specialist selection, two enlisted members were added to the rolls of the MAPPS Unit and assigned to assist the Core Group. In August 2007, we re-assigned another analyst to the MAPPS Unit.

In January 2007, the State Police filed the required paperwork with the Office of Information Technology (OIT) for a state waiver for additional equipment to assist in the production of the Task 50 reports. In May 2007, over \$81,000.00 worth of equipment and software were installed for MAPPS/Core Group personnel.

Finally, two MAPPS analysts have been provided access to databases to pull supplemental data as needed for the Task 50 reports. These steps were noted by the IMT in the 16th report.

The addition of these four members and the technological advances to the Core Group have allowed for the completion of the required consent decree related reports as scheduled, yet permit the completion of any ad-hoc assignments or reports that are deemed necessary as issues are identified through the risk management process. In other words, the particular circumstances leading to the issuance of a “warning” in the 15th report had been identified and corrected during the 16th monitoring period.

The 15th IMT Report also noted an increase in the number of consent searches from the previous reporting period. The primary reason for the increase can be attributed to a radical change in New Jersey's search and seizure case law.

In January 2006, in *State v. Eckel*, the New Jersey Supreme Court ruled that a police officer could no longer search a motor vehicle incidental to the arrest of a person from that motor vehicle. The State Police forecasted that there would be a change in both the quantity and structure of Consent to Search Requests following this decision, and we contacted the IMT to advise them of our expectation.

In light of the *Eckel* decision and its immediate implementation, the Office of State Police Affairs (OSPA) was requested to provide clear and concise legal guidance to the 3,000 enlisted members of the State Police. An informational bulletin was issued based upon legal advice from OSPA that indicated that a consent to search was a legal

substitute in certain instances where a search incidental to arrest would have otherwise been appropriate prior to the Eckel decision.

In addition to the anticipated post-Eckel increases in consent searches, our systems and data analysis also revealed other factors that contributed to the increase in consent searches and underscored the change in “tone and tenor” referred to by the IMT in the 15th Report.

Our systems and data analysis revealed that training provided by the U.S. Department of Homeland Security and U.S. Department of Transportation was given to enlisted personnel in February and March of 2006. The two programs, Drug Interdiction Assistance Program (DIAP) and Desert Snow, used training curriculum that focused primarily on the criminal interdiction of guns, drugs, explosive devices and other terror related crimes involving commercial vehicles.

The issues raised in the 15th Report concerning these training programs was not about course conduct or content, but rather that the

training cycle, with respect to linking relevant training to target audiences, was not properly followed. More specifically, commercial vehicle criminal interdiction training designated for our commercial vehicle inspection teams in the Homeland Security Branch's Transportation Safety Bureau, was also provided to members of the Field Operations Section who were assigned to fill empty seats in the class.

Subsequent to this training, our early warning systems identified several incidents of elongated motor vehicle stops and an increase in consent searches. As I mentioned earlier, I tasked the Core Group to engage in data retrieval and to provide analytical reports concerning these activities, and as a result of my orders the Core Group missed the deadline for the Task 50 and Task 51 reports.

The Command Staff took several steps to address the elongated stops and increase in consent searches. A Patrol Practices and Procedures Committee was formed to create more timely forecasting

of motor vehicle stop activity trends. Advanced first line supervisory training was provided to appropriate members.

For its part, the Training Bureau took a hard look at processes governing outside agency training, and implemented additional steps to maintain better oversight. Included in those steps are the use of multiple reviews of lesson plan material by various entities within the Division, adopting processes that will ensure that there are job-relevant links between personnel and the training they receive, and utilizing the upcoming 2007 in-service to continue to educate and provide awareness to our members concerning the impact of our policies and procedures on DIAP and Desert Snow training.

In August 2007, the IMT issued the 16th report, covering the second half of 2006 and early 2007. Again, the NJSP was found to be 100% compliant with the tasks of the decree. With the issuance of the 16th Report, Field Operations has been in compliance with the consent decree for almost four years.

As expected, the 16th report noted an increase in consent search requests from the previous reporting period. The IMT wrote that the increase in consent searches were attributable in part to the same DIAP and Desert Snow training noted earlier. It is important for this Committee to recognize that the concerns raised by the IMT in the 15th and 16th reports had already been treated through organizational interventions and procedural corrections by State Police supervisory, executive, and members of the OSPA in “real time”, as part of the routine internal review process.

The IMT articulated these corrective maneuvers in the 16th Report by writing, as follows:

"The New Jersey State Police response to the unapproved training depicts an agency that has become self-monitoring and adaptive, able to note, analyze and correct problems with the delivery of field services in real time. The essential characteristic designed into the current crop of consent decrees strives for just that type of self-awareness and adaptivity on the part of American law enforcement agencies. It appears the ultimate goal has been attained." {16th IMR Exec. Summary}

On the surface, it appears that the 15th and 16th Report assessments of 100% compliance are at odds with included language about “warnings” and “slippage.” A compliance rate of 100% does not mean that we do not make mistakes; in fact, performance deficiencies normally occur and process mistakes are routine. The decree does not require perfection, but it does require systems and policies that ensure proper supervisory and managerial oversight. The systems and policies that we have put in place have the effect of ensuring that performance deficiencies are identified and corrected, and do not become systemic issues.

Turning to questions raised in the area of the Office of Professional Standards, in April 2004 the OPS was lifted from the parameters of the consent decree after a joint motion was filed with the District Court. The motion recognized two successive years of compliance with the OPS-related tasks. One of the tasks was a requirement that the legal threshold for substantiating an allegation of misconduct be a

“preponderance of the evidence.” That standard still applies today for each and every administrative allegation.

Standing OPS procedure is to administratively close an internal investigation when the targeted trooper resigns or retires prior to its completion. Should other members be involved, then the investigation will continue to its logical conclusion.

In the vast majority of these types of cases, the investigation has been completed and the member has pending substantiated allegation(s)/charge(s). Once the resignation or the retirement occurs, a letter/memo is placed in the member’s personnel file noting the outcome should he or she ever seek reinstatement.

The motion to release OPS from the decree included an agreement that the Office of State Police Affairs would act as the monitor for OPS and conduct audits. That responsibility is just a part of the current role of OSPA regarding oversight and remediation. The Director of OSPA

attends every Risk Analysis Panel Meeting, and is available for advice and counsel to our executive level commanders on issues raised by the Core Group.

Additionally, members of OSPA act as a layer of review in certain post-stop activities, including motor vehicle stops with canine deployment, use of force or a consent to search. When these post-stop activities occur, a member of OSPA will travel to the station and review the MVR and all associated reports.

Members of OSPA provide legal advice to my office in the area of misconduct investigations. My office and OSPA communicate regularly regarding these investigations, and they are consulted on all aspects, from the conclusions to the recommended discipline.

OSPA provides additional legal advice to the State Police in the area of search and seizure. New case law is reviewed by the Search and Seizure Committee, which is chaired by the Director of OSPA. Upon

determining that our membership should be informed of a relevant court decision, OSPA will provide a thorough, concise and clear statement of the practical application of the law and its impact on law enforcement. That statement is posted on the State Police intranet, and may also be covered as part of our annual search and seizure in-service.

The Summary of Selected Trends Report issued in March 2007 by OSPA is another manner in which that office assists the State Police. The report notes trends of stop and post-stop activity for the first 13 monitoring periods, covering the time frame from May 1, 2000 to April 30, 2006, based upon the semi-annual reports filed with the federal court in compliance with Task 114 of the Consent Decree. As stated in the OSPA Trends Report, the filing of this data “affords transparency for the activities of the NJSP, but can merely point to areas where more data would be useful.” Our own Core Group analysis has come to the same conclusion.

Recently, my office received a peer review report commissioned by this committee and authored by Professor Jeffrey Fagan and other researchers from the Columbia University Law School. Professor Fagan's report presented an analytical review of a report authored by Professor John Lamberth and Jay Kadane submitted on behalf of the American Civil Liberties Union regarding stop statistics on the southern end of the Turnpike. As Superintendent, I look introspectively and analytically at studies such as these. I not only welcome but encourage academic research. I believe that academic research enhances the public's confidence in the State Police, which is imperative in the post 9/11 era.

The peer review report noted several limitations in the Lamberth/Kadane paper. Some of the limitations deal with the unavailability of certain data elements, including the specific motor vehicle violations observed as well as the level of egregiousness of the violation. Other limitations raised by the review team include a variety of issues with the method of observation of the driver.

Ultimately, the review team concluded that the measurement and design limitations of the study were unlikely to undermine the conclusions of Lamberth and Kadane, who wrote that stop rates at Moorestown Station for Blacks are disproportionate to their violation rate and disproportionate to the rates for drivers of other races.

Regardless of the continued conflicting research on the issue of appropriate stop data, I am confident that the State Police has systems and procedures in place that would identify any pattern of profiling, or any other type of prohibited patrol practice.

As the Committee is well aware, motor vehicle stop data for every station is compiled, analyzed and presented to Field Operations and other executive level commanders via the Core Group. Analysis of our motor vehicle stop data reaches the highest level of our organization. It is important to note that the IMT has indicated to us their belief that there is little more that we could do to dissect patrol practices at the Moorestown station. Furthermore, a review of the stop data at

Moorestown Station by the Police Institute at Rutgers confirmed there was no evidence that stop rates are generated by selected enforcement.

While the entire compliment of reforms and multiple layers of review provide me with a high level of comfort that our members are engaged in constitutional patrol practices, we will continue to review all literature and research in our quest to maintain the public's confidence. As technological advances and academic research become available to enhance our analysis of enforcement patterns and data, we will continue to look to improve Division policy and practice. As in all cases concerning Division policy and practice, where we don't have answers, we will always continue to look.

The issue of de-policing is often raised when discussing any consent decree. In any organization or society, change generally elicits uncertainty and caution. Public and private organizations, including ours, may experience a decrease in certain activities that accompanies

the onset of change. A fundamental discomfort with changes in policy, combined with a lack of confidence in being subjected to unprecedented and multiple layers of review may produce attitudes that can initially bring about downward trends in police activity. Over time, as the State Police has adjusted to changes in policies and procedures, there has been a consistent increase in our patrol-related activities. The number of motor vehicle stops, criminal arrests and DWI arrests continue to trend up in 2007.

This continuing trend upward is attributed to the complete adaptation to and adoption of the reforms of the federal consent decree by the State Police. Other attributes are the confidence our members have in their ability to perform their duties, and an engaged supervisory contingent that continually provides guidance to our newer members.

Conversely, the ability to review MVRs and the multiple levels of review of enumerated police actions allow supervisors, commanders, as well as executive level leaders, to see into the performance and behavior of uniformed troopers.

Finally, while there are several different types of police oversight models that have been discussed in relation to a post-consent decree strategy, it is clear that each has supporters and critics. I would like to reiterate the proposal provided in my October 2006 written testimony to this Committee - codification of the reforms implemented in the State Police over the last seven years, and a continued auditing component to sustain the public trust and organizational transparency through the publication of semi-annual reports

It is fair to say that the State Police remains the most scrutinized law enforcement agency in the United States. Our troopers' performance under the bright lights, as noted in the most recent IMT reports, as well as in our CALEA accreditation, are evidence that police reform can be accomplished in a manner that still allows for effective and vigilant policing.

Thank you, Mr. Chairman, and I invite any questions from the Committee.