

**Office of State Police Affairs Report to
The Advisory Committee on Police Standards
October 5, 2006**

On September 20, 2006, members of the staff of the Office of State Police Affairs (OSPA) appeared at a meeting of the Governor's Advisory Committee on Police Standards (the Committee), held at the Hughes Justice Complex. Present from the OSPA were: AAG Daniel Giaquinto, Director; DAG Desha Jackson, Deputy Director; Manuel P. Quinoa, Chief Investigator; and Dr. Mary Eckert, Special Investigator. The Committee asked that OSPA respond in writing as to the scope of its authority, in statute or otherwise. This report responds to that request. In addition, the report elaborates on responses provided to the Committee with regard to OSPA's post-Consent Decree recommendations, both for itself continuing as an oversight agency of the New Jersey State Police (NJSP) and for an expanded role with local police departments. Not directly addressed at the meeting, but an issue raised by the Chair to OSPA prior to the meeting, is whether or not there are systemic issues that could affect the future of reforms made by the NJSP in complying with the Consent Decree, when federal monitoring goes away. Inasmuch as these systemic issues are clearly tied to the future for both the NJSP and any future oversight, they are raised briefly here, along with some other considerations for the future.

The outline of the report is as follows:

- I. OSPA: Creation and Authority;
- II. Future of OSPA, outlining post-Consent Decree recommendations;
- III. Systemic Issues for both NJSP and any oversight agency post-Consent Decree;
- IV. Other Future Considerations; and,
- V. Summary.

I. OSPA: CREATION AND AUTHORITY

A. CREATION OF OSPA

In 1999, the United States Department of Justice (DOJ) filed a complaint¹ against the State of New Jersey and the Division of State Police of the Department of Law and Public Safety, alleging a pattern or practice of discriminatory conduct (racial profiling) by Troopers of the New Jersey State Police that deprived persons of rights, privileges, or immunities secured or protected by the Constitution and the laws of the United States. The State denied the allegations of racial profiling, but the complaint resulted in the parties jointly entering into a Consent Decree in December 1999.

¹ Pursuant to federal legislation, specifically the Violent Crime Control and Enforcement Act of 1994, 42 U.S.C. §14141, and the Omnibus Crime Control and Safe Street Act of 1968, 42 U.S.C. §3789(d)(c), DOJ is authorized to determine whether law enforcement agencies are engaged in a pattern or practice of discriminatory conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and the laws of the United States.

Prior to the parties' joint agreement upon a Consent Decree that would resolve all claims in the DOJ's complaint, the State agreed to investigate the allegations of racial profiling set forth in the complaint. This investigation resulted in the issuance of the Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, April 20, 1999 (Interim Report) and the Final Report of the State Police Review Team, July 2, 1999 (Final Report). Consent Decree ¶5.

The Interim and Final Reports set forth numerous reform recommendations and remedial steps to be implemented to manage and supervise the actions of the State Police. OSPA is within the Office of the Attorney General and was created to ensure the recommendations and remedial steps of the Interim and Final Reports, established in the Consent Decree, were achieved.

B. PRESENT AUTHORITY FOR OSPA

Present authority for OSPA emanates from the State of New Jersey creating a new unit in 1999 within the Office of the Attorney General, State of New Jersey Department of Law and Public Safety in response to the aforementioned federal complaint. Consent Decree ¶6. OSPA was responsible, inter alia, for ensuring the implementation of the reform recommendations, and remedial steps and actions described in the Interim and Final Reports. Consent Decree ¶6 and ¶110. These responsibilities included but were not limited to the provision of technical assistance and training, auditing the manner in which the State receives, investigates and adjudicates misconduct, and auditing state troopers performance and the State Police's use of MAPPs. Consent Decree ¶110. Furthermore, OSPA is charged with monitoring the integrity of the State Police, protecting the public safety by ensuring the uniform and efficient enforcement of all motor vehicle and criminal laws, and preventing conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. Consent Decree ¶5.

OSPA's legislative authority is currently found under the auspices of Title 52 of the New Jersey Statutes. Pursuant to N.J.S.A. 52:17B-4 and N.J.S.A. 52:17B-27, the Attorney General of the State of New Jersey, whose responsibilities include but are not limited to coordinating all of the law enforcement activities of the Department of Law and Public Safety (Department), is empowered to supervise the organization of the Department and implement administrative strategies relative to law enforcement activities which enhance and ensure the integrity of those activities.

C. FUTURE AUTHORITY FOR OSPA

The Constitution of New Jersey vests the executive branch of government power in its Governor. Article V, Executive, Section 1, ¶1. As New Jersey's chief Executive, the Governor is empowered to ensure that the laws of New Jersey are faithfully executed. Article V, Executive, Section 1, ¶11. It is axiomatic that the laws of New Jersey prohibit violations by state and local law enforcement agencies of citizens' constitutional or civil rights, patterns and practices of discriminatory conduct, and unlawful searches and seizures. These are concerns confronting any law enforcement agency operating within the borders of New Jersey. Substantiation of these concerns severely damages the reputation of state and local law enforcement in general.

The Governor has the power, by appropriate action, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the State. Article V, Executive, Section 1, ¶11. The Governor, whose executive branch powers are legislatively codified within Title 52 of the New Jersey Statutes, is therefore empowered to ensure that the aforementioned constitutional or legislative rights of New Jersey's citizens are upheld.

To this end, the Governor may authorize the continuance of OSPA as a state agency assisting the Executive branch of government in ensuring that state or local officers, departments or agencies, including the Division of State Police in the Department of Law and Public Safety, complies with constitutional or legislative mandates pertaining to the rights, privileges, or immunities secured or protected by the U.S. Constitution, the New Jersey Constitution, or the laws of the United States or New Jersey. The Office of the Attorney General has also laid the groundwork for the continuance of OSPA.

Pursuant to Attorney General Administrative Directive Executive 2006-1 (AGADE 2006-1), executed by former Attorney General Peter Harvey (AG Harvey), upon the dissolution of the Consent Decree, OSPA is to continue to assist the Attorney General in coordinating all of the law enforcement activities of the State Police, including but not limited to academy training and oversight functions, ethics and leadership training, assisting in the coordination of the Superintendent's disciplinary function relative to Trooper misconduct, advice on constitutional law pertaining to search and seizure and equal protection, and cultural and diversity initiatives.

The intent of AGADE 2006-1 is that OSPA provide assistance to the Attorney General in supervising and implementing the reform recommendations, remedial steps and actions noted in the Interim and Final Reports. In memorializing the continued and constructive oversight function of OSPA in AGADE 2006-1, AG Harvey committed to ensuring full statewide compliance with the spirit of the Consent Decree. AGADE 2006-1, however, has its limitations which can presently be rectified by the Committee.

For instance, one of the most innovative supervision tools accruing from the Decree, the Management Awareness Personnel Performance System (MAPPS), is not mentioned for continued oversight in AGADE 2006-1. The limitations of AGADE 2006-1 notwithstanding, there is no impediment to the continuance of OSPA's existence and authority under the auspices of Title 52 and the commensurate responsibilities of the Governor or Attorney General upon the dissolution of the Consent Decree.

II. FUTURE OF OSPA

This office has previously suggested that OSPA's monitoring role for NJSP in the future would be similar to the federal monitors which would include but may not be limited to: periodic reviews of specific MVRs; reviewing the data and use of MAPPS; ensuring that meaningful supervisory reviews of troopers are being conducted; continuing to review the lesson plans of the Academy; ensuring that the lessons remains relevant and address the needs of law enforcement, as

well as reviewing investigations and classifications of internal affairs matters to determine accuracy. OSPA would also continue to perform other functions currently performed, including trooper discipline, public information, and other matters directed by the Attorney General.

As stated in the September 20th meeting, it is the recommendation of OSPA that it continue to monitor and investigate allegations involving constitutional and equal protection violations by not only NJSP but municipal police departments as well. The authority to monitor NJSP is stated above. The Attorney General also has the authority to monitor municipal police.

Elsewhere this office has noted that although New Jersey does not have a “pattern or practice” statute as contained in the Violent Crime Control and Law Enforcement Act of 1994, there is ample state authority for the Attorney General to investigate and resolve matters of bias-based policing within police agencies acting under the authority of state law. The Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., not only recognized the Attorney General’s broad, common law authority over criminal matters, see N.J.S.A. 52:17B-102, but also declared it to be the public policy of this State

to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. [N.J.S.A. 52:17B-98].

Moreover, N.J.S.A. 52:17B-112(b) mandates county and municipal police officers to cooperate with the Attorney General and county prosecutors in the performance of their respective duties. Along with the unlimited power to supercede, participate in or initiate any criminal investigation or proceeding contained in N.J.S.A. 52:17B-106 and 107, the statutory authority set forth above suffices to empower any investigation of, or directive to, police agencies acting under the authority of state law on any matters that impact the detection, arrest, indictment and conviction of criminal offenders as well as the administration of justice.

In addition to this statutory authority, the Attorney General’s supervisory authority to issue guidelines and directives to prosecutors and other law enforcement agencies acting under color of state law has been recognized and/or upheld in numerous cases.

One can also measure the depth of the supervisory authority of the Attorney General over local law enforcement in New Jersey by examining the authority of the county prosecutors, who, when supervising local law enforcement, stand in the stead of the Attorney General. This derivative authority is broad, as evidenced by State v. Winne, 12 N.J. 152, 168-169 (1953). (The Attorney General is “in a position to command the cooperation of all law enforcement in the county.”)

In summary, unlike DOJ, the Attorney General does not need to assert standing and utilize a “pattern or practice” statute. Through the well defined supervisory authority over law

enforcement, the Attorney General may direct changes within law enforcement that further the administration of justice.

A post-Consent Decree OSPA would thus have authority to provide technical assistance to municipal police departments. As stated at the September 20th meeting, OSPA would be responsible for giving guidance to police departments in the area of constitutionally-based policing and equal protection. OSPA envisions that upon request of individual departments, chiefs of police associations, and/or county prosecutors, this unit would assess the needs of the individual departments and, as appropriate, help them develop the processes adopted by NJSP that are the basis of all NJSP's successful reforms.

OSPA would also investigate police departments for organizational (pattern and practice) civil rights violations subject to the Attorney General's approval. These investigations would include, but not be limited to, allegations of racial profiling, false arrest and imprisonment, excessive force, and improper searches, etc. OSPA would also work with the Division of Criminal Justice's Prosecutors and Police Bureau regarding these matters.

In addition to serving local police departments, there are several other differences between the proposed new unit and the current one. First, as stated before the Committee, the office may function with or without NJSP troopers in the new unit. OSPA is in agreement that while the troopers have been helpful regarding technical issues on SOPs, search and seizure issues, and reviewing MVR stops prior to the monitors' visits, OSPA can still have this type of assistance without them being assigned to the unit. Post-Consent Decree, a unit without troopers would provide an added level of independence that is needed to ensure constructive, unfettered criticism and free discourse about issues facing NJSP.

Second, OSPA would propose that legal advice that falls outside of the new mission be provided by the two divisions that are already in place – the Division of Law (DOL) and the Division of Criminal Justice (DCJ).² OSPA would focus on legal issues regarding search and seizure, discipline, equal protection, pattern and practice litigation, as well as any other issues that appear during the monitoring process. OSPA would continue to partner with DOL and/or DCJ to resolve problems.

² Pursuant to Governor Florio's Executive Order No. 6, signed March 14, 1990, "no special counsel shall be employed for the State or by any officer, department, board, body, commission, or instrumentality of the State Government, except by authority of the Attorney General, and then only with the approval of the Governor."

III. SYSTEMIC ISSUES

A. SYSTEMIC ISSUES WITHIN NJSP

The Committee Chair asked OSPA to report on systemic issues OSPA has seen during the period of federal monitoring. OSPA's monitoring role since 2000 has allowed OSPA to observe first hand how the NJSP works in many areas, not all of which were subject to federal monitoring as required by the Consent Decree. Nonetheless, the observed systemic issues detailed here relate to the organizational environment in which the Consent Decree reforms must be sustained. As such, they may present impediments to maintaining the gains of the reforms and the spirit of the Consent Decree. NJSP itself is acutely aware of many of them and has moved to address some of them.

- ***Integration of Technology***

The growth of technology in NJSP during the last six years is tremendous. However, perhaps in part because of the extent to which outside vendors have been relied upon to develop, maintain, and create enhanced technological capabilities, planning processes often have seemed technology- and vendor-driven, as opposed to coming from deliberative and integrated "big picture" policy development. Often policy is "wrapped around" the technology after it is developed, lessening the effect it can have on the issue it was purchased to help address, and limiting its potential beyond that one issue. The MAPPS System presented perhaps the first opportunity for integration of information across applications and as such, exhibited the growing pains of working through technologies (and vendors) that must "talk" to each other. Going forward, oversight agents should be cognizant of these tendencies as new technologies come on-line, such as the new computer-aided dispatch system or digitized mobile video recording.

- ***Maintenance and Expansion of Analytic Capabilities Within a Changing Organizational Structure***

As just noted, during the Consent Decree period, NJSP's focus has been on technology to collect data. Less attention has been paid to getting data "out" in a usable format to help inform decisions. Clearly, it is post-Consent Decree that analytic functions must be further developed to ensure they become ingrained within the fabric of the NJSP organization. There is not just one way to organize for these tasks and, certainly, the NJSP needs to figure out how best to organize itself to meet its many demands. As in other spheres of police work, the ability to have the information used will depend on the value the information has and to whom. MAPPS data and the analytic work from them have the potential to provide useful information to NJSP to inform policy decisions and decisions about individual troopers. There are growing analytic demands in many other units as well. These demands will have to compete for both material and personnel resources with ongoing operational demands.

- ***Integration of Policies across Units of the NJSP***

Standard operating procedures (SOPs) are “owned” by the “office of primary interest,” yet developments in one unit affect policies in another and there is a lag in their integration. One example of the lack of SOP integration is the existence of multiple requirements for quarterly reviews – those mandated by MAPPS policies of the data contained within and those mandated by the personnel policies requiring quarterly appraisals and annual evaluations. To date, these policies are separate, yet it would seem a rigorous appraisal and evaluation process should incorporate such data reviews of all personnel to effect long-term compliance with the spirit of the Consent Decree.

- ***Career Development***

NJSP is well aware that its promotional system needs an overhaul. But, career development is somewhat broader. How troopers are given new opportunities, are transferred and reviewed are all aspects of the process. Of importance to the monitors was that “highly qualified” people continue to be assigned to the Academy and that ethics and values be included in training across the board. Long term, many more units may look for special qualifications and NJSP must find and cultivate members with special skills or analytic expertise. An understanding of analysis would actually be important up the chain of command so that issues can be discussed and resolved. These issues thus have implications for both recruitment and transfer policies. Identification of qualified, diverse recruits, appropriately trained, meaningfully reviewed and promoted, according to a clear and fair process is essential to retaining qualified troopers and maintaining their morale.

- ***Role of Civilians within NJSP***

Civilian personnel are likely to increasingly support many units with technical and methodological skills necessary for the most difficult analytical tasks. While any enlisted member who has relevant qualifications should be encouraged to transfer into analytical units, it is unlikely that there will be enough promotional opportunities within all units to make it a “career path” for a trooper with specialized skills. Promotional advances for the civilian analysts may also affect the continuity of civilian staffing as well. However, it is likely that the civilian staff will form the more stable core of any analytical unit, accomplishing on-going analytic tasks, adjusting to a shifting pool of enlisted personnel, both within the unit and up the chain of command. A post-Consent Decree challenge for the NJSP will be to recognize, embrace, and learn to utilize the unique knowledge civilian analysts have. To be effective, they require access to the same data as enlisted personnel, which should be incorporated in all data-access protocols.

- ***Use of Appropriate Interventions and Discipline***

Processes for the graduated use of interventions for performance issues leading to discipline, when necessary, and then progressive discipline are not yet fully utilized by supervisors and managers in the approach to these issues. Post-Consent Decree, effective use of these processes needs to be maintained and broadened to ensure the continued adherence to sound supervision principles incorporated in the Consent Decree.

B. SYSTEMIC ISSUES FOR OVERSIGHT

In addition to commenting on systemic issues observed within the NJSP that may be impediments to the continuity of reform, OSPA's experience since 2000 also allows specification of systemic issues for future oversight of the NJSP. While OSPA's experience relates to any organizational context, it is within the OAG and the Department of Law and Public Safety where it can offer the most insight.

- ***Scope of Authority***

The Consent Decree provided "tasks" that set parameters for the reforms of the NJSP and the appropriateness of what the federal monitors and OSPA could address. While the Consent Decree permitted the Attorney General to expand the role of OSPA beyond enumerated tasks, it was not always clear what authority it had to recommend as opposed to mandate changes. Post-Consent Decree OSPA would need the clear enforcement powers. The organizational relationship between OSPA and NJSP needs to be spelled out for both parties, with clear parameters for its mandate. By extension, this clarity will be needed with regard to local police departments as well.

- ***Access to Information***

To achieve constructive oversight post-Consent Decree, complete and unfettered access to the data, policies and personnel of the NJSP needs to be continued. The experience of the Consent Decree has generally been excellent in this regard, but future oversight can not be effective without assurances that this access will be maintained.

IV. OTHER CONSIDERATIONS

OSPA also believes that the Consent Decree reforms should be codified. The legislation should include a provision for funding of the technology and personnel needed to keep the reforms in place. The legislation should consider the following guiding principles of the Consent Decree:

- Contacts with the public must be appropriately documented and routinely supervised.
- Timely and accurate data must be maintained for informed supervision and management.
- Mandates for review of individual and aggregated information by supervisors and managers are necessary to promote accountability up the chain of command and permit the management awareness system to identify members or units that require interventions, thereby aiming to correct performance before misconduct occurs.
- When misconduct is alleged, there must be appropriate processes for intake, classification, investigative findings, and adjudication.

- Training is intrinsic to the development of sound and constitutional police practices and thus should be reviewed and modified according to relevancy and training needs identified by the various bureaus/units throughout NJSP, and then evaluated by measuring its implementation in the field.

V. SUMMARY

No organization is static, and the NJSP must address on-going challenges for its mission and organization post-Consent Decree. OSPA believes that continued constructive oversight of NJSP is both necessary and proper. Oversight would not only be consistent with the recommendations of the Final Report, it would also enhance public confidence in NJSP, and would act as a guarantor against slippage from the current reforms and spirit of the Consent Decree. Additionally, attention to municipal police is appropriate. To accomplish this goal, OSPA, or any new oversight agency, must have sufficient authority and clarity of function vis-à-vis the NJSP and municipal police. Retaining this relationship within the OAG, however, allows the Attorney General to hold all agencies accountable. OSPA expects its own performance to be subject to independent review in all areas, further ensuring public confidence in the monitoring process of law enforcement agencies.