



State of New Jersey
ADVISORY COMMITTEE ON POLICE STANDARDS

New Jersey Advisory Committee on Police Standards

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

December 7, 2007



State of New Jersey
ADVISORY COMMITTEE ON POLICE STANDARDS

New Jersey Advisory Committee on Police Standards

James E. Johnson, Chair

Larry L. Bemby
Ellen Brown
Michelle Carroll
Kevin P. Donovan
Reverend Reginald Style Floyd
Jonathan L. Goldstein
James E. Harris
Jerome C. Harris, Jr.
Carmelo V. Huertas

Pastor J. Stanley Justice
Samer E. Khalaf
Carlos F. Ortiz
Michael A. Rambert
Mitchell C. Sklar
Edwin H. Stier
Scott Louis Weber
Theresa L. Yang

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

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

PREFACE

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

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

ACKNOWLEDGEMENT

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

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

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

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

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

INTRODUCTION

I. Summary of Recommendations of the Committee

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

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

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

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

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

- maintenance of MVRs and upgrading of technology;
- maintenance and enhancement of MAPPS; and
- maintenance of at least the minimum training requirements of the Consent Decree.

7. The State Comptroller should:

- designate an auditor to perform, within six months of the lifting of the Consent Decree, then every six months for the next eighteen months, and at least one time per year thereafter, risk-based auditing of:
 - stops;
 - post-stop enforcement activities;
 - internal affairs and discipline;
 - decisions not to refer an individual to internal affairs notwithstanding the existence of a complaint; and
 - training; and
- establish a procedure for reporting to the Governor and the public the results of the Comptroller audits, including a report of the activities of the Comptroller and funding levels and a report card from the Comptroller of the performance of the State Police in the areas noted above.

8. The Committee recommends, that upon the lifting of the Consent Decree, the Governor should immediately issue an Executive Order adopting the recommendations of this Report.

9. The State should conduct a comprehensive review of the State Police's continued efforts at eradicating racial profiling five years from the date the Consent Decree is lifted.

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

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

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

II. Background

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

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

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

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

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

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

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

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

III. Summary of Work of the Committee

A. Members of the Committee

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

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

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

B. Summary of the Work of the Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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