

June 19, 2006

To: Attorney General, State of New Jersey

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RE: Post-Consent Decree Oversight of the New Jersey State Police

EXPERT OPINION

I. INTRODUCTION

On December 30, 1999 the State of New Jersey entered into a Consent Decree with the U.S. Department of Justice to settle a suit involving allegations of racial profiling by the New Jersey State Police. The Consent Decree required the NJSP to implement a series of management reforms designed to increase the accountability of NJSP troopers with respect to interactions with citizens and with respect to traffic stops in particular.

The Consent Decree involved the creation of two forms of oversight for the NJSP. First, it required the appointment of an Independent Monitor to ensure compliance with the terms of the Decree. Second, it required the creation of an Office of State Police Affairs (OSPA) within the Office of the Attorney General (OAG) of New Jersey to provide additional oversight. The Attorney General had established an OSPA prior to the advent of the Consent Decree but in response to the same allegations of racial profiling.¹

The U.S. Justice Department is presently considering ending the Consent Decree. Such action raises the question of whether the State of New Jersey should maintain some form of permanent external oversight of the NJSP in the post-Consent Decree era.

¹ John J. Farmer, Jr., Attorney General, and Paul H. Zoubek, First Assistant Attorney General, *Final Report of the State Police Review Team*. July 2, 1999.

The purpose of this Expert Opinion is to make a recommendation as to whether the State of New Jersey should maintain some form of permanent external oversight of the NJSP, and if so what form that oversight should take.

This Expert Opinion is based on a review of all relevant documents related to the Consent Decree and its implementation, along with interviews with key stakeholders.

II. IMPLEMENTING THE CONSENT DECREE

The New Jersey State Police has done an excellent job of implementing the terms of the Consent Decree. The Thirteenth and most recent report of the Independent Monitor concludes that the NJSP has continued to make remarkable progress in all areas of compliance."²

The Monitor noted several special achievements of the NJSP. After citing significant improvements in training within the NJSP, it commented, for example, that "As dramatic as the positive changes have been at the Training Academy this period, the changes made in the process and outcome of supervision of troopers within the New Jersey State Police continues to be even more remarkable. For the fifth consecutive reporting period, evidence exists that New Jersey State Police supervisors are fully engaged in the consent decree compliance process, reviewing 313 of the 313 motor vehicle stop events reviewed by the monitors."³

The NJSP successfully implemented an early intervention system (EIS), known as MAPPS, as mandated by the Consent Decree.⁴ The special significance of this implementation is explained in Section III, below.

The top command of the NJSP is committed to maintaining the reforms brought about by the Consent Decree, and commanders talk about "going beyond the decree" in terms of standards of accountability.⁵ Maintaining the reforms is Goal 1 in

² *Thirteenth Report of the Independent Monitor*, "1.5 Progress toward Compliance," p. 4.

³ *Ibid*, p. 6.

⁴ *Ibid*, p. 8.

⁵ Interviews with NJSP command staff.

Superintendent Joseph Fuentes's 2006 Strategic Plan for the NJSP.⁶

The NJSP is to be commended for successfully implementing the terms of the Consent Decree in a timely fashion.

III. THE NJSP IMPLEMENTATION IN CONTEXT

The achievement of the NJSP in implementing the Consent Decree should be placed in the context of the efforts of other law enforcement agencies to implement court-ordered consent decrees and memoranda of agreement (MOA).

Under Section 14141 of the 1994 Violent Crime Control Act, the U.S. Department of Justice has reached settlements with 20 law enforcement agencies.⁷ The requirements of the various consent decrees and MOAs are essentially similar to the New Jersey Consent Decree.⁸ (Some settlements have involved Letters that do not have the force of law and are generally far more limited in scope than the consent decrees and MOAs.) In addition, two consent decrees exist as a result of actions by state attorneys general, and two exist as a result of private litigation.⁹

Some law enforcement agencies have successfully implemented their consent decrees or MOAs within the required time frame, while others have struggled to meet the required deadlines. The examples relevant to this report are discussed below.

Pittsburgh, PA

The Pittsburgh, Pennsylvania, Police Department in 1997 was the first law

⁶ Col. Joseph R. Fuentes, Superintendent, *New Jersey State Police Strategic Plan 2006*, p. 3.

⁷ See the web site of the DOJ Special Litigation Section: www.usdoj.gov/crt/split/.

⁸ The common elements of the various consent decrees and MOAs include (1) revised use of force policies; (2) improved citizen complaint process; (3) an early intervention system; (4) improved training related to the above reforms; (5) a court-appointed independent monitor. See Samuel Walker, *The New World of Police Accountability* (Thousand Oaks: Sage, 2005).

⁹ State Attorneys General brought suits against Riverside, California, and Walkill, New York. Private suits resulted in settlements in Philadelphia, PA, and Oakland, CA.

enforcement agency to reach a negotiated consent decree with the U.S. Department of Justice as a result of Section 14141 litigation. The key terms of the decree are essentially the same as the decree involving the NJSP. The department successfully implemented all of the terms of the Consent Decree within the required time period and the decree was ended in the summer of 2002. The successful implementation has been documented by an Independent Monitor and two separate evaluations.¹⁰

Steubenville, OH

The Steubenville, Ohio Police Department was the second law enforcement agency to be subject to a consent decree under Section 14141. The department successfully implemented the terms of the decree and it was ended in the spring of 2005.¹¹

Los Angeles, CA

The Justice Department and the City of Los Angeles entered into a consent decree regarding the Los Angeles Police Department in 2001. The basic elements of the consent decree are essentially similar to those of the NJSP consent decree. As of the spring of 2006, the department had failed to meet a number of implementation deadlines.¹² The LAPD, for example, had still not implemented TEAMS II (the equivalent of the NJSP's MAPPS system) after fifteen years of effort that began in 1991 with the Christopher Commission Report. In May, 2006 the federal judge overseeing the

¹⁰ Robert C. Davis, et al., *Federal Intervention in Local Policing: Pittsburgh's Experience with a Consent Decree* (Washington, DC: The Police Foundation, 2006). Available at www.ncjrs.gov, NCJ 212980. See also the earlier report, Robert C. Davis, Christopher W. Ortiz, Nicole J. Henderson, Joel Miller, and Michelle K. Massie, *Turning Necessity Into Virtue: Pittsburgh's Experience with a Federal Consent Decree*. Available at www.vera.org. Samuel Walker, *Report of the Conference on Police Pattern or Practice Litigation: A 10-Year Assessment. February 10-11, 2005: Executive Summary*. Available at www.policeaccountability.org.

¹¹ Interview, Charles Reynolds, Independent Monitor, Steubenville Police Department Consent Decree.

¹² Kroll and Associates, *Report of the Independent Monitor For The Quarter Ending December 31, 2005*. Issued February 15, 2006. The department had complied with 27 tasks, failed to comply with 11, and the Monitor "withheld determination" on 2 tasks. Available at www.lapdonline.org.

case extended the consent decree for another three years.¹³

Cincinnati, OH

The City of Cincinnati, Ohio, entered into a Memorandum of Agreement (MOA) with the Justice Department with respect to the Cincinnati Police Department in 2002. The basic terms of the MOA are similar to the consent decree involving the NJSP. The Cincinnati Police Department has failed to meet a number of deadlines specified by the MOA. In fact, in early 2005 the Independent Monitor concluded that the Cincinnati Police Department was in "material breach" of the MOA as a result of several instances of willful non-cooperation.¹⁴ The underlying conflicts have since been resolved, but the CPD has still not met all of the required implementation deadlines.¹⁵

Washington, DC

The Metropolitan Police Department of Washington, DC entered into a Memorandum of Agreement with the Justice Department in 2001. The terms of the MOA are essentially the same as the Consent Decree involving the NJSP. The police department has consistently failed to meet deadlines specified by the MOA. The Independent Monitor reported in April, 2006 that in many areas substantial compliance with the terms of the MOA had not been achieved.¹⁶

Oakland, CA

The Oakland, California, Police Department entered into a Settlement

¹³ "LAPD Faces 3 More Years of Scrutiny," *Los Angeles Times*, May 16, 2006. *Report of the Independent Commission to Investigate the Los Angeles Police Department* (Los Angeles: Christopher Commission, 1991). Available at www.parc.info.

¹⁴ Saul Green, *Independent Monitors's Eighth Quarterly Report*, January 14, 2004. Saul Green, *Independent Monitor's Ninth Quarterly Report*, April 1, 2005. The settlement with the City of Cincinnati included a separate Collaborative Agreement settling a suit alleging racial profiling brought by private plaintiffs. Available at www.cincinnati-oh.gov/police/.

¹⁵ Saul Green, *Independent Monitor's Thirteenth Quarterly Report*, May 1, 2006.

¹⁶ Michael Bromwich, et al., *16th Quarterly Report of the Independent Monitor for the Metropolitan Police Department*, 4/27/06. Available at www.policemonitor.org.

Agreement in 2003 to resolve a pattern or practice suit brought by private parties. The terms of the Agreement are essentially the same as the Consent Decree involving the NJSP. The police department has failed to meet a number of the required deadlines.¹⁷

Summary

The record of the consent decrees and MOAs in other cities highlights the special achievement of the NJSP. It joins Pittsburgh and Steubenville in having successfully achieved full implementation. The four other departments discussed above have not achieved successful implementation.

Given the record of other law enforcement agencies facing similar requirements, the NJSP deserves special commendation for its achievement in fully implementing the Consent Decree in a timely fashion.

IV. AFTER THE CONSENT DECREE

The question this Expert Opinion was assigned to address involves what should be done with regard to oversight following the dissolution of the Consent Decree.

A. OVERSIGHT ALTERNATIVES

There are three basic alternatives with regard to the future of oversight of the NJSP following the end of the Consent Decree.

1. No Independent Oversight of the NJSP

One alternative is to have no institutionalized independent oversight of the NJSP following the end of the Consent Decree. This approach would return full responsibility for maintaining standards of accountability on the NJSP itself.

¹⁷ "No Shortcut to Cop Reform," *Oakland Tribune*, April 21, 2006. *Seventh Status Report of the Independent Monitor*. December 7, 2005. Available at www.oaklandpolice.com.

The NJSP has proposed this alternative, although with an important addition. The NJSP proposes to assume full responsibility for maintaining standards of accountability, but also to establish a contractual relationship with an institution of higher learning (specifically, Rutgers University) to conduct regular audits similar to those previously conducted by the Independent Monitor.¹⁸

2. Oversight of the NJSP by the Office of State Police Affairs

A second alternative would be to maintain some independent oversight of the NJSP through the existing Office of State Police Affairs in the Office of the Attorney General.

The OSPA has proposed this alternative. The proposal calls for "a model close to the current structure of OSPA," with one modification separating the monitoring and the technical assistance/legal assistance activities. The OSPA proposal notes that this approach is consistent with the recommendations of the Attorney General's 1999 *Final Report*, that the political climate would demand some form of oversight, and that the Attorney General has statutory responsibility for the State Police.¹⁹

3. Oversight of the NJSP by a New Agency

Independent oversight of the NJSP could be provided through the creation of a new independent agency. The responsibilities of such an agency could be broader or narrower than those outlined in the current OSPA proposal. Legislation would be required to create any such agency.²⁰

¹⁸ New Jersey State Police, *Raising the Bar: Sustaining Excellence, Productivity and Accountability in the Post-Consent Decree Era*, March 14, 2006. New Jersey State Police, *When the Consent Decree Goes Away: A Five-Year Plan for Continued Auditing of the New Jersey State Police*. Joseph R., Fuentes, Superintendent, *New Jersey State Police Strategic Plan 2006*.

¹⁹ Daniel G. Giaquinto, Memorandum to Peter C. Harvey, Attorney General, "Office of State Police Affairs Post Consent Decree," September 14, 2005.

²⁰ Various models of oversight are described in Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont, CA: Wadsworth, 2001), and Police Assessment Resource Center, *Review of National Police Oversight Models* (Los Angeles: PARC, Feb 2005). Available at www.parc.info.

B. The Post-Consent Decree Experience of Other Law Enforcement Agencies

In choosing a post-Consent Decree alternative for the NJSP, it is useful to consider how other law enforcement agencies have handled the end of their consent decrees or MOAs.

The record on this issue is extremely limited, however. To date, only two federal consent decrees have been ended.

Pittsburgh

The consent decree involving the Pittsburgh Police Department was ended in 2002. As noted above, the department successfully complied with all the terms of the consent decree in the required time period. The City of Pittsburgh did not create any new oversight agency or procedure related to the terms of the consent decree. The Citizens Police Review Board, an agency that reviews individual citizen complaints against police officers, does continue in existence.²¹

Recent events in Pittsburgh raise serious questions about the viability of the reforms in the Pittsburgh Police Department that were created as a result of the consent decree. There is a strong consensus of opinion that former Chief Robert McNeilly was the key factor in the successful implementation of the consent decree. In November, 2005, however, a new mayor was elected in Pittsburgh. This individual had the support of the local police union which had opposed Chief McNeilly on numerous issues related to the consent decree. In January, 2005 the new mayor fired Chief McNeilly.²²

Based on conversations with various stakeholders in Pittsburgh, the author of

²¹ Robert C. Davis, et al., *Federal Intervention in Local Policing: Pittsburgh's Experience with a Consent Decree* (Washington, DC: The Police Foundation, 2006). Available at www.ncjrs.gov, NCJ 212980. See also the earlier report: Robert C. Davis, Christopher W. Ortiz, Nicole J. Henderson, Joel Miller, and Michelle K. Massie, *Turning Necessity Into Virtue: Pittsburgh's Experience with a Federal Consent Decree* (New York: Vera Institute, 2002) Available at www.vera.org. The Citizens Police Review Board web site is: www.city.pittsburgh.pa/cprb/.

²² Interview, former Pittsburgh Police Chief Robert McNeilly. Samuel Walker, *Report of the Conference on Police Pattern or Practice Litigation: A 10-Year Assessment. February 10-11, 2005: Executive Summary*. Available at www.policeaccountability.org.

this Expert Opinion believes that the future of consent decree-related accountability reforms in Pittsburgh are uncertain at best and possibly in jeopardy.

Steubenville, OH

The consent decree between the Justice Department and the Steubenville, Ohio, Police Department ended in the spring of 2005. No new oversight procedures were created following the end of the consent decree.²³

To date, there is no evidence or informed opinion regarding the status of accountability standards in the Steubenville Police Department.

V. THE CHALLENGE OF SUSTAINING REFORM IN LAW ENFORCEMENT AGENCIES

The question of whether or not there should be continued independent oversight of the NJSP raises the more general issue about sustaining accountability-related reforms in law enforcement agencies.

The history of police reform is filled with examples of the failure of departments to sustain important reforms. This includes both accountability-related reforms and innovations in other aspects of policing.²⁴ Several examples relevant to the NJSP are discussed in the following section.

New York Police Department (NYPD)

Following a major corruption scandal in the late 1960s, New York City Police Commissioner Patrick V. Murphy instituted a number anti-corruption procedures within the New York Police Department (NYPD). These reforms were hailed at the time as an

²³ Interview, Charles Reynolds, former Independent Monitor, Steubenville Police Department.

²⁴ This is true, for example, with regard to community policing and problem-oriented policing.

answer to the recurring corruption problems in the department.²⁵ Yet, in the early 1990s another scandal erupted in the NYPD, this one involving a combination of corruption and brutality. The Mollen Commission investigating the department found that the anti-corruption reforms instituted by Murphy had completely collapsed.²⁶

The lesson of the NYPD in the post-Murphy era is that elaborate accountability reforms, including those developed in the glare of national and local publicity, can erode over time if additional safeguards are not developed.

The Los Angeles Police Department (LAPD)

The Los Angeles Police Department (LAPD) represents an extremely important example of how a law enforcement agency once regarded for its high standards of professionalism allowed those standards to erode. In the late 1950s and early 1960s the LAPD was generally considered to be the most professional local police department in the country.²⁷ Yet, in 1999 the department was engulfed by a major scandal (generally referred to as the Rampart Scandal).²⁸ Partly as a result of, but also because of other problems related to the abuse authority, the U.S. Department of Justice brought a pattern or practice suit against the LAPD. The suit was settled with a consent decree containing most of the same elements found in the NJSP Consent Decree.

In response to the Rampart Scandal, the LAPD undertook a comprehensive review of its internal procedures in an effort to discover what went wrong. The resulting Board of Inquiry Report concluded that the department's personnel and integrity-related procedures were essentially worthless. It concluded, for example, that the standard

²⁵ *The Knapp Commission Report on Police Corruption* (New York: George Braziller, 1970). The reforms are discussed in detail and in the context of reform efforts in other departments in Lawrence W. Sherman, *Scandal and Reform: Controlling Police Corruption* (Berkeley: University of California Press, 1978).

²⁶ Mollen Commission Report, *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, July 1994. Available at www.parc.info.

²⁷ Lou Cannon, *Official Negligence: How Rodney King and the Riots Changed Los Angeles and the LAPD* (New York: Times Books, 1997). See Ch. 3 on the reputation of the LAPD in the 1950s.

²⁸ Los Angeles Police Commission, *Report of the Rampart Independent Review Commission* (Los Angeles: Police Commission, 2000).

personnel evaluations were worthless and widely regarded as such by many within the department. The report cited over thirty internal integrity and accountability-related procedures, but concluded that they had failed to prevent the Rampart Scandal.²⁹

The lesson of the Rampart Scandal is that even in a department with an established reputation for the highest standards of integrity and accountability it is possible for those standards to erode to the point of collapse.

The Los Angeles Sheriff's Department

The case of the Los Angeles Sheriff's Department (LASD) represents three particularly illuminating examples of how accountability related reforms are threatened by the pressure of routine law enforcement operations.

The problems discussed here are in no way as serious as the NYPD and LAPD problems discussed above. But they do illustrate the impact on accountability mechanisms of normal pressures that law enforcement agencies face. Equally important, they illustrate the role that external oversight can play in identifying problems at an early stage and setting in motion corrective action.

The first example involves the LASD's early intervention system, the Personnel Performance Index (PPI) (the equivalent of the NJSP MAPPS system). Operational by 1997, the PPI was quickly regarded as the most sophisticated EIS in the country. LASD officials were invited to numerous national conferences to describe the PPI and law enforcement agencies across the country attempted to model their systems after it.³⁰ In 2003, however, a report by the Special Counsel to the LASD, one of two forms of oversight for the department, found that it was not functioning at full capacity. There were problems with the quality of the data being entered into the system, delays in data entry, and the fact that some commanders were not familiar with the capabilities of the system. These problems were the result of staffing shortages, normal personnel reassignments, and a failure to provide continuity through proper training and

²⁹ Los Angeles Police Department, *Board of Inquiry into the Rampart Area Corruption Incident: Public Report*. March 1, 2000. Available at www.cardinalacademy.org/Reports/LAPD.htm.

³⁰ Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies* (Washington, DC: Department of Justice, 2003). Available at www.ncjrs.org, NCJ 201245.

orientation of command officers.³¹

The Special Counsel's report was a great embarrassment to the LASD, and in response it took steps to correct the problems. This episode illustrates how routine budget constraints and normal patterns of personnel reassignments can easily erode an important accountability mechanism.

A second example involves the Century Station, an LAPD precinct station in a high crime neighborhood. In the mid-1990s the Century Station was involved in a very high number of officer-involved shootings. The Special Counsel investigated and found that the problems were the result of a number of serious management problems. The ratio of officers to sergeants, a critical element of supervision, far exceeded even the department's own standard. The station was used as a training ground for new deputies, with the result that it had a disproportionate number of new deputies. Sergeants, in addition to being overloaded with responsibilities, were themselves young and relatively inexperienced. Finally, the station had a bad reputation within the department and officers at all ranks sought to transfer out as quickly as possible.³²

In response to the Special Counsel's report, the LASD took several steps to correct the problems that had been identified. A new commander was assigned to the Station and he initiated a number of practices that provided much closer supervision of deputies on the street. As a consequence, officer-involved shootings declined dramatically. Eventually, however, officer-involved shootings increased in the Century Station. A follow-up review by the Special Counsel found that, among other issues, many of the lieutenants and sergeants had been rewarded for their accomplishments by promotion or transfer. As a result there was a lack of continuity in the accountability practices that had produced the reduction in shooting incidents.³³ This episode illustrates how routine personnel reassignments can result in the loss of key leaders in critical positions and the resulting loss of continuity and focus on a potential problem area within a department. It is also important to note that the Special Counsel has examined the Century Station several times over the years, suggesting that certain

³¹ Merrick Bobb, Special Counsel to the Los Angeles Sheriff's Department, *Sixteenth Semiannual Report* (February 2003), pp. 58-59. Available at www.parc.info.

³² Merrick Bobb, Special Counsel to the Los Angeles Sheriff's Department, *Ninth Semiannual Report*, June 1998., pp. 7-34. Merrick Bobb, Special Counsel to the Los Angeles Sheriff's Department, *Thirteenth Semiannual Report* (December 2000), pp. 9-15. Available at www.parc.info.

³³ Merrick Bobb, Special Counsel to the Los Angeles Sheriff's Department, *Fourteenth Semiannual Report* (October 2001), pp. 79-87. Merrick Bobb, Special Counsel to the Los Angeles Sheriff's Department, *Fifteenth Semiannual Report* (July 2002), pp. 9-35. Available at www.parc.info.

critical areas of policing require continued attention.

The third example involves training within the LASD. Commanders in the department fully understand the importance of continuing training for officers and the department has a number of training programs that supplement and exceed the requirements of California state law.³⁴ A report by the Special Counsel in 2006, however, found that in a number of areas officers were not receiving even the required training. One audit, for example, found that possibly only half of the officers were in compliance with a state-mandated continuing professional education requirement.³⁵ The report identified budget constraints as a major factor in the training lapses. Training takes officers away from their normal duties and their work must be covered by their current unit. The Special Counsel found that because the LASD is about 1,000 officers short of its authorized strength, some units were unable or unwilling to release officers for training. This episode illustrates the impact of budgetary constraints, which are a routine and recurring problem in law enforcement agencies, on training programs.

The lesson of the LASD examples is that without the Special Counsel, an external monitor with both independence and significant resources, it is entirely possible that the problems related to the EIS, use of force, and training might have continued and even worsened.

VI. ANALYSIS AND RECOMMENDATIONS

The following section analyzes the three alternatives for post-Consent Decree oversight and makes a recommendation with regard to each one.

A. No Independent Oversight of the NJSP

As noted above, the NJSP has proposed assuming full responsibility for

³⁴ This observation is based in part on an author's site visit to the LASD as part of a different research project.

³⁵ Merrick Bobb, Special Counsel to the Los Angeles Police Department, *Twenty-First Semiannual Report* (March 2006), pp. 1-3, 7, 17, 20-23. Available at www.parc.info.

maintaining standards of accountability within the agency, with no permanent independent oversight from outside the NJSP.³⁶ The NJSP is fully committed to maintaining the reforms arising from the Consent Decree, as indicated by the fact that it is Goal 1 of the Superintendent's 2006 Strategic Plan for the NJSP.³⁷

The NJSP proposal includes two specific elements that provide some measure of external accountability. The first is a plan to involve external experts through a contractual relationship with an institution of higher learning to conduct audits of performance issues similar to those conducted by the Independent Monitor. Specifically, staff at Rutgers University who are already familiar with the NJSP would be retained for this purpose. Second, the NJSP plans to seek accreditation through the Commission on Accreditation for Law Enforcement Agencies (CALEA).

The NJSP proposal has merit. The NJSP has done an excellent job of implementing the reforms mandated by the Consent Decree. This achievement has been documented by the reports of the Independent Monitor and the interviews and review of documents by the author of this Expert Opinion. This author is convinced by the evidence that the leadership of the NJSP is fully committed to continuing the Consent Decree reforms and, in their words, "moving beyond the decree" and making its terms a "floor" and not the "ceiling."

Other considerations weigh against the NJSP proposal, however. Most important, the evidence from other law enforcement agencies clearly indicates that sustaining reform is a serious challenge. As discussed above, other agencies have, in varying degrees, failed to maintain certain important reforms despite the commitment of top leaders and the glare of local and national media scrutiny. Particularly noteworthy is the extent to which important accountability-related reforms can erode as a consequence of routine operations, including budget constraints and normal personnel reassignment practices.

The NJSP proposal to establish a contractual relationship with experts from Rutgers University for the purpose of conducting audits similar to those conducted by the Independent Monitor has some merit. It would ensure continuation of an important element of accountability by outside experts. It suffers, however, from a problem inherent in all contractual relationships. The terms of the contract would be established by the NJSP itself. Additionally, there is a natural tendency for a contracting party to

³⁶ New Jersey State Police, *Raising the Bar: Sustaining Excellence, Productivity and Accountability in the Post-Consent Decree Era*, March 14, 2006.

³⁷ Fuentes, *New Jersey State Police Strategic Plan 2006*, p. 3.

seek to please the contractor in order to maintain the relationship. In particular this may lead to a tendency to downplay the seriousness of some problems that are identified. A truly independent outside agency has no disincentives to candor. And as with some of the examples from other agencies cited earlier indicate, it is often necessary to frame criticisms in strong terms in order to spur corrective action.

The proposed relationship with the Police Institute at Rutgers University is presented in the NJSP proposal as a *fait accompli*. The best practice, however, would be to develop a Request for Proposals (RFP) and allow a number of agencies to submit competing bids. There are other agencies with considerable experience in this specific area and in the area of police procedures generally. Competitive bidding would be the best way to secure the best possible proposal for this task.

Finally, the proposed relationship with Rutgers University has the possibility or at least the appearance of a conflict of interest. The NSP proposal calls for a relationship with the Police Institute at Rutgers. At present, however, Col. Joseph R. Fuentes, Superintendent of the NJSP is a member of the Board of Advisors of the Police Institute.³⁸ This dual role creates at a minimum the appearance of a conflict of interest.

The proposal to seek CALEA accreditation is a worthy goal. It would bring a certain degree of external accountability to the NJSP and accreditation status would be valuable in terms of public relations. There are serious limits to the existing CALEA accreditation process, however. As critics have pointed out, the existing CALEA *Standards for Law Enforcement Agencies* are framed in very general terms.³⁹ Typically, they require that an agency have a written policy on a particular operational issue. With only a few exceptions, however, the *Standards* do not specify the precise content of the policy in question. The limitations of the CALEA *Standards* become immediately apparent when we compare them with the various provisions of the Consent Decree involving the NJSP and other law enforcement agencies subject to DOJ pattern or practice litigation. Examples from the NJSP include but are not limited to the very detailed requirements for documenting traffic stops and searches and the requirement that supervisors review the video recordings of each stop.⁴⁰ The terms of the various consent decrees are very specific and, in effect, establish a "standard of care" that the CALEA accreditation standards do not match.

³⁸ www.policeinstitute.org.

³⁹ Commission on Accreditation for Law Enforcement Agencies, *Standards for Law Enforcement Agencies*, 4th edition (Fairfax, VA: CALEA, 1999).

⁴⁰ *United States v. State of New Jersey*, Secs. 29-32, 35-39. This criticism is developed in Walker, *The New World of Police Accountability*, pp. 28-31.

One important factor that needs to be given considerable weight is the issue of continuity of leadership. There is a broad consensus of opinion among current and past stakeholders that the success of the NJSP in implementing the Consent Decree is due in large part to the leadership of the current Superintendent. It is a truism in law enforcement that leadership is the crucial factor. There is also a consensus of opinion that the then-chief of police in Pittsburgh was largely responsible for that department successfully implementing its consent decree.⁴¹ Consequently, one of the greatest potential threats to a sustained commitment to accountability in the NJSP is the possibility that at some time in the future there could be a Superintendent who is not fully committed to the reforms achieved through the Consent Decree.

In short, there are a number of threats to the continuity of the accountability-related reforms that have been instituted through the Consent Decree. Those threats include:

- (1) The advent at some future time of a Superintendent who is not fully committed to the reforms;
- (2) Budget constraints that make it impossible for the NJSP to adequately staff key positions related to the reforms and/or to maintain and strengthen current training standards;
- (3) Normal personnel reassignment patterns that remove commanders who are deeply committed to the reforms and replace them with commanders who are less attentive to the demands of accountability.

The best guarantee against erosion or "slippage" is for there to be some form of independent oversight of the NJSP.

Finally, the political context of the NJSP must be considered. As the former Attorney General pointed out in his Final Report, the public has come to expect independent oversight of the NJSP. Failure to maintain such oversight would erode public confidence in the NJSP. This issue is not unique to New Jersey. In communities across the country, there is a growing recognition that independent oversight is a necessary and valuable aspect of the governance of law enforcement agencies.⁴²

⁴¹ Samuel Walker, *Report of the Conference on Police Pattern or Practice Litigation: A 10-Year Assessment. February 10-11, 2005: Executive Summary*. Available at www.policeaccountability.org.

⁴² This point, with the evidence of trends across the country, is argued in Walker, *Police Accountability: The Role of Citizen Oversight* and Walker, *The New World of Police*

For the above reasons,

It is not recommended that responsibility for accountability be returned completely to the NJSP in the post-Consent Decree period.

B. Oversight of the NJSP by the Office of State Police Affairs

The Office of State Police Affairs (OSPA) has proposed continuing its role in providing oversight of the NJSP on a permanent basis.⁴³

On the basis of the issues discussed in this report,

It is recommended that the State of New Jersey maintain independent oversight of the NJSP through the Office of State Police Affairs.

To summarize previous discussions, several factors indicate the need for continuing independent oversight of the NJSP.

(1) There is a substantial history of law enforcement agencies failing to sustain important accountability-related reforms. The case of the Los Angeles Sheriff's Department, however, provides particularly relevant examples of the vital role that independent oversight can play in monitoring a law enforcement agency, identifying problems, calling them to the attention of the department and the public, and making appropriate recommendations for corrective action.

(2) Continuity of leadership is a potential problem in all organizations. By general consensus, Superintendent Joseph Fuentes has played a critical role (some argue *the* critical role) in ensuring full compliance with the Consent Decree. In the years ahead, there will be new Superintendents of the NJSP. It is impossible to predict what attitude they will take towards the reforms resulting from the Consent Decree.

Accountability.

⁴³ Giaquinto, Memorandum to Harvey, "Office of State Police Affairs Post Consent Decree," September 14, 2005.

(3) Budget constraints, whether they are great or small, pose a constant threat to all innovations in law enforcement. In many cases, accountability measures are often the first victim of budget constraints. Regrettably, many people give a lower priority to what seem to be mere administrative functions (such as the MAPPS system) or training compared with deploying officers on the street, in large part because that is a highly visible and politically sensitive aspect of law enforcement.

(4) The case of the Los Angeles Sheriff's Department discussed above indicates how normal personnel reassignment practices can, however inadvertently, undermine important accountability functions.

(5) The political context requires independent oversight. As noted in the former Attorney General's Final Report, the public today expects independent oversight of law enforcement and maintaining the current role of the OSPA will serve to enhance public confidence in the NJSP.

The oversight role proposed by the OSPA is stronger in one very important respect than the NJSP proposal. The NJSP has proposed developing an on-going relationship with Rutgers University to conduct audits similar to those conducted by the Independent Monitor.⁴⁴ While this approach has considerable merit, it is limited to the performance issues specified in the proposal. In effect, the monitoring is within the "four corners" of the Consent Decree. The OSPA proposal, by contrast, would give the OSPA a broad license to monitor any issue within the NJSP that appeared to merit inquiry. The example of the Special Counsel to the Los Angeles Sheriff's Department illustrates the potential scope of such a broad license. Many different factors can impact officer-citizen interactions and the day-to-day operations of a law enforcement agency. Issues examined by the LASD Special Counsel include recruitment, assignment and promotion practices; sexual harassment issues; patterns in civil litigation; and other issues.⁴⁵ The lesson of other law enforcement agencies is that under the pressure of routine operations new problems do in fact arise. The OSPA proposal is better designed to respond to such unforeseen contingencies.

Additional Considerations:

Assistance to Municipal Law Enforcement Agencies Through the OSPA

⁴⁴ New Jersey State Police, *When the Consent Decree Goes Away*.

⁴⁵ A summary of all the issues examined by the Special Counsel can be found at www.parc.info, and in Walker, *The New World of Police Accountability*, pp. 147-148.

The OSPA has proposed that its mandate be expanded to include providing assistance to municipal New Jersey law enforcement agencies with respect to civil rights compliance.⁴⁶ This proposal includes providing technical assistance, primarily using the NJSP reforms as a model, and also investigating pattern or practice civil rights violations. The OSPA would assist departments in the development of appropriate policies and procedures, the development of stronger front-line supervision, improved training, improve internal affairs investigations, and the development of risk management procedures.

The OSPA proposal notes that the Office of the Attorney General has statutory authority to undertake this role. Additionally, the OSPA has already provided assistance to local agencies. The OSPA provided technical assistance to the Gloucester County Police Chiefs Association with respect to data collection and other accountability mechanisms related to achieving bias-free policing. Representatives of the OSPA and the Division of Criminal Justice have met with the Gloucester County Police Chiefs on two occasions and have provided technical assistance regarding a traffic stop data collection policy.⁴⁷ In short, the precedent for technical assistance to local law enforcement agencies has already been established. Moreover, the OSPA has acquired a substantial body of relevant experience through its role with the NJSP that would be of extreme value to local agencies.

This proposal has tremendous merit. To the best of this Expert's knowledge, no state in this country currently provides assistance to local law enforcement agencies with respect to accountability procedures. State-level requirements are related to the training of peace officers. While some command-level training in some instances involves accountability issues, state assistance is not directed toward organizational issues as proposed by the OSPA.

It is strongly recommended that the State of New Jersey adopt the OSPA proposal for providing technical assistance to municipal law enforcement agencies with respect to accountability issues.

Adopting the OSPA proposal, would catapult the State of New Jersey to the front ranks of law enforcement professionalism in the United States. *It would immediately establish a model that other states would seek to follow.*

⁴⁶ Daniel G. Giaquinto, Memorandum to Anne Milgram, First Assistant Attorney General, March 14, 2006. Daniel G. Giaquinto, Memorandum to Anne Milgram, First Assistant Attorney General, March 30, 2006.

⁴⁷ Giaquinto, Memorandum to Milgram, March 14, 2006, p. 4.

The proposal would be a great service to the people of the State of New Jersey. It would result in more professional law enforcement across the state and a consequent reduction in allegations of abuse of authority and racial discrimination. It is important to point out that while the NJSP occupies a highly visible role, the vast majority of contacts between police and citizens involve municipal police agencies. Enhanced professionalism among municipal agencies would result in both a reduction in litigation and a general improvement in police-community relations.

A few comments on the OSPA proposal are in order. The current proposal refers to the investigation of civil rights issues. The language of the proposal is ambiguous and needs clarification. It is recommended that the role of the OSPA not involve the investigation of local law enforcement agencies, in the sense of OSPA-initiated investigations. Participation by local agencies should be entirely voluntary. In short, the role of the OSPA should be defined in terms of assistance and not in terms of threatened investigation.

Given the activities of the OSPA in the last few years, there is good reason to believe that local police chiefs will be interested in seeking the assistance of the OSPA in this regard. The availability of OSPA assistance could be readily marketed through existing law enforcement professional associations. Additionally, it would be possible for mayors and city council members of New Jersey municipalities to initiate contact with OSPA when they are concerned about police issues in their areas.

C. Oversight of the NJSP by a New Agency

Continuing oversight of the NJSP be conducted through a new independent agency presents a number of difficulties. Creating such an agency would require new legislation. The ultimate structure and authority of such an agency is uncertain. Creating a new agency would entail significant costs. Perhaps most important, the OSPA already has both the authority to conduct oversight, through the statutory authority of the Office of Attorney General, and in the last few years has gained valuable experience with respect to that task. The transition from the current OSPA to any such new agency would involve a loss of continuity at a critical moment.

Providing continuing oversight of the NJSP by creating a new agency is not recommended.

VII. CONCLUSION

This report recommends that the State of New Jersey provide continuing independent oversight of the New Jersey State Police through the Office of State Police Affairs.

There is limited experience with law enforcement agencies terminating federal consent decrees. Nonetheless, there is considerable experience related to law enforcement agencies and accountability reforms. That experience clearly indicates that agencies have a difficult time sustaining important reforms. There is also evidence that an independent oversight agency can effectively monitor a law enforcement agency, identify emerging problems, and recommend corrective action.

The political context of law enforcement involves increased public expectations of professional, bias-free policing. The public also increasingly believes that independent oversight is valuable and necessary.

The proposal to have the OSPA provide technical assistance to municipal law enforcement agencies with regard to civil rights issues has tremendous merit. It has the potential to improve the quality of police services received by all citizens of New Jersey and in particular to reduce racial and ethnic tensions. A proactive role by the State of New Jersey in this regard could establish the state as a national leader in the area of police accountability.