

**TESTIMONY OF ACTING DIRECTOR DESHA JACKSON
OFFICE OF STATE POLICE AFFAIRS
BEFORE THE ADVISORY COMMITTEE ON POLICE STANDARDS
OCTOBER 10, 2006**

Good afternoon distinguished members of the Advisory Committee. I am Desha Jackson, Acting Director of the Office of State Police Affairs (OSPA), which is located in the Attorney General's Office. I would like to thank you for giving me this opportunity to testify on behalf of the OSPA.

Law enforcement provides an essential service to our society. Their function is important and meaningful to the citizens of New Jersey. Law enforcement officers hold a tremendous amount of power and discretion. The use of this power should be discharged fairly and without bias.

Racial profiling harms society because it is not effective law enforcement. The racial profiling allegations in New Jersey led to the decline of the public's confidence in the NJSP to discharge their law enforcement duties in a constitutional, constructive, and credible manner.

The Consent Decree was created to address the systematic problem of racial profiling in New Jersey. Racial profiling is the illegal use of race or ethnicity as a factor in law enforcement decisions.

The OSPA was instrumental in brokering the process by which the reforms were made and assisted in bringing them into compliance with the Consent Decree.

1. Background of the Office of State Police Affairs

The mission of the OSPA is to ensure implementation of the remedial steps and actions contained in the Interim and Final Reports of the State Police Review Team, to ensure implementation of the terms of the Consent Decree, and to facilitate achievement

of full compliance with the Consent Decree. To that end, this office is dedicated to the establishment of an environment within the NJSP that prohibits and discourages unlawful use of race or ethnicity in policing decisions, and encourages the protection of all citizens' constitutional rights and legislative mandates.

Our office was established prior to the signing of the Consent Decree as a new unit within the Office of the Attorney General, New Jersey Department of Law and Public Safety, headed by an assistant attorney general/director-in-charge, reporting directly to the Attorney General. With the signing of the Consent Decree in 1999, the unit became responsible for ensuring not only the implementation of remedial steps and actions described in the Interim and Final Reports, but also the implementation of the terms of the Consent Decree. (Consent Decree ¶6).

Furthermore, through ¶110 of the Consent Decree, the OSPA provides coordination with the Independent Monitor and the United States concerning the State Police and matters related to the implementation of the Consent Decree. The office's responsibilities have included: auditing the manner in which the State receives, investigates, and adjudicates misconduct allegations; auditing the State Police's use of management awareness data; and, auditing state trooper performance of the motor vehicle stop requirements discussed in the Consent Decree. We are also responsible for submitting a status report on the progress of the NJSP delineating all steps taken during the prior six month reporting period to comply with the provisions of the Consent Decree (¶122). In addition to the status report, we submit an aggregate data report including "aggregate statistics on the NJSP traffic enforcement activities and procedures broken down by each NJSP station and the race/ethnicity of the civilians involved" (¶114). The office, within ¶110, is responsible for providing technical assistance and training

regarding Consent Decree matters, and takes on additional responsibilities as may be assigned by the State Attorney General.

The 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-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 these activities.

2. Staffing

The current staffing of the OSPA consists of a Director, two attorneys, Chief Investigator, four investigators, one social scientist and two support staff. Staff is assigned by the Director with the approval of the Attorney General. The staff also includes one Captain of the NJSP and two Sergeants First Class of the NJSP, who act as liaison between the NJSP and the OSPA and assist in reviewing mobile video recordings.

The attorneys have a background that is grounded in labor and employment law as well as experience with administrative matters and criminal prosecution. The investigators have law enforcement backgrounds and have formerly served with the following agencies: Division of Criminal Justice (DCJ); State Commission of Investigation; Essex County Prosecutor's Office; Trenton Police Department, and the NJSP. The social scientist holds a Ph.D. in Sociology and has experience in policy and applied research, including extensive experience in the development of operational policies, of database content to carry them out, and of operational reporting protocols.

The attorneys are given yearly performance evaluations. Currently there is no system in place to evaluate the investigators or the social scientist; however, these

individuals come to the office vetted through years of relevant experience. The troopers are evaluated by their superiors through the process provided within the NJSP.

As a result of our oversight responsibilities, the OSPA is routinely in contact with the NJSP. On a less frequent basis, the OSPA is contacted by interest groups in response to the public release of the independent monitor's reports or the OSPA's progress reports. In all instances, the OSPA openly receives and processes concerns and/or suggestions in order to make a fair assessment in all situations; however, our decisions are void of influence and partiality. The OSPA acts independently and seeks advice and direction from the Attorney General when appropriate.

3. Resources

The OSPA's budget is under the direction and control of the Department of Law and Public Safety, Finance and Facility Management. The Finance and Facility Management section is responsible for preparing, implementing and monitoring the budget. The OSPA has no direct supervisory control over the budget. The budget is thus contained within the Department of Law and Public Safety appropriation and is subject to the Legislature's budget process. The budget of the OSPA is currently \$1.3 million. This includes salaries for 15 staff as well as non-salary costs, i.e., supplies, travel, etc. At present, the OSPA is able to meet its obligations with the resources available to it.

The OSPA deals with many different types of information in the course of its work. Depending on the type of information, the office uses its investigative, legal, and analytical resources to address specific oversight issues. Our authority to obtain information is contained in ¶113 of the Consent Decree, which gives the OSPA "full and unrestricted access to all State Police staff, facilities, and documents (including databases) that the office deems necessary to carry out its function."

If new resources were available, additional staffing would enhance our capacities in several areas. More attorneys would increase the number of mobile video recordings receiving direct legal reviews and allow more “real time” guidance in constitutional issues to individual troops and stations. Increasing the analytic support within the OSPA would enable the office to undertake a more ambitious and likely, useful, public reporting agenda.

4. Relationship Between the OSPA and the OPS

The OSPA, in performing its monitoring function, is given full and unrestricted access to information from the NJSP. The social scientist’s primary role is to monitor the NJSP’s Management Awareness Personal Performance System (MAPPS) set up to comply with ¶ 40 of the Consent Decree, and also to provide technical assistance with regard to policy and analytic issues for MAPPS. She assists with a variety of other analytical tasks within the office, including the publication of the semi-annual report on aggregate motor vehicle stop data (¶114).

The legal staff provides advice to the NJSP, in conjunction with and on a case-by-case basis with the DCJ and the Division of Law (DOL), regarding a wide range of matters, including without limitation, equal protection and search and seizure issues, motor vehicle stops issues, State Police lesson plan reviews, use of force and other civil, administrative and criminal issues.

The state troopers assigned to the OSPA review tapes of motor vehicle stops for procedural and constitutional issues. By conducting these reviews, the State Police are determining whether state police supervisors are recognizing problematic stops and responding to the problem in an appropriate manner. This role evolved through the liaison role in the OSPA with both the independent monitors and the NJSP to ensure that

the review of motor vehicle stops are conducted in a timely fashion consistent with the terms of the Consent Decree.

The OSPA ensures successful collaboration with the OPS on a myriad of State Police internal investigations and administrative matters. A main role of the OSPA's legal representatives, relative to internal investigations, is to partner with staff members in the OPS to ensure that the investigation(s) reveal a preponderance of evidence against the member sufficient to sustain contemplated disciplinary charges. The partnership includes but is not limited to counsel regarding investigative techniques, review of internal investigations, review concerning the evidence acquired or produced during the investigation, and cosigning on the legal sufficiency of all investigative processes. After the review process is complete the complaint is forwarded to the Superintendent for him to determinate what, if any, charges will be brought against the member of the NJSP. The OSPA represents the State of New Jersey, Office of Attorney General and the NJSP in disciplinary matters before the Office of Administrative Law (OAL).

The investigative staff is responsible for auditing the OPS and its internal affairs process. The OSPA assumed this role when the OPS was removed from federal monitoring by joint application of the State and the Department of Justice, which was granted in 2004. The audit includes the review of misconduct investigations to ensure proper intake classification, investigative sufficiency and adjudication as well as the review of the complaint/comment toll free hot-line. The investigative staff is also tasked with conducting internal investigations of the NJSP personnel brought by civilians or members of the NJSP when a conflict exists.

5. Civilian Complaint Process

One of the important areas of responsibility for the OSPA is to make sure the civilian complaint review process is adequately addressed. The OSPA performs 100

percent review of all closed misconduct allegations for investigative sufficiency where allegations relate to racial profiling and/or disparate treatment; excessive use of force; illegal search and seizure; or domestic violence. A 10 percent random sample of the remaining closed misconduct cases is also conducted. The OSPA ensures the proper classification as to performance or misconduct based issues and their administrative disposition.

The OSPA reviews the 24-hour toll-free telephone “hotline” to ensure the proper classification of citizen complaints by the OPS personnel. The OSPA ensures that the citizens’ complaints are opened, citizen’s are being treated with dignity and respect, their complaints are not being discouraged, and that all necessary information is obtained. In accordance with ¶¶111 and 112 of the Consent Decree, the OSPA contacts motorists, via a mail survey, who were subject to a motor vehicle stop and enforcement actions and procedures connected to a motor vehicle stop. The results are forwarded to the federal monitors.

If a motorist indicates that his/her contact with the NJSP was dissatisfactory, we contact the motorist to obtain additional information by sending him/her a compliment/complaint form. The motorist has a choice to send the form back to our office or the OPS. If necessary, an investigation will be conducted to determine if there was a violation of the Rules and Regulations or Standing Operating Procedures. If during the investigation it appears that there has been a violation of the Criminal Law, the matter is forwarded to the DCJ. If DCJ finds no reason to pursue the issue criminally, the matter will be forwarded back to the OPS to be processed administratively.

6. Sustainability of the Progress Made by the NJSP Post-Consent Decree

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, the 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 functions relative to Trooper misconduct; and, advising on constitutional law pertaining to search and seizure, equal protection and cultural and diversity initiatives.

The intent of AGADE 2006-1 is that the 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 constructive oversight function of the OSPA in AGADE 2006-1, AG Harvey committed to ensuring compliance with the spirit of the Consent Decree.

7. Additional Recommendations

The OSPA believes that continued constructive oversight of the NJSP is both necessary and proper as a way to ensure that the reforms are further institutionalized. Oversight would not only be consistent with the recommendations of the Final Report, it would also enhance public confidence in the NJSP, and would act as a guarantor against slippage from the current reforms and spirit of the Consent Decree. To that end, some codification of the reforms in the spirit of the Consent Decree may be advisable. 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:

- C Contacts with the public must be appropriately documented and routinely supervised.
- C Timely and accurate data must be maintained for informed supervision and management.

- C 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.
- C When misconduct is alleged, there must be appropriate processes for intake, classification, investigative findings, and adjudication.
- C 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 the NJSP, and then evaluated by measuring its implementation in the field.
- C Finally, mandates for continued oversight and public disclosure of aggregate data will ensure transparency and public confidence in the reform process.

In addition to the above recommendations, this Committee should also consider oversight regarding municipal police departments. The Attorney General should be given the charge of monitoring local law enforcement agencies' policies and procedures in our state. Through the well defined supervisory authority over law enforcement defined in the Criminal Justice Act of 1970 (N.J.S.A. 52:17B-97 et seq.) and case law (State v. Winne, 12 N.J. 152 (1953)), 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. The OSPA would be responsible for giving guidance to police departments in the area of constitutionally-based policing and equal protection. The 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 the NJSP that are the basis of all the NJSP's successful reforms. The 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. The OSPA would also work with the DCJ's Prosecutors and Police Bureau regarding these matters. If the Attorney General is tasked with this responsibility, additional resources would be needed to perform these functions, including, but not limited to, more staff.

**CLOSING REMARKS OF ACTING DIRECTOR DESHA JACKSON
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The OSPA's professional and credentialed staff are uniquely experienced to provide continued oversight.

The NJSP is part of the Department of Law and Public Safety and reports to the Attorney General. As the controversial history of racial profiling has vividly taught us, the Attorney General is ultimately responsible for the performance of the NJSP. Thus, it is only logical that the Attorney General should have in place a mechanism to ensure that he/she properly discharges the responsibility of supervising the NJSP.

The point that I am making is that law enforcement did not and cannot achieve this success alone. The oversight process assisted in the NJSP's ability to prevail. Future oversight would guarantee continued compliance with the reforms and would go a long way in continuing the path of gaining the trust of not only the diverse communities who were directly affected by racial profiling, but all people who drive on our highways and are subject to law enforcement action by the NJSP. One of the other concerns is that under the current leadership, the NJSP is doing very well. What happens if there is a new leader of the NJSP? This is where an oversight office would be extremely helpful. Should there be a change in leadership, the office's duties would remain the same. The office would be able to guide and give technical assistance to any Superintendent of the NJSP.

Attorney General Administrative Directive 2006-1 keeps the OSPA alive post-Consent Decree for the reasons stated above. Codification would further enhance the OSPA's authority. These reforms allow for meaningful supervisory reviews, relevant

training and process to review the training, ensures that every complaint is investigated and data regarding who is being stopped, why they are being stopped, and post-stop actions, among other data, is being collected.

As public servants I believe we all have an obligation and a duty to ensure, to the best of our ability, that the public is being protected and served in a way that is free from bias.