

U.S. v. New Jersey Joint Application for Entry of Consent Decree and Consent Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF NEW JERSEY

and

DIVISION OF STATE POLICE of the NEW JERSEY DEPARTMENT OF LAW AND
PUBLIC SAFETY,

Defendants.

CIVIL NO. 99-5970(MLC)

JOINT APPLICATION FOR ENTRY OF CONSENT DECREE

Plaintiff, the United States, and Defendants, the State of New Jersey and the Division of State Police of the New Jersey Department of Law and Public Safety, respectfully move this Court for entry of the attached Consent Decree.

The United States has simultaneously filed its Complaint against the Defendants alleging violations of 42 U.S.C. §14141 and 42 U.S.C. §3789d(c). The Complaint alleges a pattern or practice of conduct by troopers of the New Jersey State Police that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and the laws of the United States. Defendants deny that the State Police has engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

The parties seek to enter into this Decree jointly for the purpose of avoiding the risks and burdens of litigation, and to support vigorous, lawful, and nondiscriminatory traffic enforcement that promotes traffic safety and assists law enforcement to interdict drugs and other contraband, arrest fugitives, and enforce firearms and other criminal statutes.

The United States and the State of New Jersey have agreed upon a proposed Consent Decree that would resolve all claims in the United States' Complaint. The proposed Decree would address the claims in the United States' Complaint by amending certain policies, practices, and procedures relating to the manner in which the State of New Jersey manages and operates the New Jersey

State Police.

The proposed Decree addresses the following matters: policy requirements and limitations on the use of race in law enforcement activities and the procedures used for conducting motor vehicle searches; documentation of traffic stops including post-stop procedures and enforcement actions; supervisory measures to promote civil rights integrity; procedures for receiving, investigating, and resolving misconduct allegations; training; responsibilities of the Office of the New Jersey Attorney General concerning the New Jersey State Police; public reporting by the State Police about its law enforcement activities; and the establishment of an independent monitor to review and analyze implementation of the Decree by the State.

Specifically, the proposed Decree includes the following provisions:

1) *Policy Requirements* (§§26-28): State troopers may not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon the scope and substance of post-stop actions, except where state troopers are on the look-out for a specific suspect who has been identified in part by his or her race or national or ethnic origin. The State Police shall continue to require that troopers make a request for consent to search only when they possess reasonable suspicion that a search will reveal evidence of a crime, and all consent searches must be based on the driver or passenger giving written consent prior to the initiation of the search.

2) *Traffic Stop Documentation* (§§29-34): State troopers engaged in patrol activities will document the race, ethnic origin, and gender of all motor vehicle drivers who are the subject of a traffic stop, and also will record information about the reason for each stop and any post-stop action that is taken (including the issuance of a ticket or warning, asking the vehicle occupants to exit the vehicle and frisking them, consensual and non-consensual vehicle searches, uses of force, and arrests).

3) *Supervisory Review of Individual Traffic Stops* (§§35-39): Supervisors regularly will review trooper reports concerning post-stop enforcement actions and procedures, and patrol car video tapes of traffic stops, to ensure that troopers are employing appropriate practices and procedures. Where concerns arise, supervisors may require that the trooper be counseled, receive additional training, or that some other non-disciplinary action be taken. Supervisors also can refer specific incidents for further investigation, where appropriate.

4) *Supervisory Review of Patterns of Conduct* (§§40-56): The State will develop and implement an early warning system, called the "Management Awareness Program," that uses computerized information on traffic stops, misconduct investigations, and other matters to assist State Police supervisors to identify and modify potentially problematic behavior. At least quarterly, State Police supervisors will conduct reviews and analyses of computerized data and other information, including data on traffic stops and post-stop actions by race and ethnicity. These reviews and analyses, as appropriate, may result in supervisors implementing changes in traffic enforcement criteria, training, and practices, implementing non-disciplinary interventions for particular troopers (such as supervisory counseling or additional training), and/or requiring further assessment or investigation.

5) *Misconduct Allegations* (§§57-92): The State Police will make complaint forms and informational materials available at a variety of locations, will institute a 24-hour toll-free telephone hotline, and will publicize the State Police toll-free number at all State-operated rest stops located on limited access highways. The State also will institute procedures for ensuring that the State Police is notified of criminal cases and civil lawsuits alleging trooper misconduct. Allegations of discriminatory traffic stops, improper post-stop actions, and other significant misconduct allegations will be investigated by the Professional Standards Bureau inside the State Police or by the State Attorney General's Office. All investigations will be properly documented. Where a misconduct allegation is substantiated concerning prohibited discrimination or certain other serious misconduct, discipline shall be imposed. Where a misconduct allegation is not substantiated, the State Police will consider whether non-disciplinary supervisory steps are appropriate.

6) *Training* (§§93-109): The State Police will continue to implement measures to improve training for recruits and incumbent troopers. The training will address such matters as supervisory issues, communication skills, cultural diversity, and the nondiscrimination requirements of the Decree. The State Police also will take steps to continue to improve its trooper coach program for new troopers. The Independent Monitor selected by the parties will evaluate all training currently provided by the State Police regarding traffic stops, and will make recommendations for improvements.

7) *Auditing by the New Jersey Attorney General's Office* (§§110-113): The State Attorney General's Office will have special responsibility for ensuring implementation of the Decree. The Office will conduct various audits of State Police performance, which will include contacting samples of persons who were the subject of a State Police traffic stop to evaluate whether the stops were appropriately conducted and documented. The Office also will audit State Police implementation of the Management Awareness Program, and procedures used for receiving, investigating, and resolving misconduct allegations.

8) *State Police Public Reports* (§114): The State Police will issue semiannual public reports containing aggregate statistics on certain law enforcement activities, including traffic stop statistics.

9) *Independent Monitor* (§§115-121): An Independent Monitor, who will be an agent of the court, will be selected by the United States and the State of New Jersey to monitor and report on the State's implementation of the Decree. The responsibilities of the Monitor will include evaluating samples of trooper incident reports, supervisory reviews of incidents, and misconduct investigations, supervisors' use of the Management Awareness Program, and the use of non-disciplinary procedures to address at-risk conduct.

10) *Decree Term* (§131): The basic term of the Decree will be five years, however, based on the State's record of compliance, the United States and the Independent Monitor may agree to a request by the State to shorten the term of the Decree if the State has been in substantial compliance for at least two years.

Joint entry of this Decree is in the public interest since it provides for expeditious remedial activity and avoids the diversion of federal and State resources to adversarial actions by the

parties. Additionally, the proposed Decree does not conflict with the collective bargaining agreements between the State Police and its troopers, as noted in the Decree at ¶128.

For the reasons discussed above, entry of the Decree is lawful and appropriate. Therefore, the United States and the State jointly move for entry of the Consent Decree.

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CONSENT DECREE

TABLE OF CONTENTS

Page

INTRODUCTION 1

Definitions 4

POLICY REQUIREMENTS 7

INCIDENT DOCUMENTATION AND REVIEW 9

Documentation 9

Supervisory Review of Individual Reports and Incidents 16

SUPERVISORY MEASURES TO PROMOTE CIVIL RIGHTS
INTEGRITY AND REDUCE POLICE MISCONDUCT 18

Management Awareness Program 18

Supervisory and Management Reviews 20

MISCONDUCT INVESTIGATIONS, ANALYSES, AND RESOLUTIONS 23

Public Information and Outreach 23

Receipt of Misconduct Allegations 24

Professional Standards Bureau	27
The Investigations Component	27
Misconduct Investigations	28
Evaluating and Resolving Misconduct Allegations	30
Disciplinary Procedures	32
Tracking, Records, and Reporting	33
TRAINING	33
Training Oversight and Coordination	33
Academy Training, Post-Academy Training, and Trooper Coach Field Training	35
Documentation of Training	38
RESPONSIBILITIES OF THE OFFICE OF THE NEW JERSEY ATTORNEY GENERAL	38
PUBLIC INFORMATION	39
OVERSIGHT, REPORTING AND RECORD KEEPING, AND IMPLEMENTATION	40
Independent Monitor	40
Reports and Records	42
Implementation	46

INTRODUCTION

1. The United States brings this action under 42 U.S.C. §14141 and 42 U.S.C. §3789d(c) to remedy an alleged pattern or practice of racially discriminatory conduct by troopers employed by the Division of State Police of the New Jersey Department of Law and Public Safety (hereinafter "State Police").
2. In its Complaint, the United States alleges that State Police troopers engage in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, including the Fourteenth Amendment and the Omnibus Crime Control and Safe Streets Act, as amended. Further, the United States alleges that this pattern or practice of conduct has been made possible by the failure of the State Police to adopt and implement proper management practices and procedures. The United States alleges that the State has tolerated this conduct. The United States further alleges that State Police policy, training, supervision and complaint procedures allow a high degree of discretion to individual troopers in conducting motor vehicle stops and do little to prevent individual troopers from improperly using race to target minority drivers and passengers. In making these allegations, the United States recognizes that the majority of state troopers perform their difficult jobs in a lawful

manner.

3. Defendants in this action are the State of New Jersey and the Division of State Police of the New Jersey Department of Law and Public Safety (hereinafter collectively, "the State").

4. The State denies that the State Police has engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. The State maintains that the State Police has never issued or embraced an official policy to engage in racial profiling or any other discriminatory enforcement practices, but rather has undertaken a number of steps to prohibit such forms of discrimination including, but not limited to, issuing standard operating procedures banning such practices; providing in-service training programs and bulletins; requiring state troopers to have a reasonable suspicion before requesting permission to search (thereby imposing a prerequisite to consent searches not required by the Constitution or laws of the United States or the State of New Jersey); requiring state troopers to document the race of detained drivers and passengers; issuing stern warnings concerning the falsification of records and data regarding the race of detained drivers or passengers, and explaining that such allegations would be thoroughly investigated and referred to the Division of Criminal Justice for review and prosecution as appropriate; prohibiting the use of "spotlighting" the occupants of motor vehicles at night before deciding whether to initiate a stop; allocating \$13.2 million for FY2000 to begin the development of internal management systems and fund additional related technology and support; and retaining independent experts to conduct a review of Academy training.

5. The State further cites its recent issuance of two reports, the Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, April 20, 1999 (hereinafter, "Interim Report") and the Final Report of the State Police Review Team, July 2, 1999 (hereinafter, "Final Report"). These reports set forth numerous remedial steps to be implemented to manage and supervise the actions of the State Police, to monitor integrity, to protect the public safety by ensuring the uniform and efficient enforcement of all motor vehicle and criminal laws, and to prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

6. As recommended in the Final Report, the State has created a new unit within the Office of the Attorney General, New Jersey Department of Law and Public Safety to be headed by an assistant attorney general/director-in-charge, reporting directly to the Attorney General. The new unit will be responsible, inter alia, for ensuring the implementation of remedial steps and actions described in the Interim Report and the Final Report of the State Police Review Team, as well as implementation of the terms of the Consent Decree.

7. In light of these ongoing efforts to address the allegation of disparate treatment of minority drivers or passengers and the State's demonstrated commitment to using the best available practices and procedures for police management, the State also denies any allegation that it has tolerated unlawful conduct by state troopers.

8. The parties enter into this Decree jointly for the purpose of avoiding the risks and burdens of litigation, and to support vigorous, lawful, and nondiscriminatory traffic enforcement that promotes traffic safety and assists law enforcement to interdict drugs and other contraband, arrest

fugitives, and enforce firearms and other criminal statutes. Moreover, joint entry of this Decree is in the public interest since it provides for expeditious remedial activity and avoids the diversion of federal and State resources to adversarial actions by the parties.

9. This Court has jurisdiction of this action under 28 U.S.C. §§1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. §14141 and 42 U.S.C. §3789d(c). Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §1391.

10. This Decree resolves all claims in the United States' Complaint filed in this case and resolves any claims the United States may have regarding any alleged pattern or practice of racial discrimination in traffic enforcement that could have been raised at this time under 42 U.S.C. § 14141 or 42 U.S.C. § 3789d(c). Accordingly, the filing of the United States' Complaint shall not trigger the provisions of 42 U.S.C. § 3789d(c)(2)(E), which provide that the filing of a lawsuit by the United States alleging a violation of 42 U.S.C. § 3789d(c) may result in suspension of Department of Justice funding granted to the specific program or activity alleged to be in violation of this statute.

11. The United States and the State agree that in order to promote law enforcement integrity, avoid misconduct, promote community support for the State Police and its troopers, and promote the use of effective, sound policing techniques, the State will continue its efforts, as outlined in the Interim Report and the Final Report, to achieve and maintain good practices and procedures for trooper supervision and management.

12. The United States does not allege that there is any State Police policy that explicitly provides for or condones discriminatory law enforcement, and acknowledges that a State Police standard operating procedure issued in 1990 prohibits consideration of a civilian's race except where that "characteristic is directly and specifically related to particular criminal activity." The United States acknowledges that the State has already undertaken a number of steps to begin to address the problem of racial profiling and other forms of disparate treatment of minority drivers or passengers by state troopers, including, but not limited to, issuing the Interim Report and the Final Report.

Definitions

13. "State trooper" means any law enforcement officer employed by the State Police including supervisors.

14. "Supervisor" means a state trooper with oversight responsibility for other State Police troopers.

15. "Civilian" means any person who is not a state trooper.

16. "Complaint" includes an allegation by a civilian or state trooper that a state trooper engaged in any form of misconduct. For purposes of this Decree, the term does not include any allegation of employment discrimination.

17. "Complainant" means any person who files a complaint against a state trooper or the State Police.

18. The term "intervention" refers to a non-disciplinary interaction between a State Police supervisor and a state trooper initiated by the supervisor to enable or encourage the trooper to undertake a modification of his or her conduct. It is intended to be a mechanism to promote best practices for trooper conduct. It is not intended, and should not be interpreted, to be any form of disciplinary action. It may include oral counseling; written counseling; training; a special MVR review schedule; mandatory professional assistance/evaluation or referral to the State Police's Employee Assistance Program; or a reassignment made to ensure the needs, interests, efficient or effective operation of the State Police, or to ensure the safety of the trooper or the public.

19. A "special MVR review schedule" is an intervention that consists of a temporary schedule established for reviewing a greater number of mobile audio/video equipment (hereinafter "MVR") tapes for a particular state trooper than otherwise would occur pursuant to the incident-specific reviews specified by ¶35 and the random reviews required by ¶36. This term also may include a decision to temporarily assign to an MVR-equipped vehicle a trooper who otherwise is not assigned to such a vehicle, and then reviewing a greater number of that trooper's MVR tapes than would otherwise be required by ¶¶35 and 36.

20. The term "motor vehicle stop" means any instance in which a State Police trooper directs a civilian driver operating a motor vehicle of any type traveling on any highway or road to stop and the driver or passenger(s) is detained for any period of time. The term "motor vehicle stop" also includes any instance in which a state trooper for any reason detains for any period of time a civilian in a motor vehicle located in a rest stop adjacent to a limited access highway, regardless of whether the vehicle was stopped at the direction of a state trooper. As used in this Decree, the term "motor vehicle stop" includes stops based on motor vehicle violations and criminal suspicion stops, but does not include checkpoint stops, roadblock stops, or commercial vehicle inspection stops. The term also does not include routine motor vehicle aids since motor vehicle aids do not involve a trooper directing a driver to stop a motor vehicle.

21. "Enforcement actions in connection with or during the course of a motor vehicle stop" are the issuance of a summons or a written warning, and the making of a custodial arrest and selecting the charges upon which the arrest is based.

22. "Procedures in connection with or during the course of a motor vehicle stop" are the running of a computerized check of information that may relate to the driver or passengers; ordering or requesting that a driver or passengers exit the vehicle; conducting a protective frisk for weapons of the driver or passengers; asking the driver or passengers for consent to search the vehicle; deploying a drug-detection dog to check for illegal drugs; conducting any other search of the vehicle, the driver, or passengers; and the use of force. For purposes of the nondiscrimination policy set forth in ¶26, but not purposes of the data collection and analysis requirements of this Decree, the term also shall include questioning the driver or passengers about any matters unrelated to motor vehicle violations.

23. All references to collecting, reporting, or analyzing information by "race/ethnicity" (or "race/ethnic") mean collecting, reporting, or analyzing information using the following categories: White, Black, Hispanic, Asian, and American Indian.

24. The terms "document" and "record" include all "writings and recordings" as defined by

Federal Rules of Evidence Rule §1001(I).

25. "Privilege" is defined as in Federal Rule of Evidence §501.

POLICY REQUIREMENTS

26. Except in the "suspect-specific" ("be on the lookout" or "BOLO") situation described below, state troopers shall continue to be prohibited from considering in any fashion and to any degree the race or national or ethnic origin of civilian drivers or passengers in deciding which vehicles to subject to any motor vehicle stop and in deciding upon the scope or substance of any enforcement action or procedure in connection with or during the course of a motor vehicle stop. Where state troopers are seeking to detain, apprehend, or otherwise be on the lookout for one or more specific suspects who have been identified or described in part by race or national or ethnic origin, state troopers may rely in part on race or national or ethnic origin in determining whether reasonable suspicion exists that a given individual is the person being sought.

27. The State Police has adopted a protocol captioned "F-55 (Motor Vehicle Stops)," dated December 14, 1999, which establishes criteria to be followed by state troopers in selecting which vehicles to stop for violation of state motor vehicle laws. This protocol includes the nondiscrimination requirements set forth in ¶ 26 and has been approved by the United States in so far as the protocol identifies practices and procedures required by the Decree. The State shall implement this protocol as soon as practicable. The State shall monitor and evaluate the implementation of the motor vehicle stop criteria and shall revise the criteria as may be necessary or appropriate to ensure compliance with ¶¶ 26 and 129. Prior to the implementation of any revised criteria, the State shall obtain approval from the United States and the Independent Monitor.

28. In order to help ensure that state troopers use their authority to conduct consensual motor vehicle searches in a nondiscriminatory manner, the State Police shall continue to require: that state troopers may request consent to search a motor vehicle only where troopers can articulate a reasonable suspicion that a search would reveal evidence of a crime; that every consent search of a vehicle be based on written consent of the driver or other person authorized to give consent which precedes the search; that the scope of a consent search be limited to the scope of the consent that is given by the driver or other person authorized to give consent; that the driver or other person authorized to give consent has the right to be present during a consent search at a location consistent with the safety of both the state trooper and the motor vehicle occupants, which right can only be waived after the driver or other person authorized to give consent is advised of such right; that the driver or other person authorized to give consent who has granted written consent may orally withdraw that consent at any time during the search without giving a reason; and that state troopers immediately must stop a consent search of a vehicle if and when consent is withdrawn (except that a search may continue if permitted on some non-consensual basis).

INCIDENT DOCUMENTATION AND REVIEW

Documentation

29. Motor Vehicle Stop Data

a. The State has adopted protocols (captioned F-55 (Motor Vehicle Stops) dated 12/14/99; C-22 (Activity Reporting System), F-3 (Patrol Procedures), F-7 (Radio Procedures), F-19 (MVR equipment), F-31 (Consent Searches), and a Motor Vehicle Stop Search Report dated 12/21/99; and a Property Report (S.P. 131 (Rev. 1/91)) that require state troopers utilizing vehicles, both marked and unmarked, for patrols on roadways to accurately record in written reports, logs, radio communications, radio recordings and/or video recordings, the following information concerning all motor vehicle stops:

1. name and identification number of trooper(s) who initiated the stop;
2. name and identification number of trooper(s) who actively participated in the stop;
3. date, time, and location of the stop;
4. time at which the stop commenced and at which it ended;
5. license number/state of stopped vehicle;
- 5A. description of stopped vehicle;
6. the gender and race/ethnicity of the driver, and the driver's date of birth if known;
7. the gender and race/ethnicity of any passenger who was requested to exit the vehicle, frisked, searched, requested to consent to a vehicle search, or arrested;
8. whether the driver was issued a summons or warning and the category of violation (i.e., moving violation or non-moving violation);
- 8A. specific violations cited or warned;
9. the reason for the stop (i.e., moving violation or non-moving violation, other [probable cause/BOLO]);
10. whether the vehicle occupant(s) were requested to exit the vehicle;
11. whether the vehicle occupant(s) were frisked;
12. whether consent to search the vehicle was requested and whether consent was granted;
- 12A. the basis for requesting consent to search the vehicle;
13. whether a drug-detection canine was deployed and whether an alert occurred;
- 13A. a description of the circumstances that prompted the deployment of a drug-detection canine;
14. whether a non-consensual search of the vehicle was conducted;
- 14A. the circumstances that prompted a non-consensual search of the vehicle;
15. whether any contraband or other property was seized;

- 15A. a description of the type and quantity of any contraband or other property seized;
- 16. whether the vehicle occupant(s) were arrested, and if so, the specific charges;
- 17. whether the vehicle occupant(s) were subjected to deadly, physical, mechanical or chemical force;
- 17A. a description of the circumstances that prompted the use of force; and a description of any injuries to state troopers and vehicle occupants as a result of the use of force;
- 18. the trooper's race and gender; and
- 19. the trooper's specific assignment at the time of the stop (on duty only) including squad.

b. The protocols listed in ¶29(a) include, inter alia, the procedures set forth in ¶¶ 30, 31, 32, and 33 and have been approved by the United States insofar as the protocols identify practices and procedures required by this Decree. The State shall implement these protocols as soon as practicable.

c. The State shall prepare or revise such forms, reports, and logs as may be required to implement this paragraph and ¶¶ 31, 32, and 33 (and any related forms, reports, and logs, including arrest reports) to eliminate duplication and reduce paperwork.

d. As experience and the availability of new technology may warrant, the State Police may revise the protocols adopted pursuant to this paragraph (including the reporting procedures set forth in ¶¶ 30, 31, 32, and 33) by adopting protocols establishing the new reporting procedures and by amending (to the extent necessary) the forms, reports, and logs adopted to implement this paragraph and ¶¶ 31, 32, and 33.

e. Prior to implementation, of any revised protocols and forms, reports, and logs adopted pursuant to subparagraph (d) of this paragraph, the State shall obtain approval of the United States and the Independent Monitor. The United States and the Independent Monitor shall be deemed to have provided such approval unless they advise the State of any objection to a revised protocol within 30 days of receiving same. The approval requirement of this subparagraph extends to protocols, forms, reports, and logs only insofar as they implement practices and procedures required by this Decree.

30. *Communication Center Call-In's for Motor Vehicle Stops.* The primary purpose of the communications center is to monitor officer safety. State troopers utilizing vehicles, both marked and unmarked, for patrols on roadways shall continue to document all motor vehicle stops, inter alia, by calling in or otherwise notifying the communications center of each motor vehicle stop. All motor vehicle stop information enumerated in ¶ 29(a) that is transmitted to the communications center by state troopers pursuant to protocols listed in ¶29(a), and as revised pursuant to ¶29(d) and (e), shall be recorded by the center by means of the center's Computer Aided Dispatch system or other appropriate means.

a. The initial call shall be made at the beginning of the stop before the trooper approaches the stopped vehicle, unless the circumstances make prior notice unsafe or impractical, in which event

the state trooper shall notify the communications center as soon as practicable. The State Police shall continue to require that, in calling in or otherwise notifying the communications center of a motor vehicle stop, state troopers shall provide the communications center with a description of the stopped vehicle and its occupants (including the number of occupants, their apparent race/ethnicity, and their apparent gender). Troopers also shall inform the communications center of the reason for the stop, namely, moving violation, non-moving violation, or other.

b. State troopers shall notify the communications center prior to conducting a consent search or nonconsensual search of a motor vehicle, unless the circumstances make prior notice unsafe or impractical.

c. At the conclusion of the stop, before the trooper leaves the scene, the trooper shall notify the communications center that the stop has been concluded, notify the center whether any summons or written warning was issued or custodial arrest was made, communicate any information that is required to be provided by the protocols listed in paragraph 29(a) that was not previously provided, and correct any information previously provided that was inaccurate. If circumstances make it unsafe or impractical to notify the communications center of this information immediately at the conclusion of the stop, the information shall be provided to the communications center as soon as practicable.

d. The communications center shall inform the trooper of an incident number assigned to each motor vehicle stop that involved a motor vehicle procedure(i.e., occupant requested to exit vehicle, occupant frisked, request for consent search, search, drug dog deployed, seizure, arrest or use of force), and troopers shall utilize that incident number to cross reference other documents prepared regarding that stop. Likewise, all motor vehicle stop information recorded by the communication center about a particular motor vehicle stop shall be identified by the unique incident number assigned to that motor vehicle stop.

31. *Consent Searches of Motor Vehicles.* The State Police shall continue to require that whenever a state trooper wishes to conduct or conducts a consensual search of a motor vehicle in connection with a motor vehicle stop, the trooper must complete a "consent to search" form and report. The "consent to search" form shall contain information which must be presented to the driver or other person authorized to give consent before a consent search may be commenced. This form shall be prepared in English and Spanish. The "consent to search" report shall contain additional information which must be documented for State Police records.

a. The State Police shall require that all "consent to search" forms include the following information :

1. the date and location of the stop;
2. the name and identification number of the trooper making the request for consent to search;
3. the names and identification numbers of any additional troopers who actively participate in the discussion with the driver or passenger(s) concerning the request for consent to search;
4. a statement informing the driver or other person authorized to give consent of the right to refuse to grant consent to search, and that if the driver or other person authorized to give consent grants

consent, the driver or other person authorized to give consent at any time for any reason may withdraw consent to search;

5. a statement informing the driver or other person authorized to give consent of the right to be present during the search at a location consistent with the safety of both the state trooper and the motor vehicle occupant(s) which right may be knowingly waived;

6. check-off boxes to indicate whether consent has been granted, and if consent is granted, the driver or other person authorized to give consent shall check the appropriate box and sign and date the form; and

7. if the driver or other person authorized to give consent refuses consent, the trooper or the driver or other person authorized to give consent shall so note on the form and the driver or other person authorized to give consent shall not be required to sign the form.

b. A state trooper who requests permission to conduct a consent search shall document in a written report the following information regardless of whether the request for permission to conduct a search was granted or denied:

1. the name of the driver or other person authorized to give consent to whom the request for consent is directed, and that person's gender, race/ethnicity, and, if known, date of birth;

2. the names and identification numbers of all troopers who actively participate in the search;

3. the circumstances which constituted the reasonable suspicion giving rise to the request for consent;

4. if consent initially is granted and then is withdrawn, the fact that this occurred, and whether the search continued based on probable cause or other non-consensual ground, or was terminated as a result of the withdrawal of consent;

5. a description of the type and quantity of any contraband or other property seized; and,

6. whether the discussion concerning the request for consent to search and/or any ensuing consent search were recorded using MVR equipment.

c. The trooper shall sign and date the form and the report after each is fully completed.

32. Non-consensual Searches of Motor Vehicles (Excluding Vehicle Searches Begun as a Consent Search). A state trooper shall complete a report whenever, during any motor vehicle stop, the trooper conducts a non-consensual search of a motor vehicle (excluding vehicle searches begun as a consent search). The report shall include the following information:

1. the date and location of the stop;

2. the names and identification numbers of all troopers who actively participated in the incident;

3. the driver's name, gender, race/ethnicity, and, if known, date of birth;

4. a description of the circumstances which provided probable cause to conduct the search, or

otherwise justified the search;

5. a description of the type and quantity of any contraband or other property seized; and
6. whether the incident was recorded using MVR equipment.

33. Drug-Detection Canines. A state trooper shall complete a report whenever, during a motor vehicle stop, a drug-detection canine is deployed. The report shall include the following information:

1. the date and location of the stop;
2. the names and identification numbers of all troopers who participated in the incident;
3. the driver's name, gender, race/ethnicity, and, if known, date of birth;
4. a description of the circumstances that prompted the canine to be deployed;
5. whether an alert occurred;
6. a description of the type and quantity of any contraband or other property seized; and
7. whether the incident was recorded using MVR equipment.

34. Use of Mobile Video/Audio (MVR) Equipment.

a. The State Police shall continue to operate all patrol vehicles engaged in law enforcement activities on the New Jersey Turnpike and the Atlantic City Expressway with MVR equipment. The State shall continue with its plans to install MVR equipment in all vehicles, both marked and unmarked, used for patrols on all other limited access highways in New Jersey (including interstate highways and the Garden State Parkway), and shall complete this installation within 12 months.

b. The State shall continue to implement procedures that provide that all state troopers operating a vehicle with MVR equipment may operate that vehicle only if they first are trained on the manner in which the MVR equipment shall be tested, maintained, and used. The State shall ensure that all MVR equipment is regularly inspected, maintained, and repaired.

c. Except when MVR equipment unforeseeably does not function, all motor vehicle stops conducted by State Police vehicles with MVR equipment shall be recorded by these vehicles, using both the video and audio MVR functions. The recording shall begin no later than when a trooper first signals the vehicle to stop or arrives at the scene of an ongoing motor vehicle stop begun by another law enforcement trooper; and the recording shall continue until the motor vehicle stop is completed and the stopped vehicle departs, or until the trooper's participation in the motor vehicle stop ends (the recording shall include requests for consent to search a vehicle, deployments of drug-detection canines, and vehicle searches). If a trooper operating a vehicle with MVR equipment actively participates in a motor vehicle stop and is aware that the motor vehicle stop was not recorded using the MVR equipment, the trooper shall notify the communications center of the reason the stop was not recorded, which the center shall record in a

computerized information system.

Supervisory Review of Individual Reports and Incidents

35. The reporting trooper's supervisor shall review each report prepared pursuant to ¶¶31-33 within 14 days of the precipitating incident and, as appropriate, in conjunction with that review, may view any associated MVR tape.

36. The State shall adopt a protocol requiring that State Police supervisors review MVR tapes of motor vehicle stops on a random basis. The protocol shall establish the schedule for conducting random reviews and shall specify whether and in what manner the personnel conducting the review shall prepare a written report on each randomized review of an MVR tape. Prior to implementation, the protocol shall be approved by the United States and the Independent Monitor.

37. After conducting a review pursuant to ¶35, ¶36, or a special MVR review schedule, the personnel conducting the review shall refer for investigation by the Professional Standards Bureau ("PSB") any incident where this review reasonably indicates a possible violation of the provisions of this Decree and the protocols listed in ¶29 concerning search or seizure procedures, nondiscrimination requirements, and MVR use requirements, or the provisions of the Decree concerning civilian complaint procedures. Subsequent investigation shall be conducted by either the PSB or the Office of the Attorney General ("OAG") as determined by the State. Appropriate personnel shall evaluate all incidents reviewed to determine the need to implement any intervention for the involved trooper.

38. The State Police and the OAG shall conduct periodic reviews of referral decisions pursuant to ¶ 37 to ensure appropriate referrals are being made. State Police personnel shall be held accountable for their referral decisions.

39. The State Police shall require supervisors of patrol squads that exclusively, or almost exclusively, engage in patrols on limited access highways to conduct supervisory activities in the field on a routine basis.

SUPERVISORY MEASURES TO PROMOTE CIVIL RIGHTS INTEGRITY

Management Awareness Program

40. The State shall develop and implement computerized systems for maintaining and retrieving information necessary for the supervision and management of the State Police to promote professionalism and civil rights integrity, to identify and modify potentially problematic behavior, and to promote best practices (hereinafter, the "Management Awareness Program" or "MAP").

41. The MAP shall consist of the following information:

a. all items of information in connection with all motor vehicle stops that are required to be recorded in a written report, form, or log, or reported to the communications center, pursuant to ¶29 and the protocols listed in ¶29 of this Decree, except that duplicate information need not be entered, and information as to whether the incident was recorded with MVR equipment need not

be entered if all patrol cars are equipped with MVR unless a patrol car was equipped with MVR equipment that was not functioning;

b. information on civilian compliments and other indicia of positive performance; information on misconduct investigations; reports on use of force associated with motor vehicle stops; on-duty and off-duty criminal arrests and criminal charges; civil suits involving alleged misconduct by state troopers while on duty; civil suits in which a trooper is named as a party involving off-duty conduct that alleges racial bias, physical violence or threats of violence; and

c. implementation of interventions; and training information including the name of the course, date started, date completed and training location for each member receiving training.

42. All information in MAP on substantiated misconduct investigations, civilian compliments, and other indicia of positive performance which can be attributed to a specific trooper shall be made available to that trooper on an annual basis upon written request. Nothing in this paragraph shall be construed as granting that trooper access to confidential documents other than those identified in this paragraph, or to any information which cannot be attributed to the trooper requesting the information.

43. Regarding the motor vehicle stop information identified in ¶29 (a) (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19) and recorded in accordance with the protocols identified in ¶29(a), the MAP shall have the capability to search and retrieve numerical counts and percentages for any combination of the above-referenced information and to run reports for different time periods (e.g., monthly, quarterly, annually) and for individual troopers, squads, and stations. Regarding the motor vehicle stop information identified in ¶29(a)(5A, 8A, 12A, 13A, 14A, 15A, and 17A) and recorded in accordance with the protocols identified in ¶29(a), it will be sufficient that the MAP shall have the capability to access (through cross-referenced paper documents or other method) this descriptive information entered on specific incidents and matters. Regarding the information identified in ¶41(b and c), to the extent technologically feasible, the MAP shall be developed to have the capability to search and retrieve numerical counts and percentages for any combination of the information and to run reports for different time periods and for individual troopers, squads or stations. To the extent that the MAP shall require textual or narrative descriptions of misconduct allegations or other information identified in ¶41(b and c), it will be sufficient that the MAP only have the capability to retrieve this descriptive information.

44. Where information about a single incident is included within the MAP from more than one document the State shall use a common control number or other means to link the information from different sources so that the user can cross-reference the information and perform analyses.

45. The State shall ensure that information is included within the MAP in an accurate and timely fashion and is maintained in a secure manner.

46. Within one hundred and eighty (180) days following entry of this Decree, the State shall develop a plan for designing and implementing the MAP including the use of the MAP, a timetable for implementation, and a specification of the information contained in State records pre-dating the implementation of the MAP that can reasonably be incorporated in the MAP. Prior

to effectuating the implementation plan, the plan shall be approved by the United States and the Independent Monitor. Within 180 days following the entry of this Decree, the State shall begin conducting the supervisory and management reviews required by ¶¶48-53.

Supervisory and Management Reviews

47. Consistent with the requirements of ¶¶48-53 *infra*, the State shall develop a protocol specifying the manner in which supervisory and management reviews of individual state troopers, and State Police units and sub-units (*e.g.*, troops, stations, and squads), shall be conducted, and the frequency of such reviews. Prior to implementation, the protocol shall be approved by the United States and the Independent Monitor.

48. At least quarterly, State Police supervisors shall conduct reviews and analyses of data obtained from the MAP and other appropriate sources to ensure that individual troopers and State Police units and subunits are performing their duties in accord with the provisions of this Decree and associated protocols.

49. To the extent reflected in ¶43, reports of MAP data shall regularly be prepared regarding individual troopers, stations and squads, for use in reviews as appropriate. The reports shall include the following information:

- a. the number of motor vehicle stops, by race/ethnicity, reason for the stop (*i.e.*, moving violation, non moving violation, other), road, squad, and trooper station; and the number of enforcement actions and procedures taken in connection with or during the course of a motor vehicle stop, by race/ethnicity, reason for the stop (*i.e.*, moving violation, non-moving violation, other), road, squad and trooper station;
- b. data (including racial/ethnic data) on complaints, misconduct investigations (for each type of investigation, as delineated in ¶73), discipline, intervention, and uses of force associated with motor vehicle stops.

50. To the extent reflected in ¶43, analyses of MAP data concerning motor vehicle stops shall include a comparison of racial/ethnic percentages of motor vehicle stops (by reason for the stop (*i.e.*, moving violation, non moving violation, other)) and racial/ethnic percentages of enforcement actions and procedures taken in connection with or during the course of such stops, with a benchmark racial/ethnic percentage if available (see ¶¶54-55); a comparison of racial/ethnic percentages for such stops with the racial/ethnic percentages for enforcement actions taken in connection with or the during the course of such stops; a comparison of racial/ethnic percentages for consent searches of vehicles, and requests for consent to search vehicles, with "find" rates by race/ethnicity for motor vehicle consent searches; a comparison of racial/ethnic percentages for non-consensual searches of motor vehicles with "find" rates by race/ethnicity for motor vehicle non-consensual searches; evaluations of trends and differences over time; and evaluations of trends and differences between troopers, units, and subunits.

51. To the extent reflected in ¶43, analyses of other data generated by the MAP shall include evaluations of trends and differences over time and evaluations of trends and differences between troopers, units, and subunits.

52. Each supervisor shall, consistent with his or her authority, implement any appropriate changes or remedial measures regarding traffic enforcement criteria, training, and enforcement practices for particular units or subunits or implement any appropriate intervention for particular troopers; conduct any necessary additional assessment or investigation regarding particular units or subunits or particular troopers; and/or make any appropriate recommendations.

53. A supervisory review shall be conducted regarding any state trooper who within a period of two years, is the subject of three misconduct investigations of any kind initiated pursuant to ¶ 73. Where appropriate, the review may result in intervention being taken. In the event the supervisory review results in intervention, the supervisor shall document the nature, frequency, and duration of the intervention.

54. To assist in evaluating data reported from the MAP concerning State Police law enforcement on the New Jersey Turnpike, the State shall develop (for purposes of implementing this Decree) a protocol for conducting a survey of a sample of persons and vehicles traveling on the New Jersey Turnpike to determine the racial/ethnic percentage of drivers on the Turnpike. As appropriate, the survey may identify different benchmark figures for different portions of the Turnpike. Prior to implementation, the protocol shall be approved by the Independent Monitor and the United States. The protocol shall be developed and implemented using a consultant jointly selected by the parties. The survey shall be completed within one hundred fifty (150) days of the entry of this Decree. Both the United States and the State agree that the utility and fairness of the MAP described in this Consent Decree will depend to some degree on the development of accurate and reliable benchmarks that account for all appropriate variables and factors.

55. For purposes of implementing this Decree, the State may in its discretion conduct a survey of a sample of persons and vehicles traveling on any other limited access highway in New Jersey to determine the racial/ethnic percentage of drivers on that road. In deciding whether to conduct such a survey, the State shall give due consideration to any recommendations made by the United States and the Independent Monitor. The survey shall be conducted pursuant to a protocol developed by the State and approved by the Independent Monitor and the United States. The protocol shall be developed and implemented using a consultant jointly selected by the parties.

56. The parties agree that for purposes of developing appropriate benchmark racial/ethnic percentages, it will be sufficient for the surveys described by ¶¶ 54 and 55 to determine the racial/ethnic percentages of persons and vehicles traveling on the subject roadway. The provisions of ¶¶ 54 and 55 shall not apply to any traffic survey conducted by the State for purposes of advocating a position in any criminal case or any civil litigation other than in the instant case.

MISCONDUCT INVESTIGATIONS, ANALYSES, AND RESOLUTIONS

Public Information and Outreach

57. The State Police shall require all state troopers to provide their name and identification number to any civilian who requests it.

58. The State Police shall develop and implement an effective program to inform civilians that

they may make complaints or provide other feedback regarding the performance of any state trooper. This program shall, at a minimum, include the development of informational materials (fact sheets and informational posters) describing the complaint process and the development and distribution of civilian complaint forms. The State Police shall make such materials available in English and Spanish.

59. The State shall make complaint forms and informational materials available at State Police headquarters, all State Police stations, and such other locations around New Jersey as it may determine from time to time. The State shall publicize the State Police mailing address, internet address, and toll-free telephone number at state-operated rest stops located on limited access highways. The State Police also shall provide information on the internet about the methods by which civilians may file a complaint. The State Police further shall require all state troopers to carry fact sheets and complaint forms in their vehicles at all times while on duty. The State Police shall require all troopers to inform civilians who object to a trooper's conduct that civilians have a right to make a complaint. The State Police shall prohibit state troopers from discouraging any civilian from making a complaint.

60. The State Police shall develop a program of community outreach to inform the public about State Police functions and procedures, including motor vehicle stops, searches and seizures, and the methods for reporting civilian complaints or compliments regarding officers. This outreach program is not intended, and should not be construed, to require the State Police to disclose operational techniques to the public.

Receipt of Misconduct Allegations

61. Civilians may initiate a complaint or otherwise provide feedback regarding State Police performance either in person, by mail, by telephone (or TDD), or by facsimile transmission. The State Police shall accept and investigate anonymous complaints and complaints filed by civilians other than the alleged victim of misconduct. The State shall not require that a complaint be submitted in writing to initiate a misconduct investigation.

62. The State Police shall institute a 24-hour toll-free telephone hotline for civilians to call to make a complaint or compliment or otherwise provide feedback regarding State Police performance. The hotline shall be operated by the Professional Standards Bureau (hereinafter "PSB"). The State Police shall immediately connect or refer all civilians to this hotline who telephone a State Police station to file a complaint. The State Police shall publicize the hotline telephone number on informational materials, complaint forms, and "consent to search" forms. The State Police shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The State Police shall develop a procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include regular reviews of the tape recordings.

63. The PSB shall be responsible for receiving all misconduct complaints. All complaints made at locations other than the PSB shall be forwarded to the PSB within a reasonably prompt period as specified by the State Police. The State Police shall assign and record a case number for each complaint. The OAG shall have access to all misconduct complaints received by PSB.

64. The State Police shall relocate PSB offices to buildings separate from any building occupied by other State Police personnel. The PSB shall publicize the locations of its offices.

65. The State Police shall refer to the OAG and/or PSB for investigation of state trooper performance all incidents in which a civilian is charged by a state trooper with obstruction of official business, resisting arrest, assault on a state trooper, or disorderly conduct, where the prosecutor's office or a judge dismisses the charge before or during trial and the dismissal is not part of the plea agreement.

66. The State shall notify the OAG whenever a person files a civil claim against the State alleging misconduct by a state trooper or other employee of the State Police. The OAG shall notify the PSB of such civil claims.

67. The State shall make reasonable efforts to implement a method by which it will be notified of a finding in criminal proceeding of a constitutional violation or misconduct by a state trooper.

68. The State Police shall require all state troopers promptly to notify the State Police of the following: the trooper is arrested or criminally charged for any conduct; the trooper is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or the trooper is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges racial bias, physical violence, or threats of physical violence by the trooper. State troopers shall report this information either directly to the PSB or to a supervisor who shall report the information to the PSB. The PSB shall notify the OAG of PSB's receipt of this information.

69. The State Police shall require state troopers to report, based on personal knowledge, any conduct by other troopers, involving civilians, that reasonably appears to constitute: (a) prohibited discrimination; (b) an unreasonable use of force or a threat of force; (c) an intentional constitutional violation; (d) an intentional failure to follow any of the documentation requirements of this Decree, or (e) an intentional provision of false information in a misconduct investigation or in any report, log, or transmittal of information to the communications center. State troopers shall report such misconduct by fellow troopers either directly to the PSB or to a supervisor who shall report the allegation to the PSB. The PSB shall notify the OAG of PSB's receipt of this information.

The Professional Standards Bureau

The Investigations Component

70. The State Police shall provide for a Professional Standards Bureau, the purpose of which shall be to protect the professional integrity of the Division of State Police and to fully, fairly and expeditiously investigate and resolve complaints and other misconduct investigations. The State shall provide the PSB sufficient staff, funds, and resources to perform the functions required by this Decree. The State shall encourage highly qualified candidates to become PSB investigators.

71. The Superintendent of the State Police shall establish formal eligibility criteria for the head of the PSB and for staff who supervise or conduct internal investigations. These criteria shall apply to the incumbent PSB head and investigative staff, and all candidates for these positions, and also

shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, prior investigative experience and training, analytic and writing skills, interpersonal and communication skills, cultural and community sensitivity, commitment to police integrity, and previous performance as a law enforcement officer.

72. The State shall ensure that the PSB head and staff that supervise or conduct internal investigations receive adequate training to enable them to carry out their duties. The training shall continue to include the following: misconduct investigation techniques; interviewing skills; observation skills; report writing; criminal law and procedure; court procedures; rules of evidence; and disciplinary and administrative procedures.

Misconduct Investigations

73. A misconduct investigation shall be initiated pursuant to any of the following:

- a. the making of a complaint (as defined in ¶16);
- b. a referral pursuant to ¶37 or ¶65;
- c. the filing of a civil suit by a civilian alleging any misconduct by a state trooper while on duty (or acting in an official capacity);
- d. the filing of a civil suit against a state trooper for off-duty conduct (while not acting in an official capacity) that alleges racial bias, physical violence, or threat of physical violence; and
- e. a criminal arrest of or filing of a criminal charge against a state trooper.

74. All misconduct investigations shall be conducted by the PSB or the OAG except as delegated to the chain-of-command supervisors. Assignment of misconduct investigations will be made as follows:

- a. The PSB or the OAG shall conduct misconduct investigations in the following circumstances:
 - i. all complaints alleging a discriminatory motor vehicle stop; all complaints alleging an improper enforcement action or procedure in connection with or during the course of a motor vehicle stop; and all complaints alleging excessive force in connection with any motor vehicle stop;
 - ii. all complaints relating to any motor vehicle stop where a State Police supervisor either was at the incident scene when the alleged misconduct occurred or was involved in planning the State Police action whose implementation led to the complaint;
 - iii. any misconduct investigation undertaken pursuant to any event identified in subparagraphs (b) through (e) of ¶73; and
 - iv. any other category of misconduct complaints or any individual misconduct complaint that the OAG and/or State Police determines should be investigated by PSB or OAG.

The State Police may continue to assign misconduct investigations not undertaken by the OAG or PSB to the chain-of-command supervisors.

b. The PSB and the OAG shall review all misconduct complaints as they are received to determine whether they meet the criteria (set forth in subparagraph (a) above) for being investigated by the PSB, the OAG or being delegated to a chain-of-command supervisor. Nothing in this decree is intended to affect the allocation of misconduct investigations between the PSB and the OAG.

75. The State shall prohibit any state trooper who has a conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation.

76. All written or recorded interviews shall be maintained as part of the investigative file. The State shall not conduct group interviews and shall not accept a written statement from any state trooper in lieu of an interview.

77. The State shall arrange a convenient time and place, including by telephone (or TDD), to interview civilians for misconduct investigations. The State Police shall reasonably accommodate civilians' circumstances to facilitate the progress of an investigation. This may include holding an interview at a location other than a State office or at a time other than regular business hours.

78. In conducting misconduct investigations, the State shall assess the propriety of all state trooper conduct during the incident in which the alleged misconduct occurred. If during the course of an investigation the investigator has reason to believe that misconduct occurred other than that alleged, and that potential misconduct is one of the types identified in ¶69, the investigator also shall investigate the additional potential misconduct to its logical conclusion.

79. Where two or more individual incidents that require a misconduct investigation are related, the State may investigate the incidents in a single misconduct investigation.

80. The State shall update its manual for conducting misconduct investigations to assure that it is consistent with the recommendations contained in the Final Report and the requirements of this Decree.

Evaluating and Resolving Misconduct Allegations

81. The State shall make findings based on a "preponderance of the evidence" standard.

82. If the incident that is the subject of the misconduct investigation was recorded on an MVR tape, that tape shall be reviewed as part of the misconduct investigation.

83. In each misconduct investigation, the State shall consider circumstantial evidence, as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for a state trooper's statement over a civilian's statement. Similarly, there shall be no automatic judgment that there is insufficient information to make a credibility determination where the only or principal information about an incident is the conflicting statements of the involved trooper and civilian.

84. The State shall continue to resolve each allegation in a misconduct investigation by making one of the following dispositions:

- a. "Substantiated," where a preponderance of the evidence shows that a state trooper violated State Police rules, regulations, protocols, standard operating procedures, directives or training;
- b. "Unfounded," where a preponderance of the evidence shows that the alleged misconduct did not occur;
- c. "Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate State Police rules, regulations, operating procedures, directives or training; and
- d. "Insufficient evidence" (formerly "unsubstantiated"), where there is insufficient evidence to decide whether the alleged misconduct occurred.

85. The State shall not close any misconduct investigation without rendering one of the dispositions identified above. Withdrawal of a complaint or unavailability of the complainant or the victim of the alleged misconduct to make a statement shall not be a basis for closing an investigation without further attempt at investigation. The State shall investigate such matters to the extent reasonably possible to determine whether or not the allegations can be corroborated.

86. At the conclusion of each misconduct investigation, the individual responsible for the investigation shall issue a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and findings and analysis supporting the findings.

87. The State Police shall continue to attempt to complete misconduct investigations within forty-five (45) days after assignment to an investigator.

Disciplinary Procedures

88. The State Police shall discipline any state trooper who is the subject of a substantiated misconduct adjudication or disposition regarding: (a) prohibited discrimination; (b) an unreasonable use of force or a threat of force; (c) an intentional constitutional violation; (d) an intentional failure to follow any of the documentation requirements of this Decree, (e) an intentional provision of false information in a misconduct investigation or in any report, log, or transmittal of information to the communications center; or (f) a failure to comply with the requirement of ¶69 to report misconduct by another trooper.

89. The State Police shall initiate disciplinary proceedings against any state trooper who is found guilty or who enters a plea in a criminal case regarding on-duty conduct; any state trooper found civilly liable for misconduct of the type identified in ¶88 committed on duty or whose misconduct of the type identified in ¶88 is the basis for the State being found civilly liable; and any state trooper who is found by a judge in a criminal case to have committed an intentional constitutional violation. The State Police shall discipline any state trooper who is determined to have committed the misconduct set forth in this paragraph.

90. In deciding the appropriate discipline or intervention for each state trooper who is the subject

of a "substantiated" adjudication or disposition in a misconduct investigation and each trooper who is to be disciplined pursuant to ¶89, the State shall consider the nature and scope of the misconduct and the information in the MAP. In all instances where the State substantiates a misconduct allegation regarding matters identified in ¶88 or disciplines a trooper pursuant to ¶89, it shall also require that intervention be instituted (except where the discipline is termination). Where a misconduct allegation is not substantiated, the State shall consider the information in the investigation file and in the MAP to determine whether intervention should be instituted.

Tracking, Records, and Reporting

91. The PSB shall track all open misconduct investigations to ensure that investigations are completed in a timely fashion. Within one hundred twenty (120) days following entry of this Decree, the State shall develop a plan for designing and implementing a computerized tracking system (including a timetable for implementation).

92. After a misconduct complaint is finally resolved by the State Police, the State Police shall inform the complainant of the resolution in writing, including the investigation's significant dates, general allegations, and disposition, including whether discipline was imposed.

TRAINING

Training Oversight and Coordination

93. The New Jersey State Police shall continue to: oversee and ensure the quality of all training of state troopers; continue to develop and implement the State Police Academy curriculum for training State Police recruits, and provide training for academy instructors; select and train state trooper coaches in coordination with and assistance from State Police supervisors; approve and supervise all post-Academy training for state troopers, and develop and implement all post-Academy training conducted by the State Police; provide training for State Police instructors who provide post-Academy training; and establish procedures for evaluating all training (which shall include an evaluation of instructional content, the quality of instruction, and the implementation by state troopers of the practices and procedures being taught).

94. The Independent Monitor shall review and evaluate all training currently provided or sponsored by the State Police regarding motor vehicle stops and enforcement actions and procedures in connection with or during the course of motor vehicle stops. This review shall consist of whether the training provided or sponsored by the State Police effectively instructs troopers to comply with the requirements of ¶¶26, 28, 29(a), 30, 31, 32, and 33.

95. Within nine months of the entry of this Decree, the Independent Monitor shall submit a draft report to the parties setting forth the Monitor's findings and recommendations regarding the training issues identified in ¶94. During the 30-day period following submission of the draft report, the parties and the Monitor shall consult regarding the content of the draft report, and the parties may submit written comments on the draft report to the Monitor (with copies provided to each other). Within thirty (30) days after the consultation and comment period has ended, the Independent Monitor shall submit a final report to the Court, and the parties, with appropriate explanations and justifications for any changes made to the draft report.

96. If the State concurs with the Monitor's final report on training, then within ninety (90) days after submission of this report the State shall develop a plan for implementing the report's recommendations and submit the plan to the United States for approval. If the State does not concur in whole or in part with the Monitor's final report on training, then, within thirty (30) days after submission of this report, the State shall submit its objections to the Court which shall review the Monitor's recommendations under an abuse of discretion standard.

Academy Training, Post-Academy Training, and Trooper Coach Field Training

97. The State shall continue to encourage superior troopers to apply for Academy, post-Academy, and trooper coach training positions.

98. The State shall establish formal eligibility and selection criteria for all Academy, post-Academy, and trooper coach training positions. These criteria shall apply to all incumbent troopers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, *inter alia*, knowledge of State Police policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement trooper, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity.

99. The State Police shall ensure that all troopers serving as an Academy or post-Academy instructor, or as a trooper coach, receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching, and evaluation. All training instructors and trooper coaches shall be required to maintain, and demonstrate on a regular basis, a high level of competence. The State shall document all training instructors' and trooper coaches' proficiency and provide additional training to maintain proficiency.

100. The State Police shall continue to train all recruits and troopers in cultural diversity, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons having a different sexual orientation, and persons with disabilities; communication skills; and integrity and ethics, including the duties of truthfulness and reporting misconduct by fellow troopers, the importance of avoiding misconduct, professionalism, and the duty to follow civilian complaint procedures and to cooperate in misconduct investigations. This training shall be reinforced through mandatory annual in-service training covering these topics.

101. The State Police shall continue to provide recruit and annual in-service training on Fourth Amendment requirements. In addition, the State shall provide training on the non-discrimination requirements of this Decree as part of all Academy and in-service patrol-related and drug-interdiction-related training, including training on conducting motor vehicle stops and searches and seizures. An attorney designated by the Attorney General's Office shall participate in the development and implementation of this training.

102. Before the next recruit class graduates from the State Police Academy, the State Police shall adopt a protocol regarding its trooper coach program. The protocol shall address the criteria and method for selecting trooper coaches, the training provided to trooper coaches to perform their

duties, the length of time that probationary troopers spend in the program, the assignment of probationary troopers to trooper coaches, the substance of the training provided by trooper coaches, and the evaluation of probationary trooper performance by trooper coaches. Prior to implementation, the protocol shall be approved by the Independent Monitor and the United States.

103. The State Police shall as soon as practicable provide copies and explain the terms of this Decree to all state troopers and employees in order to ensure that they understand the requirements of this Decree and the necessity for strict compliance. After the State has adopted new policies and procedures in compliance with this Decree, the State shall provide in-service training to every state trooper regarding the new policies and procedures and the relevant provisions of this Decree. The State shall incorporate training on these policies and procedures into recruit training at the State Police Academy.

104. The State shall establish systems for State Police units, sub-units, and supervisors to provide information and refer particular incidents to the Training Bureau to assist the Training Bureau in evaluating the effectiveness of training and to detect the need for new or further training.

105. The State Police shall provide all supervisors with mandatory supervisory and leadership training which (in addition to the subjects addressed in ¶¶100 and 101) shall address effective supervisory techniques to promote police integrity and prevent misconduct. The State Police shall provide the initial training required by this paragraph within one year from entry of the Decree and thereafter shall provide supervisory training on an annual basis.

106. The State shall design and implement post-Academy training programs for all state troopers who are advancing in rank. The State shall require troopers to successfully complete this training, to the extent practicable, before the start of the promoted trooper's service in his or her new rank, and in no event later than within six months of the promoted trooper's service in his or her new rank.

107. The State shall design and implement post-Academy training programs for all state troopers who are newly assigned to a State Police troop, station, or assignment where specialized training is necessary in order to perform the assigned duties.

Documentation of Training

108. The State Police shall continue to maintain records documenting all training of state troopers. As part of the MAP, the State Police will track all training information, including name of the course, date started, date completed, and training location for each member receiving training. The MAP will maintain current and historical training information.

109. The State Police shall maintain in a central repository copies of all Academy, post-Academy and trooper coach training materials, curricula, and lesson plans.

RESPONSIBILITIES OF THE OFFICE OF THE

NEW JERSEY ATTORNEY GENERAL

110. The Attorney General of New Jersey shall create an Office of State Police Affairs ("office").

The office shall have the responsibility to ensure implementation of the terms of this Consent Decree and provide coordination with the Independent Monitor and the United States concerning the State Police and matters related to the implementation of the Consent Decree. An Assistant Attorney General shall head the office. The office's responsibilities shall include auditing the manner in which the State receives, investigates, and adjudicates misconduct allegations; auditing the State Police's use of MAP data; and auditing state trooper performance of the motor vehicle stop requirements discussed in the Consent Decree. The office also shall be responsible for providing technical assistance and training regarding these matters. The office shall have such additional responsibilities as may be assigned by the State Attorney General.

111. The office shall implement an auditing system for contacting a sample of persons who were the subject of motor vehicle stops and enforcement actions and procedures connected to a motor vehicle stop, to evaluate whether state troopers conducted and documented the incidents in the manner prescribed by State Police rules, regulations, procedures, and directives, and the requirements of this Decree.

112. The office's audits of the receipt, investigation, and adjudication of misconduct allegations shall include audits of the tapes of the complaint/comment toll-free telephone hotline established by ¶62; the use of testers to evaluate whether complaint intake procedures are being followed; audits of audio tape and videotape interviews produced during the course of misconduct investigations; and interviews of a sample of persons who file misconduct complaints, after their complaints are finally adjudicated.

113. The office shall have full and unrestricted access to all State Police staff, facilities, and documents (including databases) that the office deems necessary to carry out its functions.

PUBLIC INFORMATION

114. The State Police shall prepare semiannual public reports that include aggregate statistics on State Police traffic enforcement activities and procedures broken down by State Police station and the race/ethnicity of the civilians involved. These aggregate statistics shall include the number of motor vehicle stops (by reason for motor vehicle stop), enforcement actions (including summonses, warnings, and arrests) and procedures (including requests for consent to search, consent searches, non-consensual searches, and uses of force) taken in connection with or during the course of such stops. The information regarding misconduct investigations shall include, on a statewide basis, the number of external, internal, and total complaints received and sustained by category of violation. The information contained in the reports shall be consistent with the status of State Police recordkeeping systems, including the status of the MAP computer systems. Other than expressly provided herein, this paragraph is not intended, and should not be interpreted, to confer any additional rights to information collected pursuant to this Decree.

OVERSIGHT, REPORTING AND RECORD KEEPING, AND IMPLEMENTATION

Independent Monitor

115. Within ninety (90) days after the entry of this Decree, the State and the United States shall together select an Independent Monitor who shall monitor and report on the State's implementation of this Decree. The Monitor shall be acceptable to both parties. If the parties are

unable to agree on an Independent Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to the Court, and the Court shall appoint the Monitor from among the names of qualified persons submitted. The State shall bear all costs of the Monitor, subject to approval by the Court.

116. The Monitor shall be an agent of the Court and may testify in this case regarding any matter relating to the implementation, enforcement, or dissolution of this Decree. The Monitor shall not testify in any other litigation or issue statements or make findings with regard to any act or omission of the defendants, or their agents or representatives, except as required or expressly authorized by the terms of this Decree or by the Court. The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the State or its troopers.

117. The Monitor shall offer the State technical assistance regarding compliance with this Decree.

118. The State shall provide the Monitor with full and unrestricted access to all State staff, facilities, and non-privileged documents (including databases) necessary to carry out the duties assigned to the Monitor by this Decree. In the event of an objection, the Court shall make the final determination regarding access. In any instance in which the State objects to access, it must establish that the access sought is not relevant to monitoring the implementation of the Consent Decree, or that the information requested is privileged and the interest underlying the privilege cannot be adequately addressed through the entry of a protective order. In any instance in which the State asserts that a document is privileged, it must provide the United States and the Monitor a log describing the document and the privilege asserted. Notwithstanding any claim of privilege, the documents to which the Monitor shall be provided access include: (1) all State Police documents (or portions thereof) concerning compliance with the provisions of this Decree, other than a request for legal advice; and (2) all documents (or portions thereof) prepared by the Office of the Attorney General which contain factual records, factual compilations, or factual analysis concerning compliance with the provisions of this Decree. Other than as expressly provided herein, with respect to the Independent Monitor, this paragraph is not intended, and should not be interpreted to reflect a waiver of any privilege, including those recognized at common law or created by State statute, rule or regulation, which the State may assert against any person or entity other than the Independent Monitor.

119. The Monitor, *inter alia*, shall review and evaluate the quality and timeliness of appropriate samples of misconduct investigations, disciplinary actions, and interventions ordered as a result of a misconduct investigation; supervisory steps taken pursuant to ¶37; data contained in the MAP and MAP reports; appropriate samples of "consent to search" forms and reports, "non-consensual search" reports, drug-detection canine reports, motor vehicle stop reports and logs, and MVR tapes prepared in connection with a motor vehicle stop; and supervisory reviews of incidents pursuant to ¶¶48-53, and supervisory steps taken following these reviews.

120. Subject to the limitations set forth in this paragraph, the State Police shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete. The Monitor shall provide written instructions for completing the investigation. The Monitor shall

exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any misconduct investigation which has been adjudicated or otherwise disposed, and the disposition has been officially communicated to the trooper who is the subject of the investigation.

121. During the first year after this Consent Decree is entered, the Monitor shall issue quarterly reports detailing the State's compliance with and implementation of this Consent Decree. Thereafter, the Monitor shall issue such reports at least semiannually or more frequently as the Monitor determines is appropriate.

Reports and Records

122. Between ninety (90) and one hundred twenty (120) days following entry of this Consent Decree and every six months thereafter until this Consent Decree is terminated, the State shall file with the Court and the Monitor, with a copy to the United States, a status report delineating all steps taken during the reporting period to comply with each provision of this Consent Decree.

123. During the term of this Consent Decree, the State shall maintain all records documenting its compliance with the terms of this Consent Decree and all documents required by or developed under this Consent Decree. The State shall maintain all misconduct investigation files for at least ten years from the date of the incident. The State Police shall maintain a troopers' training records and all personally-identifiable information about a trooper included in the MAP, during the trooper's employment with the State Police. Information necessary for aggregate statistical analysis shall be maintained indefinitely in the MAP for statistical purposes. MVR tapes shall be maintained for 90 days after the incidents recorded on a tape, except as follows: any MVR tape that records an incident that is the subject of a pending misconduct investigation or a civil or criminal proceeding shall be maintained at least until the misconduct investigation or the civil or criminal proceeding is finally resolved. Any MVR tape that records an incident that is the subject of a substantiated misconduct investigation, or an incident that gave rise to any finding of criminal or civil liability, shall be maintained during the employment of the troopers whose conduct is recorded on the tape.

124. During all times while the Court maintains jurisdiction over this action, the United States shall have access to any State staff, facilities and non-privileged documents (including databases) the United States deems necessary to evaluate compliance with this Consent Decree and, within a reasonable time following a request made to the State attorney, shall, unless an objection is raised by the State, be granted such access and receive copies of documents and databases requested by the United States. In the event of an objection, the Court shall make a final determination regarding access. In any instance in which the State objects to access, it must establish that the access sought is not relevant to monitoring the implementation of the Consent Decree, or that the information requested is privileged and the interest underlying the privilege cannot be adequately addressed through the entry of a protective order. In any instance in which the State asserts that a document is privileged, it must provide the United States and the Monitor a log describing the document and the privilege asserted. Notwithstanding any claim of privilege, the documents to which the United States shall be provided access include: (1) all State Police documents (or portions thereof) concerning compliance with the provisions of this Decree, other

than a request for legal advice; and (2) all documents (or portions thereof) prepared by the Office of the Attorney General which contain factual records, factual compilations, or factual analysis concerning compliance with the provisions of this Decree. Other than as expressly provided herein with respect to the United States, this paragraph is not intended, and should not be interpreted to reflect a waiver of any privilege, including those recognized at common law or created by State statute, rule or regulation, which the State may assert against any person or entity other than the United States.

125. Except to the extent expressly stated in ¶114 or otherwise publicly disclosed, all documents (including databases), records, data, logs, and recordings which are collected or maintained pursuant to this Decree and which are made accessible to the United States and the Independent Monitor, shall be deemed confidential and shall not be disclosed to any person or entity, other than the Court, the United States, and the Independent Monitor, absent written notice to the State and either written consent by the State or a Court order authorizing disclosure pursuant to otherwise applicable law.

126. This Consent Decree, together with the protocols referenced in ¶29(a) shall constitute the entire integrated agreement of the parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

127. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement, or evidence of liability of the State under 42 U.S.C. §14141 or 42 U.S.C. §3789d(c), or any other law; nor shall this Consent Decree constitute or be construed as an acknowledgment, agreement, admission, statement, or evidence of any violation of applicable law or of the existence of a pattern or practice of conduct by state troopers that deprives persons of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement, or evidence that the management system and/or systems employed by the State Police prior to the execution of this Consent Decree were in any manner inadequate, unconstitutional, or constituted deliberate indifference of the State within any context and, in particular, within the context of 42 U.S.C. §1983 or 42 U.S.C. §14141.

128. This Consent Decree is binding upon the United States and the defendants by and through their officials, agents, employees, and successors. This Consent Decree is enforceable only by the parties. Nothing in this Consent Decree shall be construed to impair the right of any person or organization to seek relief against the State or the State Police for its conduct or the conduct of state troopers. Nothing in this Consent Decree is intended to alter the collective bargaining agreements between the State and the various unions which represent State Police personnel.

129. The State, by and through its officials, agents, employees, and successors, is enjoined from and shall not engage in a pattern or practice of conduct by the State Police that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. This paragraph does not apply to the State's employment policies, practices, or procedures.

Implementation

130. This Consent Decree shall become effective on entry by the Court. Except where otherwise specifically indicated, the State Police shall implement all provisions of this Decree as soon as practicable and no later than 180 days after entry of this Consent Decree.

131. The Court shall retain jurisdiction of this action for all purposes during the term of this Consent Decree.

a. At any time after both five years have elapsed since entry of this Consent Decree and substantial compliance with the terms of this Decree has been maintained for no less than two years (which may be calculated as two periods of four successive quarters), the Court may, upon motion by the State, terminate this Consent Decree. Any motion to terminate must detail all aspects of the State's compliance with each provision of this Consent Decree, supported by affidavits and supporting documentation. The United States shall have ninety (90) days from receipt of the State's motion to file any objections. In the event the United States files objections to the State's motion, the Consent Decree shall remain in effect at least until entry of a court order disposing of the motion and thereafter as dictated by the Court's order. In the event the United States objects to termination of the Consent Decree, the Court shall hold a hearing, at which both parties may present evidence, before ruling on the State's motion to terminate. At the hearing, the burden shall be on the State to demonstrate that it has maintained substantial compliance with this Consent Decree for at least two years.

b. The United States and the State may jointly move to terminate this Decree prior to the expiration of the fiveyear period referenced in subparagraph (a) if the Independent Monitor finds that the State has been in substantial compliance with the terms of this Decree for a period of no less than two years. The United States shall not unreasonably refuse to move jointly with the State for termination of this Decree.

c. For the purposes of this paragraph, "substantial compliance" means there has been performance of the material terms of the Decree. Materiality shall be determined by reference to the overall objectives of the Decree. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

132. No changes, modifications, or amendments of this Consent Decree shall be effective unless the Court orders them.

133. The parties agree to defend the provisions of this Consent Decree. The parties shall notify each other of any court or administrative challenge to this Consent Decree. In the event any provision of this Consent Decree is challenged in any local or state court, removal to a federal court shall be sought.

134. In the event any provision of this Consent Decree is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Consent Decree.

We consent and seek entry of this Consent Decree:

FOR THE PLAINTIFF, THE UNITED STATES OF AMERICA:

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SO ORDERED this 30th day of December 30, 1999.

MARY L. COOPER
UNITED STATES DISTRICT JUDGE