



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

February 25, 1994

Re:

Dear

This letter is in regard to the inquiry which the Attorney General directed into the allegations made by Trooper [redacted] in the discrimination appeal processing form which he filed with the Division of State Police. As you should be aware, the Attorney General advised Trooper [redacted] that the Department would investigate his allegations of past acts of racial discrimination even though his appeal fell outside the time period prescribed by N.J.A.C. 4A:7-3.3(a). He was further informed that he would be apprised of the results of this investigation. Since Trooper [redacted] is now represented by you in his pending EEOC complaint, we are writing to you rather than to Trooper himself.

The Department has investigated Trooper [redacted] various allegations. This investigation included interviews with Trooper [redacted] which extended over many weeks. Following these interviews in which he provided more detailed information about his allegations, the Department interviewed the relevant individuals who worked at the various stations to which he was assigned.¹ We also reviewed relevant documents and records.

1. In February of 1993, during the course of the investigation, in response to Trooper [redacted] concerns with respect to his existing assignment, his request to transfer from the Newark Station to the Bloomfield Station was granted by the Division.



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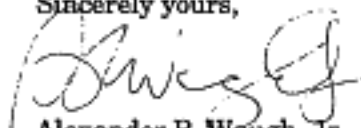
Renee Steinhagen, Esq.
February 25, 1994
Page 2

All of the various allegations, except for one, were determined to be either unsubstantiated or unfounded. The investigation did reveal that certain troopers were blowing their horns and keying their microphones in April of 1990 when Trooper [redacted] stopped a motorist while he was dressed in civilian clothes and was operating an unmarked State Police vehicle. The Newark Station Commander took specific action with respect to this incident and issued each trooper who was on patrol at that time a written performance notice and reminded each trooper about the proper radio procedures. There is no substantive evidence, however, that race was an issue in this incident.

In the course of determining that the remaining allegations were either unsubstantiated or unfounded, significant discrepancies were noted in Trooper [redacted] statements when they were compared to statements of others. In fact, supervisors and co-workers who were interviewed in the course of this investigation stated that he never informed them that he was experiencing racial problems at his first three duty assignments, nor were they independently aware of any such issues. Further, Trooper [redacted] has produced no documentation to substantiate his charges.

The findings of this investigation are also relevant to the allegations Trooper [redacted] has made to the EEOC. We are in the process of responding to the EEOC's various requests for information and by copy of this letter are providing the results of our investigation to them.

Sincerely yours,



Alexander P. Waugh, Jr.
Executive Assistant Attorney General

APW:mas

cc: Lt. Colonel D.C. Trocchia, Acting Superintendent
Mary L. Cupo-Cruz, Legal Affairs Director
Valerie Holman, Affirmative Action officer
Edward McCaffrey, Supervisory Investigator, EEOC

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

TO: Deborah T. Poritz
Attorney General

FROM: Alexander P. Waugh, Jr. *AWJ*
Executive Assistant Attorney General

DATE: February 23, 1994

SUBJECT:

The above-captioned trooper is one of 12 black troopers who have filed complaints with the EEOC charging various forms of racial discrimination against the Division of State Police. Prior to the filing of his complaint with the EEOC, Trooper [redacted] filed a discrimination appeal processing form with the Division of State Police Affirmative Action Officer. Since the appeal was filed outside of the requisite time limitations, the Department did not handle this case within the procedural framework of the discrimination appeal process. However, Trooper [redacted] was advised that his allegations of past acts of racial discrimination would be investigated by the Office of the Attorney General and the Division of State Police. He was further advised that he would be apprised of the results of the investigation upon its conclusion.

The investigation revealed that all of Trooper [redacted] various allegations of racial discrimination were either unsubstantiated or unfounded. One allegation about certain troopers blowing their horns and keying their microphones when Trooper [redacted] stopped a motorist while he was dressed in civilian clothes and was operating an unmarked State Police vehicle was substantiated; but the Newark Station Commander took specific action with respect to this incident by issuing each trooper who was on patrol at that time a written performance notice and reminding each trooper about the proper radio procedures. There was, however, no substantive evidence that race was an issue in this incident. Since Trooper [redacted] has not yet been advised about these results, I am recommending that the attached letter be sent to his attorney advising her of the results of the investigation. Since this matter was not handled as a Departmental discrimination appeal, it is not necessary for you to sign the letter of determination. Although this type of letter could also come from Legal Affairs, because I was Legal Affairs Director when Departmental discrimination complaint and the EEOC complaints were filed and I am familiar with this matter, I recommend that the attached letter be sent under my signature.

Attorney General Poritz
February 16, 1994
Page 2

The underlying investigative reports have already been provided to the EEOC in response to their requests for information, and this proposed letter will also be provided to them. Please let me know whether this letter may be sent.

A.P.W.

APW:mas
Attachment
c Mary L. Cupo-Cruz, Legal Affairs Director

Chm



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

MEMORANDUM

To: Capt. Juan Mattos
Division of State Police

From: Alexander P. Waugh, Jr. *AWJ*
Executive Assistant Attorney General

Date: November 22, 1994

Re: Training Bureau Lesson Plan

The purpose of this memorandum is to alert you to the release of some discovery in a case involving State Police which I believe has the potential for generating adverse publicity. A number of criminal defendants in southern New Jersey are seeking to defend their cases by alleging that they have been the victims of racial profiling by the State Police. SDAG Jack Fahy is handling the case as it relates to this issue. As part of the discovery, the defendants have asked for copies of certain diversity training materials used at the State Police Training Academy. It is my understanding from Jack that some minority troopers have claimed that they were taught derogatory things about minorities, which prompted the request.

Attached are some excerpts from the documents which SDAG Fahy believes are responsive to the request. While the lesson plan is positive, taken as a whole, we are concerned that some of the excerpted language could be the focus of negative comment, since there appears to be stereotyping. For example, homosexuals, who are protected by the Law Against Discrimination, are listed as the first group of "deviant subcultures". There is



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a statement that, because "blacks value material goods", "blacks who are not able to purchase their own home put money into cars". There are other broad statements which I believe would appropriately be viewed as stereotyping.

SDAG Fahy will be raising with Lt. Brennan whether these materials are still in use. I think it is important that you take a look at them and that corrective action be taken as soon as possible. I do not think the materials at issue should be used without such a review having been completed.


c. SDAG Fahy
LT. Brennan

Chom

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Becky Taylor
Director of Communications

From: Alexander P. Waugh, Jr. 
Executive Assistant Attorney General

Date: November 21, 1994

Re: State Police Profiling Case

The purpose of this memorandum is to alert you to the release of some discovery in a case involving State Police which has the potential for generating adverse publicity. A number of criminal defendants in southern New Jersey are seeking to defend their cases by alleging that they have been the victims of racial profiling by the State Police. SDAG Jack Fahy is handling the case as it relates to this issue. As part of the discovery, the defendants have asked for copies of certain diversity training materials used at the State Police. It is my understanding from Jack that some minority troopers have claimed that they were taught derogatory things about minorities, which prompted the request.

Attached are some excerpts from the documents which SDAG Fahy believes are responsive to the request. While the lesson plan is positive, taken as a whole, we are concerned that some of the excerpted language could be the focus of negative comment, since there does appear to be some stereotyping. For example, homosexuals, who are protected by the Law Against Discrimination, are listed as the first group of "deviant subcultures". There is a statement that, because "blacks value material goods", "blacks who are not able to purchase their own home put money into cars". Whether or not there is any reliable sociological research to support this assertion, I strongly question its value in the context in which it is used.

These documents have not yet been released, but they probably will be in the next few days.

c. SDAG Fahy

Excerpt 1

2. HEAVY DRINKERS

a. MEN: 21 TO 34 YEARS OLD

b. WOMEN: 34 TO 49 YEARS OLD

3. RATES DRINKING AND HEAVY DRINKING DECREASE CONSIDERABLY AMONG ELDERLY.

a. MAY BE CONSIDERABLE UNDERREPORTING OF DRINKING.

b. SURVIVAL RATE.

D. REGION AND RESIDENCE

1. ALL NATIONAL STUDIES INDICATE DRINKING INCREASES WITH THE DEGREE.

a. NORTHEAST AND MIDDLE ATLANTIC STATES HAVE HIGHEST RATES OF DRINKING AND HEAVY DRINKING.

b. THE SOUTH HAS THE LOWEST RATE OF DRINKING AND HEAVY DRINKING.

c. THE WEST AND MIDWEST HAVE INTERMEDIATE RATE.

d. THERE IS MORE DRINKING AND HEAVY DRINKING IN URBAN AND SUBURBAN THAN SMALL TOWNS, MORE DRINKING IN SMALL TOWNS THAN RURAL AREAS.

E. SOCIAL CLASS

1. PROPORTION OF MEN AND WOMEN WHO DRINK AT ALL, AND TO SOME EXTENT THE PROPORTION OF MEN WHO DRINK FREQUENTLY TENDS TO BE HIGHER AMONG MIDDLE AND UPPER CLASS THAN AMONG LOWER CLASS.

2. HEAVY DRINKERS AND ALCOHOLICS DISPROPORTIONATELY COME FROM LOWER SOCIO-ECONOMIC STRATA.

F. RACE (WHITE/BLACK)

1. PERCENTAGE OF DRINKERS IS HIGHER AMONG WHITE POPULATION.

2. PROBLEM OR HEAVY DRINKERS IS ABOUT THE SAME.

G. RELIGION

1. HIGH PROPORTION OF DRINKERS OF TOTAL POPULATION

a. JEWISH

* b. CATHOLIC

c. LUTHERN

d. EPISCOPALIAN

2. RELATIVELY FEW DRINKERS

a. PROTESTANTS

b. BAPTISTS

c. MORMANS

3. HEAVY DRINKERS AND ALCOHOLICS

a. LOW PERCENTAGE - JEWISH

b. HIGH PERCENTAGE - CATHOLICS

H. ETHNICITY

1. HIGH RATES OF DRINKERS AND DRINKING PROBLEMS:

a. IRISH - AMERICANS

b. PEOPLE OF LATIN AMERICAN ORIGIN

2. ITALIAN AMERICANS DRINK FREQUENTLY AND HEAVILY BUT APPARENTLY
HAVE LITTLE ALCOHOLISM.

III. ALCOHOL AND THE POLICE OFFICER

A. THE FACTORS THAT LEAD TO HIGH STRESS FOR THE POLICE OFFICER ARE
THE SAME AS THOSE THAT LEAD TO ALCOHOLISM.

1. SHIFT WORK

2. NEED TO SUPPRESS EMOTIONS

- B. ~~SOME~~ CULTURAL DIFFERENCES PRESENT HANDICAPS TO INTERACTIONS BETWEEN THOSE OF DIFFERENT CULTURES.
- C. SOME CULTURAL DIFFERENCES PRODUCE ECONOMIC HANDICAPS AS WELL.
- D. NOT POSSIBLE TO UNDERSTAND THE ACTIONS OF AN INDIVIDUAL OUTSIDE THEIR CULTURAL SYSTEM.
- E. INCOMBANT TO FAMILIZE WITH DIFFERENT CULTURES, HISPANIC CULTURE TO BE ANALYZED.

1. HISPANIC CULTURE

- a. INCLUSIVE OF COLUMBIANS, CUBANS, MEXICANS, PAN AMERICANS AND PUERTO RICANS.

- b. SECOND LARGEST MINORITY GROUP

- c. VALUE DIGNITY AND RESPECT

- (1) EVERY HISPANIC HAS WORTH AS AN INDIVIDUAL. WHATEVER THEIR SOCIAL STANDING, MATERIAL THINGS ARE NOT THAT IMPORTANT.

- (2) CULTURAL VALUE MAY WORK AGAINST THE HISPANIC IN AMERICAN SOCIETY.

- (a) RESPECT MORE CLOSELY LINKED WITH ACHIEVEMENT, MATERIAL POSSESSIONS.

- d. FAMILY STRUCTURE

- (1) EXTENDED FAMILY VERY IMPORTANT.

- (2) TRADITIONALLY MALE DOMINATED CULTURE. FATHER IS AN ALMOST ABSOLUTE AUTHORITY FIGURE.

- (a) WIFE CAN BE SUBSERVIENT.
- (3) GET MARRIED AT ANY EARLY AGE.
- (4) LARGE FAMILIES ARE THE RULE, ECONOMIC HINDRANCE IN AMERICAN CULTURE.
 - (a) COMFORTABLE IN SHARING SPACE.
 - (b) SPECIAL PROXIMITY - TEND TO GET CLOSE WHEN SPEAKING.
 - (c) USE OF HAND GESTURES AND TOUCHING BEHAVIOR.
- (5) HISPANIC COMMUNITY PLACES HIGH VALUE ON CLOSE, WARM PERSONAL RELATIONSHIPS.
 - (a) TOO PROFESSIONAL, TOO ALOOF OF AN APPROACH CAN CAUSE PROBLEM.
- (6) HISPANIC CULTURE HAS HIGH RESPECT FOR LAW AND LAW ENFORCEMENT.
 - (a) FOR EXAMPLE CUBAN CULTURE SEE POLICE AS GUARANTEEING FREEDOM.
- (7) HISPANIC CULTURE TENDS TO FORM INTO ETHNIC ENCLAVES, TENDS TO WORK AGAINST THEM IN AMERICAN CULTURE.
 - (a) PRESERVE CULTURE
 - (b) PRESERVE EXTENDED FAMILY CONCEPT
 - (c) PRESERVE LANGUAGE

- (8) STRONG RELIGIOUS BACKGROUND
 - (a) PREDOMINANT RELIGION - CATHOLICISM
 - (b) WILL SEEK A PRIEST RATHER THAN AVAIL THEMSELVES OF SOCIAL SERVICE AGENCIES.
- (9) STRONG GROUP IDENTIFICATION WITH HISPANIC COMMUNITY.
 - (a) OFFENSIVE TO CALL A PUERTO RICAN A CUBAN AND VICE VERSA.

Excerpt 3

4. PUERTO RICANS
5. JAMACANS

III. RACIAL GROUPS

- A. DEFINED: A SUBGROUP OF THE HUMAN SPECIES CHARACTERIZED BY PHYSICAL DIFFERENCES WHICH RESULT FROM INHERITED BIOLOGICAL CHARACTERISTICS.
- B. TYPES OF RACIAL GROUPS
 1. CAUCASOID (WHITES)
 2. NEGROID (BLACKS)
 3. MONGOLOID (ORIENTALS, ESKIMOS, NORTH AMERICAN INDIANS).

IV. POLICE STEREOTYPICAL VIEW OF MINORITIES

- A. WARY OF MINORITY PEOPLE.
- B. BELIEVE MINORITIES ARE MORE LIKELY TO BE INVOLVED IN CRIMINAL ACTIVITIES.
 1. CHINESE AMERICANS MORE LIKELY TO BE INVOLVED IN CRIMES OF GAMBLING.
 2. ITALIAN AMERICANS MORE LIKELY TO BE INVOLVED IN ORGANIZED CRIME.
 3. BLACK AMERICANS ARE MORE LIKELY TO BE INVOLVED IN CRIMES OF VIOLENCE.
 4. SPANISH SPEAKING AMERICANS ARE MORE LIKELY TO BE INVOLVED IN FIGHTS OR TAUNTING OFFICERS.
- C. GREATER DEGREE OF HOSTILITY DIRECTED TOWARD POLICE.

V. MINORITY STEREOTYPICAL VIEWS OF POLICE

- A. ARE MUCH MORE CRITICAL OF POLICE ACTIONS.
- B. MORE WILLING TO SEE RACIAL SLIGHTS IN POLICE ACTIONS.
- C. FEEL MORE SUBJECT TO MISTREATMENT, HARASSMENT, AND BRUTALITY.
 - 1. PHILADELPHIA STUDY REVEALED
 - a. 27% OF POPULATION MINORITY.
 - b. 63% OF ALL COMPLAINTS AGAINST POLICE MINORITY GENERATED.
- D. POLICE ARE SYMBOLIC, STAND FOR THE POWER AND AUTHORITY OF THE MAJORITY, VISIBLE SIGNS OF MAJORITY DOMINATED.
- E. POLICE PERCEIVED IN THE PUNISHMENT BUSINESS.
- F. POLICE ARE A "BLUE MINORITY."

Difficult to work closely or cooperatively with someone who's pushing you.

Stereotypes are easiest to form against groups that are readily identifiable by their uniform & duties

VI. ETHNIC AND RACIAL CULTURES

- A. NOT ALL CULTURAL DIFFERENCES PRODUCE CONFLICT.
- B. SOME CULTURAL DIFFERENCES PRESENT HANDICAPS TO INTERACTIONS BETWEEN THOSE OF DIFFERENT CULTURES.
- C. DIFFERING CULTURES, ATTITUDES AND VALUES
 - 1. BLACK AMERICANS
 - a. BLACKS VALUE THEIR FAMILIES.
 - (1) SOME SCHOLARS SAY THEY HAVE STRONGER KINSHIP BONDS THAN WHITES.
 - (2) MOST IMPORTANT ELEMENT OF HIS ATTITUDE TOWARD THE FAMILY IS THE PROTECTIVENESS OF FAMILY MEMBERS TOWARD CHILDREN AND EACH OTHER.

Domestic Disputes

Familial relationships
need not be blood.

(3) ARE CHARACTERIZED BY EXTENDED FAMILY STRUCTURES
AND NETWORKS WHICH GIVE AID AND SUPPORT.

B. BLACKS VALUE RELIGION

1. BLACK CHURCHES SERVE THEIR COMMUNITIES IN MORE THAN SIMPLY
RELIGIOUS WAYS.

a. SERVE SOCIAL AND WELFARE NEEDS.

C. BLACKS VALUE MATERIAL GOODS AS WELL.

1. BLACKS WHO ARE NOT ABLE TO PURCHASE THEIR OWN HOME PUT
MONEY INTO CARS.

a. CARS IMPORTANT - SHOW INDIVIDUAL'S STYLE AND
PERSONALITY, JUST AS HOME WOULD.

American custom to look
a superior in the eye
during conversation
- judge truth by eye
contact (as well as
American Indian)

D. BLACK CULTURE LACKS GENERAL EYE CONTACT CUSTOM.

1. BLACKS SHOW DEFERENCE TO SUPERIORS BY LOWERING THEIR GAZE.

2.

SPANISH AND LATIN CULTURES

a. VALUE DIGNITY AND RESPECT

(1) EVERY PUERTO RICAN HAS WORTH AS AN INDIVIDUAL,
WHATEVER HIS SOCIAL STANDING.

b. CULTURAL VALUE MAY WORK THE WRONG WAY IN AMERICAN
SOCIETY IN CERTAIN SITUATIONS.

(1) AMERICAN SOCIETY RESPECT IS MORE CLOSELY LINKED
WITH ACHIEVEMENT AND ESTEEM, ONE MUST EARN RESPECT
BEFORE IT IS GIVEN.

c. PUERTO RICANS TEND TO HAVE LARGE FAMILIES

(1) FROM 1980 CENSUS, BLACKS COMPRISE 12% OF POPULATION,
LARGEST MINORITY IN U.S.

Speaking primarily
Puerto Rican and Cuban.

Roman Catholic Church
Machismoism
Louder

Due to: continued
immigration, large
family size,
Younger median age:
W - 31.3
B - 24.9
S - 23.2

Lot of officers frequently
misunderstand - believe
trying to conceal something

(a) HOWEVER, MANY DEMOGRAPHERS FEEL BY YEAR 1990-2000
SPANISH SPEAKING PEOPLE WILL CONSTITUTE LARGEST
MINORITY GROUP.

(2) LARGE FAMILIES ECONOMIC HINDERANCE IN AMERICAN SOCIETY.

Louder

(3) NOT UNCOMFORTABLE IN SHARING SPACE, TEND TO GET
CLOSER WHEN SPEAKING.

(4) USE OF HANDS TO EXPRESS THEMSELVES.

Important during
domestic.

d. FATHER IS AN ALMOST ABSOLUTE AUTHORITY FIGURE IN THE
FAMILY STRUCTURE.

Cool crisp efficiency
impersonal tend to
offend - not professional

e. SPANISH SPEAKING PERSONS PLACE HIGH VALUE ON CLOSE, WARM,
PERSONAL RELATIONSHIPS.

f. CULTURES ENGAGE IN MORE TOUCHING BEHAVIOR THAN AMERICANS
USUALLY DO.

(1) LATINS, MIDDLE EASTERNERS, EASTERN EUROPEANS,
AVOIDANCE IN TOUCHING.

BRITISH, ORIENTALS, EAST INDIAS, AMERICAN INDIANS.

Excerpt 4

EXPLANATION:

I. DEVIANCE

- A. DEFINED: BEHAVIOR THAT DOES NOT CONFORM TO THE NORMS OF SOCIETY.
- B. DEVIANT SUBCULTURES
 - 1. HOMOSEXUALS
 - 2. NARCOTIC ADDICTS
 - 3. PROSTITUTES
 - 4. YOUTH GANGS
 - 5. MAFIA

II. EVOLUTION OF SOCIETAL VIEWS ON THE CAUSES OF DEVIANCE

- A. EARLIEST THEORY - RELIGIOUS VIEWPOINT
 - 1. DEVIANT POSSESSED BY THE DEVIL.
- B. 19TH CENTURY - LOMBROSO'S THEORY
 - 1. CRIMINALS ARE EVOLUTIONARY THROWBACKS, BIOLOGICALLY LESS ADVANCED.
 - 2. BIOLOGICAL STATE MANIFESTED IN A VARIETY OF PHYSICAL OR ANATOMICAL CHARACTERISTICS.
 - 3. ATTEMPT TO LINK OBSERVABLE PHYSICAL CHARACTERISTICS WITH CRIMINAL BEHAVIOR.
- C. 1949 - WILLIAM SHELDON'S SOMATOTYPES THEORY
 - 1. BODY TYPE COULD BE LINKED TO CRIMINAL INTENT.
 - a. THREE BODY TYPES
 - (1) MESOMORPH (MUSCULAR)
 - (2) EKTOMORPH (SLENDER)
 - (3) ENDOMORPH (HEAVY)

1896

Protruding jaws,
high cheekbones

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Fred DeVesa
Acting Attorney General

From: Alexander P. Waugh, Jr. *AWJ*
Executive Assistant Attorney General

Date: August 30, 1993

Subject: STATE POLICE PROFILING

As you know, I met with the State Police Troop Commanders earlier this month to discuss the issues of hostile work environments and racial profiling. During the discussion of profiling, reference was made to a Florida case which was said to uphold profiling. Based on research done by DAG Olgiati, it would appear that the case referred to is Cresswell v. State of Florida, 564 So. 2d 480 (Fla. 1990), which is essentially a search and seizure case addressing the issue of when a profile can be used by a police officer to form articulable suspicion justifying brief investigatory detention after conclusion of a legitimate traffic stop on the highways. This case does not deal with the issue of racial profiling. As Major Stith correctly pointed out at the meeting, the issue in the Florida case concerns what action is appropriate after the stop is made, not what profiles can be used in justifying the initial stop.

It occurs to me that it might be useful to have some further thought given to the issue of profiling, perhaps even leading up to the promulgation of some guidelines. I believe that State Police would benefit from some further advice in this area. Perhaps a working group of some sort could be formed involving some State Police members and some deputies from Criminal Justice, with Legal Affairs involvement if deemed appropriate.

A.P.W.

APW:pat
attachs.
c. Assistant Attorney General Bozza

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Major D. Trocchia
Acting Deputy Superintendent
Division of State Police

From: Alexander P. Waugh, Jr. *AWJ*
Counsel to the Attorney General
Legal Affairs Director

Date: August 25, 1993

Subject: RACE RELATIONS AND EQUAL EMPLOYMENT OPPORTUNITY
COMMITTEE

I have reviewed the draft Operations Instruction and the proposed questionnaire. I have some recommendations to make in addition to the comments contained in handwriting on the drafts.

As I indicated during my meeting with the Troop Commanders on August 24th, it is important for an employer to make its policies with respect to equal employment opportunities and hostile work environments known to its workforce and to provide a meaningful opportunity to employees who believe themselves to be the victims of inappropriate action to seek redress from the employer. It is also desirable for an employer to take steps to keep itself apprised of what is going on in the workforce, so that appropriate remedial action can be taken. I believe that the proposal contained in the draft Operations Instruction is consistent with these goals and will enhance the Division's ability to respond to generalized complaints of discrimination in the workplace. Of course, to be truly effective, the Committee must take its work seriously and make sure that there is follow through on its recommendations. A failure to follow through on findings of the need for improvement could become a liability.

I have suggested that members and employees be given the opportunity to submit their responses to the questionnaire in an anonymous fashion. Especially given the fact that the Committee is composed solely of officers, I think it important to make it clear that those who might be concerned, for various reasons, about bringing their concerns to the attention of the Committee in a face to face meeting may, nevertheless, make their concerns known in a less formal manner. I also believe it should be made clear that those wishing to bring a formal complaint, which would be subject to investigation and specific

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August 25, 1993

remediation through either the discrimination appeal process or the Department's hostile workplace policy, must be referred to the Affirmative Action Officer for the filing of a formal complaint. I believe it is important to distinguish the formal complaint process from the work of the Committee. The Committee process is not intended to address individual wrongs, but rather to "take the pulse" of the organization and to propose any necessary division-wide remedial action.

Finally, I would again suggest that consideration be given to putting an NCO and trooper on the Committee. It would seem appropriate for the Committee to have the benefit of views of the lower ranks during the process of its deliberations. In addition, this might provide the opportunity for having another minority and a female represented on the Committee.

With respect to the troopers who are complainants before the EEOC, I suggest that they be given the opportunity to either appear before the Committee or respond anonymously. No member, whether a complainant or not, should be compelled to appear before the Committee.

Please let me know if you have any questions with respect to any of my comments. I would appreciate the opportunity to review the final draft briefly, prior to its implementation.

A.P.W.

APW:pat
attach.

c. Acting Attorney General DeVesa
SDAG Cupo-Cruz



OPERATIONS INSTRUCTION

EFFECTIVE DATE DRAFT		NUMBER
SUBJECT RACE RELATIONS AND EQUAL OPPORTUNITY COMMITTEE		
REFERENCE S.O.P. C46, C59	RESCINDS	O.P.I. NUMBER L090

I. AUTHORITY:

A Race Relations and Equal ^{Employment} Opportunity Committee is hereby established within the Division of State Police by authority vested in the Superintendent.

II. PURPOSE:

A. The Race Relations and Equal ^{Employment} Opportunity Committee is responsible for monitoring the Division's compliance with State and Federal statutes, rules and regulations, Executive Orders and guidelines, as they relate to, but not limited to, affirmative action, hostile work environment and ^{sexual} discrimination in all phases of employment. _{and gender}

B. To monitor compliance with the Division's policies regarding, but not limited to, affirmative action, race relations, ~~equal employment opportunity~~, hostile work environment, and ~~sexual~~ discrimination. _{and}

C. To provide a confidential forum for enlisted personnel to detail perceptions and experiences, regarding but not limited to, race relations, equal employment opportunities, and hostile free work environment issues. _{Use same language as}

D. To report all findings and recommendations to the Superintendent in the form of a confidential ~~fact-finding~~ report.

III. MECHANICS:

A. The Race Relations and Equal Opportunity Committee is to be comprised of the following members appointed by the Superintendent:

1. Major D. C. Trocchia, Acting Deputy Superintendent, shall serve as Chairman.
2. Major V. Littles, Division Staff Section Supervisor.

O.I.

3. Capt. W. Coblenz, Acting Intelligence Section Supervisor.
4. Capt. J. Mattos, Affirmative Action Officer.
5. Lt. S. Maggio, Deputy Troop "D" Commander.

Assisted by ~~A~~ legal advisor from the Office of the Attorney General
~~AAG A. Waugh Jr., Legal Affairs Director, Office of Attorney General.~~

B. General Guidelines:

1. To provide a confidential forum for enlisted personnel to freely articulate perceptions and experiences regarding, but not limited to, ~~race relations, equal opportunities, and hostile free environment issues~~ without the fear of any reprisal. *use vs of same language as IIA*
2. To review any and all disclosed allegations of racism, prejudice, or a hostile work environment.
3. To prepare a confidential, ~~fact-finding~~ report to the Superintendent detailing the committee's findings and recommendations.

C. Member's Request for Appearance:

1. In the event a member desires to appear before the Committee, the member shall submit a request, ~~via channels,~~ *directly* to the Deputy Superintendent's Office.
2. The Deputy Superintendent will, upon receipt of a member's request, schedule the member to appear before the committee. Division's operational needs will be considered when scheduling a member's appearance.
3. All information disclosed to the committee will be completely confidential and will not to be made part of any member's personnel file.
4. The committee shall meet at the discretion of the Deputy Superintendent or as directed by the Superintendent.

BY ORDER OF THE SUPERINTENDENT

D. C. Trocchia, Major
Acting Deputy Superintendent

NEW JERSEY STATE POLICE

RACE RELATIONS / EQUAL EMPLOYMENT OPPORTUNITY COMMITTEE

QUESTIONNAIRE

TROOP: _____ STATION: _____ DATE: _____ TIME: _____
 FULL NAME: _____ RANK or TITLE: _____ BADGE NUMBER: _____
 UNIT CODE: _____ YEARS OF SERVICE: _____ CLASS: _____ SEX: _____ RACE: _____

The views of Division members and employees on this issue are to determine

forum

The purpose of the Race Relations / Equal Employment Opportunity Committee is to provide a platform for enlisted, sworn and civilian members of the Division of State Police to detail perceptions and experiences concerning race relations, equal employment opportunities and a hostile free work environment. Our mission is to determine what positive steps have been taken, or ^{should} be taken to assure compliance with the Division's policies. We wish to make clear at the beginning of each interview that the information received is given freely, voluntarily and without fear of retribution. Once the individual provides us with data, that information will be collated and transformed into a report. The demanding task of interviewing personnel, reporting the information, analyzing the findings and consulting with competent legal authority will conclude with the offering of recommendations to the Superintendent.

use same place as II A of the OI

Are you familiar with the Division of State Police policy against discrimination, harassment and hostile environment in the work place? *responses may be submitted anonymously with the understanding that anonymous responses. Individuals wishing to file formal complaints will be referred to the Division or Department Affirmative Action Officer for that purpose.*

- Yes
 No
2. If you are familiar with the policy, how and approximately when was this information conveyed to you? *if the individual so desires.*
-
3. Have you been subjected to any acts by any member of this division in violation of this policy? If yes, please provide description of incident.
 Yes _____
 No _____
4. Have you ever witnessed any acts in violation of this policy? If yes, please explain.
 Yes _____
 No _____
5. Have you ever reported to your supervisor any acts in violation of this policy? What was the outcome?
 Yes _____
 No _____
6. Do you understand how the specialists selection process works?
 Yes
 If yes, is the process fair to everyone?
 Yes
 No
 No

NEW JERSEY STATE POLICE
RACE RELATIONS / EQUAL EMPLOYMENT OPPORTUNITY COMMITTEE
QUESTIONNAIRE

7. Do you understand how the promotional system works within the New Jersey State Police?
 Yes
 If yes, is the process fair to everyone?
 Yes
 No
 No
8. Do you know that in order to be considered for the rank of Sergeant in the Field Operations Section, you first have to attain the rank of Trooper I?
 Yes
 No
9. Do you understand how the selection process for schools and/or special training is carried out?
 Yes
 If yes, is the process fair to everyone?
 Yes
 No
 No
10. Do you understand the seniority system within the New Jersey State Police?
 Yes
 If yes, is the process fair to all members?
 Yes
 No
 No
11. Do you understand the present evaluation system used by the New Jersey State Police?
 Yes
 If yes, is the process fair to all members?
 Yes
 No
 No
12. Do you understand the disciplinary system of the New Jersey State Police?
 Yes
 If yes, is the process applied equally to everyone?
 Yes
 No
 No
13. Do you understand the transfer system of the New Jersey State Police?
 Yes
 If yes, is the process applied equally to everyone?
 Yes
 No
 No

NEW JERSEY STATE POLICE
RACE RELATIONS / EQUAL EMPLOYMENT OPPORTUNITY COMMITTEE
QUESTIONNAIRE

14. Is there anything additional you would like to tell us?

15. What recommendations do you have regarding the current ~~Equal Employment Opportunity Committee~~ issues facing the division?

16. In your opinion, does the Division of State Police provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or sexual orientation?

- Yes
- No

Please explain.

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Alexander P. Waugh, Jr.
Assistant Attorney General
Legal Affairs Director

From: John M. Fahy
Senior Deputy Attorney General
Internal Affairs Counsel

Date: July 22, 1993

Subject: IMO Trooper Glenn Johnson #4455

To JMF/MC-C /PTL
I have set up a meeting for both of you with Capt. Robertson at 10:30 on 7.26. Please go over this case very carefully with him and discuss the issues raised below. The issue of whether he can have counsel for the IAB interview needs to be discussed too, if refusal to be interviewed is a ground for suspension. There is potential for a complaint of retaliation because of pending EEOC complaint, so we need to make sure there are strong grounds for any action taken.
ASW
7-26-93

I have reviewed the documentation submitted by the State Police concerning a recommendation to suspend Trooper Glenn Johnson, #4455. I have concluded that there is a legal basis to suspend the trooper at this time, but several difficulties in taking such action must be recognized. The primary charges which would ultimately support the termination of this officer relate to his issuance of bad checks and failure to comply with direct orders to contact the Internal Affairs Bureau. In addition, other offenses, including failure to comply with the terms of a protection order obtained by his wife, failure to notify the Division regarding changes of address and failure to maintain a current insurance and registration on his personal vehicles. The latter offenses under the totality of circumstances in combination with bad checks and insubordination would, under the totality of circumstances, support termination.

There is also an assault charge filed by the trooper's wife arising out of the most recent domestic problems. The facts related to this matter, however, are too uncertain to support any disciplinary charges at this point.

It should be noted that the Superintendent has twice considered the issue of suspending this trooper pending outcome of the disciplinary charges. On December 15, 1992, when the State Police were fully aware of the bad check cases, Colonel Dintino decided to defer suspension until this matter was reviewed by the Division of Criminal Justice. Criminal Justice decided not to take any action and, in a memorandum dated May 26, 1993 advised State Police of this decision. Deputy Director Michael Bozza offered his opinion that the State Police should "get rid of this trooper". Thereafter, on or about June 9, 1993 Superintendent Dintino again decided that he would not suspend the trooper and that IAB should proceed with the investigation and disciplinary action.

In addition, with regard to the insubordination charges, the trooper can assert that he did not fully understand the instructions provided to him by members of the Internal Affairs Bureau. Clearly, the trooper must meet with IAB officials when ordered to do so. Based upon the potential criminal offenses involved in his domestic matters and the bad check cases, he could certainly assert his Miranda rights and not answer particular questions posed to him.


Ultimately, I think we will prevail in obtaining a termination of this particular officer. The only real concern is that no disparate treatment occurs with regard to the immediate suspension pending outcome of the potential disciplinary actions. Perhaps, the officer should be provided with a written order to attend a meeting with IAB. If he refuses that order then suspension is essential. When all of the potential criminal matters are viewed in this case, we most likely could successfully defend against any claim of disparate treatment with regard to the suspension.

ejm

**DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL**

INTEROFFICE MEMORANDUM

To: Major D. Trocchia
Division of State Police

From: Alexander P. Waugh, Jr. 
Counsel to the Attorney General
Legal Affairs Director

Date: July 29, 1993

Subject: ALLEGATIONS OF DISCRIMINATION IN THE STATE POLICE

I believe we should give serious consideration to having Col. Dintino send a memorandum to each trooper to the effect that he will not tolerate discrimination, reiterating the Attorney General's hostile work environment guidelines and the reporting system thereunder and having each trooper acknowledge receipt thereof. I think this would have the advantage of both reiterating the Superintendent's position and reinforcing the notion that any such incident should be reported so that they can be dealt with. If you concur, I would be happy to work with you and/or Capt. Mattos on preparing an appropriate memorandum.

A.P.W.

APW:pat

**DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL**

INTEROFFICE MEMORANDUM

To: SDAG Jack Fahy

From: Alexander P. Waugh, Jr. *AW*
Counsel to the Attorney General
Legal Affairs Director

Date: July 29, 1993

Subject: RACIAL PROFILING

Colonel Dintino has asked me to address a meeting of troop commanders, scheduled for August 3, 1993, on the issue of racial profiling. I have agreed to do so, although I have also asked to speak on the issue of harassment and hostile work environments. Since you are the expert on racial profiling, I would appreciate it if you would prepare an outline for me, or, even better, if your schedule permits, accompany me and address that issue, while I address the issue of harassment and hostile work environments. Please let me know.

A.P.W.

APW:pat

*Operator
notified*

File
RF
12/12/6



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7058
WEST TRENTON, NEW JERSEY 08626-0058
(609) 882-2000

ROBERT J. DEL TUFO
Attorney General

COLONEL JUSTIN J. DINTINO
Superintendent

FACSIMILE TRANSMISSION

FAX NO. (609) 882-6920

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET 8.

DATE: 7/14/92
TO : SPAG Alex Waugh
Legal Affairs

FAX NO: _____
TEL NO: _____

FROM: FIELD OPERATIONS OFF.
NJ STATE POLICE

PHONE : 609-882-2000

Since the implementation of Operation ROADSIDE, the program has made significant progress. The number of arrests and seizures made during the ROADSIDE details indicates that the New Jersey State Police have aggressively embraced the goals and objectives of this program.

Based on intelligence gathered as a direct result of ROADSIDE activities, it has been estimated that 80% of all narcotics entering New Jersey are concealed within commercial vehicles. In order to continue our efforts, funding for ROADSIDE must not only continue, but be increased.

It would be difficult to list the benefits of the entire program, as so many local, state and federal enforcement agencies have benefitted. However, through March 31, 1992, our ROADSIDE details have accomplished the following:

Drug Related Arrests	151
Other Arrests	85
Total Arrests	236

DRUGS

Cocaine Seized	6,166 lbs.
Value	\$103,074,240

Marijuana Seized	469.21 lbs.
Value	\$559,370

Heroin Seized	1.25 lbs.
Value	\$57,700

Amphetamines Seized	21 Tablets
Value	\$100

OTHER

Weapons Confiscated	34
Vehicles Confiscated	36
Currency Confiscated	\$205,222.68

ROADSIDE OPERATIONS

Roadside Details	70
Surveillance Hours	756 Hours
Educational Seminars	23
Number of Persons Attending	850

Funding will be necessary to continue this highly successful program. Designated, ROADSIDE II funding is requested for a total of six (6) troopers. Based on a task force concept, three (3) of the troopers will be taken from our Truck Enforcement Unit, one (1) from the Drug Interdiction Training Unit, one (1) narcotics dog handler and one (1) detective from the Intelligence Bureau.

Salary and Fringe Benefits	\$75,791.42 x 6 =	\$454,748.52
East Coast Strike Force Training & Seminars		20,000.00
Training/Travel		20,000.00
Informant Fees		10,000.00
Overtime		<u>15,000.00</u>
TOTAL		\$519,748.52

Operation ~~Convoy~~ ROADSIDE IIROADSIDE II

I.

Operation ~~Convoy~~ was developed to address the transportation mode of the Colombian Cartel's narcotic distribution enterprises. Through intelligence information and interviews of narcotic violators the New Jersey State Police learned that the major shipments of cocaine being smuggled into the United States via Mexico were being warehoused in the south and on the west coast.

Once the cocaine was secured in these warehouses the Colombians were hiring predominately Hispanic trucking networks to transport large quantities of cocaine to the New Jersey/New York metropolitan area. Although the cocaine was destined for retail stash houses located in the City of New York, the tractor trailers not only travelled through the state of New Jersey, but often times off-loaded the cocaine in various staging areas in North Eastern New Jersey.

Upon acquiring this information the New Jersey State Police became one of the few law enforcement agencies in the United States to dedicate both uniformed and plainclothes personnel to investigate and interdict the Hispanic transportation networks.

E

In order to accomplish such investigative goals as identifying the trucking networks responsible for transporting the cocaine, and subsequently interdicting them, a four (4) phase operational plan was developed. Phase one (1) of this plan teams up Operation Roadside personnel with plain clothes Detectives and focuses on highway interdiction of the trucks transporting the cocaine. This phase also produces invaluable intelligence information regarding the driver's of various trucking companies.

Phase two (2) consists of surveillances being conducted at various off-load sites and staging area's in an attempt to both interdict the shipment of cocaine and also arrest those members of the organization that are responsible for the off-loading of the drug and subsequent re-sale storage. In this stage of the operation plain clothes Detectives are used to conduct the surveillances and identify the targets, and uniformed personnel are utilized to interdict the shipment. The objective being to make the arrest appear as a normal patrol related arrest.

Phase three (3) employ's the use of advance investigative techniques such as wire intercepts, pole camera's etc. to arrest and dismantle both the transportation networks and the Colombian organization(s) that has hired them.

Phase four (4) addresses the acquisition of reliable informants who have information concerning the transportation networks. This phase is also a foundation for carrying out the three previous phases.

CONVOY STATS

III

STATISTICS FROM OCT, 1990 TO JUNE 1992

- Total number of individuals arrested : 26
- Total kilograms of cocaine seized : 3,900 / \approx 117 million dollars
- Total amount of cash seized : \$18,290.00
- Total number of tractor trailers seized: 3
- Total number of vehicles seized : 6
- Total number of motor homes seized : 1

12

The funds made available through Operation Roadside would enhance our investigative ability and increase our capacity to investigate and interdict the transportation networks utilized to transport the cocaine to New Jersey.

Currently the New Jersey State Police, Special Operations Unit assigned to the Criminal Enterprise and Racketeering Bureau is part of a federally funded OCDETF case known as "Operation Vegatron". The FBI is the lead agency in this investigation. The goals and objectives in this case are basically the same as outlined in our operational plan and "Operation Convoy". However, the State Police are only allotted a small amount of money to cover limited expenses.

An example of these expenses would be overtime, purchase of services, travel etc. A major problem encountered during the course of this investigation is that the State Police and the FBI have differing opinions on certain operational objectives. One such objective is highway interdiction and some of the goals associated with "Operation Roadside". And since expenditures have to be approved by the FBI, certain objectives are not feasible without the appropriate funding.

Therefore, if funding were obtained from the "Operation Roadside" grant the State Police could take a leading role in the investigation and interdiction of commercial vehicles transporting illegal narcotics. This funding would allow us to implement our ideas and operational plans without interference from outside agencies. Although the cooperate effort of a task force concept would still be strived for.

Presently, funding from this grant could be used to enhance all four phases of the aforementioned operational plan. Moreover, the New Jersey State Police has been one of the first agencies, if not the first in the United States to combine and dedicate the efforts of both uniformed and plainclothes personnel to a intra-divisional task force addressing narcotics trafficking in commercial vehicles.

12

The monies granted through "Operation Roadside" would be used for such investigative assets as:

- Informant Fee's:

Many times the individuals that are involved in transporting illegal narcotics in commercial vehicles fear for their life out of retribution from the Colombian Cartel. In several cases if the cooperating witness is not facing charges, some type of incentive is needed to gain their full cooperation. The FBI has experienced great success in gaining the cooperation of individuals involved with transporting illegal narcotics in commercial vehicles, by paying them large sums of money (upwards of \$35,000.00).

compartments would also be purchased from this category.

VI

Therefore, the following budgetary amounts are being requested from the "Operation Roadside" grant so that the above items may be purchased:

- | | | |
|--|---|--------------------------------|
| 1. Informant Fees | : | \$40,000.00 |
| 2. Rental of Surveillance Locations | : | 12,000.00 |
| 3. Surveillance Vehicle | : | |
| - Outfitting of tractor trailer with state of the art electronic surveillance equipment over and above what's in current Roadside surveillance van. (See attached specifications). | | |
| 4. Overtime | : | 40,000.00 20,000.00 |
| 5. Surveillance Equipment | : | 8,900.00 (GSA Price) |
| - Canon L1 8 mm Camcorder with | | |
| a. 250 mm lense | | |
| b. 500 mm lense | | |
| c. 2x extender | | |
| d. EOS adapter | | |
| e. Night Vision Kit | | |
| f. Dark Invader Adapter | | |
| g. Spare Battery Pak BPE-722 | | |
| h. CB 110 Car Battery Adapter | | |
| i. Pelican Camera Case | | |
| 6. Investigative Travel | : | 20,000.00 |
| 7. Training and Education | : | 12,000.00 |
| 8. Tractor Trailer/Commercial Vehicle Driving School | : | 13,000.00 |
| 9. Investigative Expenses | : | 10,000.00 |
| Total amount requested: | | <u>\$220,900</u> |

IF CUT \$190,900

*And to be forwarded
by Friday 6-26-92*

film to be developed. Also often times if the picture is taken on a roll of film with 24 exposures, the entire roll has to be wasted in order to have the film developed immediately.

- Investigative Travel:

Since the investigation into commercial vehicles transporting illegal narcotics usually originates in other parts of the United States, the need often arises to travel out of state to follow up investigative leads, and make arrests.

- Training and Education:

Many facets of commercial vehicle drug investigation and interdiction differ in other parts of the country. In New Jersey we experience the off-loading of the narcotics, in California and Texas they encounter the wholesale warehousing and on-loading etc. Therefore, to fully understand and enhance our investigative abilities to detect illegal narcotic transportation networks we should attend various training seminars concerning this subject that are given in different locations within the United States.

We should also take advantage of opportunities to work in other states when they are available. These opportunities will add to our overall knowledge of drug interdiction and enlighten us as to some of the other methods different states are utilizing to fight the war on drugs. These investigative techniques may be applicable to the State of New Jersey.

- Tractor Trailer and Commercial Vehicle Driving School:

In order to carry out covert operations within the criminal element utilizing tractor trailers and commercial vehicles to transport illegal narcotics, we need to have State Police personnel trained in driving these vehicles. Several opportunities have been past up to introduce undercover operatives into various transportation networks because they were unable to operate a tractor trailer.

- Investigative Expense:

Several other investigative expenses are incurred while attempting to carry out investigations concerning commercial vehicle interdiction. Some of these expenses consist of having mobile telephones and pagers available for immediate communication. Often times last minute communications with informants and other personnel have to occur, whether or not it's a last minute change that might effect the entire job, or a life threatening situation. Currently, coin telephones in high risk drug area's do not allow you to receive incoming calls. Moreover, if you can find a coin telephone that works properly, it may not be a New Jersey Bell or AT&T accessible phone, thereby hindering your ability to make a call. Various equipment such as cordless drills used to detect hidden

- Rental of Surveillance locations:

During the course of conducting investigations such as these, it often becomes necessary to rent hotel rooms and apartments or houses that serve as surveillance vantage points and/or electronic surveillance plants. Many times the off-load of illegal narcotics occurs in a hotel parking lot or private location that is inaccessible to common vehicular surveillance.

- Surveillance Vehicle:

As with any other type of crime, in order to detect the presence thereof, law enforcement personnel must be able to enter the actor's environment to learn the interactions associated therewith. Many times illegal narcotic activities concerning tractor trailers occur within locations that either restrict the entry of cars (such as certain truck stops), or are not conducive to vehicular surveillance. Outfitting a tractor trailer with state of the art surveillance equipment that would enable us to conduct both covert and overt operations within the environment of the criminal element would give us a tremendous advantage and enhance our investigative and interdiction ability.

- Overtime:

Investigations involving the transportation of narcotics in commercial vehicles often times consist of a sequence of events that can stem over days at a time. The transport usually consists of obtaining the narcotic content in one part of the United States and transporting it to another. Once the illegal drug reaches it's destination, off-load arrangements have to be made that also encompass several hours or even days. From a law enforcement stand point it is very important to maintain the continuity of the act. This is usually accomplished by hours of surveillance by sufficient manpower. Insodoing, often times overtime is incurred.

- Surveillance Equipment:

Having the necessary surveillance equipment to conduct the operation is not only imperative to the prosecution of the case, but also to the moral of the men. Nothing is more frustrating then trying to do the job without the proper equipment. Items such a video camera that has the capacity to record the events of an illegal narcotic transaction in the hours darkness is a great asset that can vastly enhance the prosecutorial undertaking. Other items such as polaroid camera's also contribute to the success of the investigation. Many times a picture of a person, place, thing, or vehicle is necessary to have in order to identify that particular item to other personnel. Occasionally you are not afforded the opportunity to wait several days for the



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

November 6, 1998

PAUL H. ZOUBEK
DIRECTOR

The Honorable Charles A. Delehey
Presiding Judge, Criminal Part
Superior Court of New Jersey
Mercer County Civil Court House
209 South Broad Street, P.O. Box 8068
Trenton, New Jersey 08650

Re: In The Matter Of The Attorney General's Application
To Place Cases On The Inactive List
(State v. Owen Goodall, Indictment No. 92-0672)

Your Judge Delehey:

As you are aware, on Friday, November 6, 1998 the State filed a motion with Your Honor to place two cases venued in Mercer County on the inactive list. Following the filing of said motion, it was brought to my attention that the matter of State v. Omar Goodall was resolved by means of entry of a guilty plea under the terms of an agreement on the same date the motion was filed.

Counsel for defendant, Goodall, and the Mercer County Prosecutor's office were served with a copy of the State's motion to place the matter on the inactive list. Since the matter appears to have been resolved the State will withdraw its application as to the Goodall matter, unless an objection is raised by the parties.

Very truly yours,


John M. Fahy
Supervising Deputy Attorney General

hw
c: Gabriel Lependorf, Esq.
Alvin J. McGowen, Assist. Pros.

LIPS

New Jersey Is An Equal Opportunity Employer

OAG 006378

SP 127848



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

JOHN J. FARMER, JR.
Attorney General

PO Box 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

PAUL H. ZOUBEK
Director

June 7, 1999

Iain Johnston, Esq.
Special Assistant Attorney General
c/o Altheiner & Gray
P.O. Box 900
10 South Wacker Dr.
Suite 400
Chicago, Illinois 60606

Re: Expert Testimony

Dear Mr. Johnston:

Per your request, enclosed please find transcripts of proceedings in State v. Pedro Soto, et al. in the Superior Court of New Jersey, Law Division, which contain the testimony of Dr. James Fyfe. There are four transcripts dated April 17, 18, 19 and 24, 1995.

If you have any questions, feel free to call.

Very truly yours,

John M. Fahy
Assistant Attorney General

hw
Enclosures



New Jersey Is An Equal Opportunity Employer


OAG 006379

SP 127849

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Director Paul H. Zoubek

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: October 30, 1998

SUBJECT: Motion To Place Troopers Kenna And Hogan's Cases
On Inactive List

Attached please find revised motion papers in the above captioned matter incorporating your suggestions. Please note that I am the attorney signing the papers to lessen any heightened publicity that would occur if you or the Attorney General personally signed on behalf of the State.

Also, in consultation with officials in Middlesex and Mercer counties, it is my understanding that the court prefers that the motion papers be filed with the criminal presiding judges as opposed to the assignment judges. I have modified the papers accordingly.

The next important date is November 9, 1998 when a status conference and motion to suppress are scheduled for one of the cases in Mercer county. The papers for Mercer county should be filed prior to that date. Some delay has been encountered in ensuring the accuracy of the case list in Middlesex County to avoid any error in moving inactive any case where such action is not warranted. I will be meeting with Deputy First Assistant Prosecutor Julia McClure next week to verify the accuracy of the list.

Please advise me as to whether the papers can be filed.

J.M.F.

hw
Attachments

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF THE)
ATTORNEY GENERAL'S APPLICATION) VERIFIED PETITION
TO PLACE CASE ON THE INACTIVE LIST)

STATE OF NEW JERSEY)
SS.
COUNTY OF MERCER)

John M. Fahy, of full age, being duly sworn according to law, upon his oath, respectfully petitions the Court as follows:

1. I am a deputy attorney general of the State of New Jersey employed by the Division of Criminal Justice.

2. In the course of my employment I have become aware of an issue effecting certain prosecutions within Mercer and Middlesex Counties. Specifically, this issue involves the ability of the State to proceed with prosecutions while the State troopers who participated in the enforcement actions in said prosecutions are themselves the subject of an investigation being jointly conducted by law enforcement agencies in this state including the State Police and Division of Criminal Justice.

3. The subject troopers are John Hogan and James Kenna.

4. The subject criminal cases are listed in

Attachment 1 which is appended hereto.

5. While I am not personally involved in the investigation, as has been reported by the press, and confirmed by the Attorney General, a case involving a motor vehicle stop on the Turnpike in which several motorists were shot in which Troopers Hogan and Kenna participated is the subject matter of the investigation referred to in paragraph 2 above.

6. I am aware of the fact that Trooper Hogan has retained the legal services of Robert Galantucci, Esq. and Trooper Kenna has retained the legal services of John Arseneault, Esq. Both attorneys have been provided with notice of this petition as a courtesy. The State makes no representations in support this motion as to the positions or opinions of Troopers Hogan or Kenna.

7. The issue which I bring to the courts attention first came to my attention in the matter of State v. Omar Gittens, Indictment No. 98-03-0337, presently venued in Mercer County before the Honorable Andrew J. Smithson J.S.C.

8. Defense counsel in the Gittens matter, Robin J. Lord, Esq., in letters of July 24, 1998 and September 3, 1998 has sought information concerning the status and contents of the pending investigation involving the conduct of Trooper Hogan which she

claims is discovery her client is entitled to in part because it might contain "discoverable information affecting the credibility of a State witness." Letter of July 24, 1998. Copies of both letters from Attorney Lord to Matthew Regulski, Assistant Mercer County Prosecutor, on which I was also copied, are attached to this affidavit as Attachment 2 and 3.

9. The State does not contest the fact that Trooper Hogan is a relevant witness in the Gittens matter.

10. I have consulted with Assistant Attorney General Debra Stone who is aware of status and factual information developed to date in the investigation referred to in paragraph 2 above which in part involves Trooper Hogan. I have been advised by AAG Stone that the investigation is ongoing and for that reason no informed determination can be made at this time as to the legal and ethical obligations of prosecutors regarding discovery or proceeding with the pending prosecutions in which Troopers Hogan and Kenna are relevant witnesses.

11. Further, it is the position of the Attorney General's office that information regarding the ongoing investigation cannot and should not be revealed at this time due to concerns about

maintaining the integrity of the investigation.

12. Based upon the foregoing, the State, with authorization of the Attorney General, Peter Verniero, has filed the present consolidated verified petition requesting that the subject cases be placed on the inactive list for a period of 120 days to allow the State the opportunity to complete the investigation referred to in paragraph 2 and make an informed decision regarding the State's discovery obligations in the pending cases.

13. I have been informed that the Mercer and Middlesex County Prosecutor's Offices join in the present motion and have requested that said offices confirm this in a written submission to the court.

14. While the relief being sought is made by means of an ex parte verified petition pursuant to R.1:4-7, as a professional courtesy, defense counsel in the subject criminal cases listed in the accompanying Affidavit of Service have also been served copies with the moving papers.

15. In support of this verified petition the State also submits a letter in lieu of formal brief.

John M. Fahy
Deputy Attorney General
Division of Criminal Justice

Sworn and subscribed to
before me this day
of November, 1998.

An Attorney at Law of New Jersey

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
APPLICATION TO PLACE CASES :
ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having found good cause;

IT IS HEREBY ORDERED on this day of 1998, that the cases listed in attachment 1 are placed on the inactive list for a period of 120 days from the date of entry of this order.

Charles A. Delehey, P.J.S.C.

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
APPLICATION TO PLACE CASES :
ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having found good cause;

IT IS HEREBY ORDERED on this day of 1998, that the cases listed in attachment 1 are placed on the inactive list for a period of 120 days from the date of entry of this order.

Barnett E. Hoffman, P.J.S.C.



State of New Jersey
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 DIVISION OF CRIMINAL JUSTICE
 P.O. BOX 086
 TRENTON, NEW JERSEY 08625-0086
 TELEPHONE: (609) 984-6500

PETER VERNIERO
 ATTORNEY GENERAL

September 24, 1998

PAUL H. ZOUBEK
 DIRECTOR

LETTER IN LIEU OF FORMAL BRIEF ON BEHALF
 OF THE OFFICE OF THE ATTORNEY GENERAL

The Honorable Charles A. Delehey
 Presiding Judge, Criminal Part
 Superior Court of New Jersey
 Mercer County Civil Court House
 209 South Broad Street, P.O.Box 8068
 Trenton, New Jersey 08650

The Honorable Barnett E. Hoffman
 Presiding Judge, Criminal Part
 Superior Court of New Jersey
 Middlesex County Courthouse
 1 JFK Square
 New Brunswick, New Jersey 08903

Re: In The Matter Of The Attorney General's Application
 To Place Cases On The Inactive List

Your Honors:

Please accept this letter in lieu of formal brief in support of the State's application by verified petition to place various criminal cases within the venues of Mercer County and Middlesex County on the inactive list. The petition in made to Your Honors in your capacity as Presiding Judge, Criminal Part. Assignment judges are "responsible for the supervision and efficient management of all court matters within the vicinage..." R.1:33-4(c). A presiding judge of each functionl unit within the vicinage may be delegated judicial duties and responsibilities allocated to the assignment judge when so designated. R.1:33-6. The State



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Your Honors
Page 2
October 30, 1998

asserts that a consolidated application to the presiding criminal judge is in the public interest with respect to the present application since it will ensure the efficient utilization of judicial resources and consistency of procedures within the vicinage.

While the basis for the application is not specifically provided by court rule, trial courts clearly have the power to grant stays and to place cases on the inactive list in criminal matters. See State v. Clay, 230 N.J. Super. 509, 519 (App.Div. 1989) (case placed on inactive list while defendant was incarcerated in another state); State v. Ellis, 280 N.J. Super. 533 (App.Div. 1995)(citing to statutory provision N.J.S.A. 2C:1-3 allowing case to be placed on inactive list with permission of defendant being tried in another jurisdiction for offense based on same conduct); State v. County, 278 N.J. Super. 80 (App. Div. 1994) (case placed on inactive list where defendant was fugitive); State v. Mraovitch, 176 N.J. Super. 141, 143 (App.Div. 1980); (case was on inactive list while defendant was a fugitive); State v. Davis, 131 N.J. Super. 484 (App.Div. 1974) (murder indictment placed on inactive list based upon *ex parte* application of prosecutor after defendant was convicted of a prior death-carrying murder charge, although 11 years on inactive list was held to have denied defendant's right to speedy trial).

The present application to place cases on the inactive list is necessitated by the unique situation in which the State is responsible for conducting an ongoing investigation which concerns the activities of two State Troopers, Hogan and Kenna, who are also relevant witnesses in the subject criminal prosecutions. The nature of the ongoing investigation in part

Your Honors
Page 3
October 30, 1998

involves the actions of the officers in another matter in which a motor vehicle stop on the Turnpike participated in by both troopers resulted in the shooting of several occupants of the vehicle stopped. Clearly this is an important matter of public interest which must be investigated. At the same time it is easy to envision a scenario whereby such an investigation might lead to discoverable information which the State is obligated to provide to defendants in other criminal prosecutions in which the subject troopers are involved or might even effect the viability of the prosecutions in their totality. Equally evident is the fact that the integrity of the ongoing investigation and fairness to the subjects thereof should not be compromised by piecemeal decisions regarding the discovery rights of defendants in the subject criminal case by either the State or the courts. For this reason the State is forced to make the present application by means of verified petition pursuant to R.1:4-7.

While the State asserts it may lawfully proceed by means of *ex parte* verified petition, as a matter of courtesy to the two officers under investigation and the criminal defendants whose cases are affected by the order sought, notice has been provided to all such parties. This notice is provided in part due to the State's understanding that decisions regarding bail in the subject cases might be affected by the State's action in seeking the Court's approval in moving the subject case to the inactive list.

As mentioned previously, this motion is necessitated by the State's recognition that it must provide relevant police reports and statements of witnesses and other information which are within the possession, custody or control of the prosecutor. R.3:13-3(c)(6),(7) and (8);

Your Honors
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State v. Long, 119 N.J.Super. 439, 490 (1990). This is a continuing obligation of the prosecutor under our discovery rules. R. 3:13-3(g); State v. Laganella, 144 N.J.Super. 268, 281 (App.Div. 1976), appeal dismissed 74 N.J. 256 (1977). Moreover, the State also recognizes its federal constitutionally-mandated obligation to turn over exculpatory evidence within its knowledge or possession in whatever form to a defendant being prosecuted by the State. Under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny "[t]he suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment, irrespective of the good or bad faith of the prosecution." 373 U.S. at 87. The Supreme Court of this State recently explained and clarified when evidence will be deemed to be "material" in this jurisdiction for Brady purposes. In State v. Marshall, 148 N.J. 89, 156 (1997), it was held that evidence will be deemed to be "material," regardless of the status of defendant's discovery requests, in all instances "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. (quoting United States v. Bagley, 473 U.S. 667 682 105 S.Ct. 3375, 3383 (1985)).

Fully cognizant of its discovery obligations and need to protect the integrity of an important ongoing investigation, the State has no other option but to seek the court's approval in moving the cases which are the subject of the present application to the inactive list for a period of 120 days. This will allow the State time to investigate the matter involving Troopers Hogan and Kenna, and to review the reports, statements and other information developed

Your Honors
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October 30, 1998

during the course of the investigation to determine whether any information contained therein should be released to defendants in the affected cases to comply with the Constitution and R.3:13-3.

As indicated in the accompanying verified complaint, one criminal defendant has already sought discovery of the ongoing investigation file. The investigation has not been completed, however, and the State is therefore not in a position to fully and properly assess this request. The fact that a defendant has made a discovery application is not a triggering event. As discussed in State v. Marshall, supra, the status of a defendant's discovery request is not controlling. Rather, the State has an affirmative duty under Brady to provide defendant with relevant evidence which can affect his innocence or guilt. In the present case, the State cannot meet its obligation and make crucial decisions regarding the pending prosecutions until the investigation involving Troopers Hogan and Kenna is completed.

The fact that the matter involving Troopers Hogan and Kenna is an ongoing investigation strongly favors maintaining the secrecy of information developed to protect the integrity of the investigation. The Supreme Court of this State has recognized that one of the factors supporting grand jury secrecy is the need to protect the confidentiality of ongoing investigations. State v. Doliner, 96 N.J. 236, 247 (1984). Once an investigation has been completed, the need becomes significantly less compelling. Id. Courts have also balanced the State's need to protect the integrity of ongoing investigations against a defendant's discovery rights in other situations. In denying a target's pre-indictment application for

Your Honors
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discovery of wiretapped telephone conversations, the trial court noted that even under R.3:13-3 following indictment "[D]iscovery may be denied, restricted or deferred, with the court considering factors such as the need to protect witnesses from intimidation, the need for secrecy regarding informants as required for effective investigation of criminal activity, and the protection of confidential relationships recognized by law. R.3:13-3(d)(1)." In The Matter of the Application of John Doe, 184 N.J. Super. 492, 495 (Law Div. 1982). Protection of ongoing or future investigations was also a factor supporting the adoption of a privilege protecting against the automatic disclosure of surveillance site locations to criminal defendants similar to that applicable to informant information. See State v. Garcia, 131 N.J. 67, 74-75 (1993) ("**** non-disclosure avoids compromising ongoing surveillances") Likewise, it is clear that secrecy requirements must be preserved to protect the integrity of the ongoing investigation which had necessitated this application.

Equally clear is that the pending prosecutions should not be dismissed while the State completes the ongoing investigation to determine its discovery obligations and possibly the viability of the prosecutions without a demonstration by a particular defendant that such action has resulted in a denial of his speedy trial rights. The State fully recognizes the fact that it is seeking to place the subject cases on the inactive list and will be bound by the consequences of such action. Before any case is dismissed, however, the delay must be deemed unreasonable in accordance with the standards articulated in Baker v. Wingo, 407 U.S. 514, 519-20, 92 S.Ct. 2182, 2186-87, 33 L.Ed. 101, 110-11 (1972). See State v. Lang, 119 N.J.

Your Honors
Page 7
October 30, 1998

439, 469 (1990).

For the foregoing reasons the State respectfully requests that this Court grant the State's motion to move the listed cases to an inactive status for a period of 120 days.

Respectfully submitted,

Peter Verniero
Attorney General of New Jersey

By: John M. Fahy
Supervising Deputy Attorney General

hw

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
APPLICATION TO PLACE CASES :
ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having found good cause;

IT IS HEREBY ORDERED on this day of 1998, that the cases listed in attachment 1 are placed on the inactive list for a period of 120 days from the date of entry of this order.

Charles A. Delehey, P.J.S.C.

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
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ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having found good cause;

IT IS HEREBY ORDERED on this day of 1998, that the cases listed in attachment 1 are placed on the inactive list for a period of 120 days from the date of entry of this order.

Robert J. Longhi, A.J.S.C.

Attachment 1

HOGAN & KENNA CASES

Mercer County Cases

Indictment No.	Defendant's Name	Defendant's Attorney
98-03-0337	St. v. Omar Gittens St. v. Omar G. Goodall	Robin Lord Gabriel Lependorf

Middlesex County Cases

97-002864	Brown, Carlton A.	Boretti, Joanna
98-000191	Garnier, Rudolph	Sutherland, Ivan
98-000458	Harris, Jerome D.	Mallon, Thomas
98-000459	Powell, Thaddeus L.	Pezzullo, Nikole
94-002302	Stovall, Thomas J.	Boretti, J.
98-000581	Peters, Terence B. Peters, Kitson K.	Matlaga, Martin Werner, Kenneth
98-0080873	Move, Michael G.	Smink, Linda
98-001002	Butler, William S.	Matlaga, M.
97-2510	Avans, Rohan	Toto, A.
97-2622	Jackson, A.	Labrada, M.
98-000058	Michael, Cunningham	Lippel, Alan
98-000200	Mee, Kenneth	Matlaga, Martin
98-000639	Wilcox, Bruce B.	Hartmann, John
98-000691	Lanier, Terry L.	Hartmann, John
98-000696	Steplight, Damian	Muraskin, David

96-001079	Cuffee, Antoine M.	Tregoe, Elizabeth
98-000706	Green, Kwaune, J.	Boretti, Joanna
98-000780	McClain, Anthony L.	Barker, R.
95-003008	Ventura, Alfredo O. Medina, Hector	Public Defender Barker, Richard
98-000193	Napoleon, Maria-Con Christian	Boretti, J.
96-000140	Ramos, Cruz M.	Anderl, Mark
97-001891	Ramirez, Ismael C. Medina, Edgardo V.	Weichsel, John Lippel, Alan
97-002232	Lee, Terrence E.	Werner, A. Kenneth
97-002447	Donascimento, Oldrneol	Larson, Alexandra
97-002723	Carlos, James D.	Perez, Victor



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
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PETER VERNIERO
ATTORNEY GENERAL

December 30, 1998

PAUL H. ZOUBEK
DIRECTOR

John M. Chalko
Criminal Division Manager
Superior Court of New Jersey
Middlesex County Court House
P.O. Box 964
New Brunswick, New Jersey 08903-0964

Re: In The Matter Of The Attorney General's Application
To Place Cases On The Inactive List

Dear Mr. Chalko:

Enclosed for filing please find 27 original orders with attached case lists entered by the Honorable Barnett E. Hoffman, P.J.S.C., on December 11, 1998. These orders place the cases listed in the attachment for the 27 affected defendants on the inactive list for a period of 120 days. Please file said orders. If you have any questions, please feel free to contact me at (609) 984-2353.

Counsel for the 27 defendants are being served with a copy of this letter and a copy of the order with attachment.

Very truly yours,

John M. Fahy
Supervising Deputy Attorney General

hw
Enclosures
c: Julia L. McClure, Asst. Pros.
Counsel listed on Attachment 1

LIPS

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OAG 006399

SP 127869

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420


SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
APPLICATION TO PLACE CASES :
ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having heard oral argument in support and opposition thereto and having found good cause;

IT IS HEREBY ORDERED on this 11th day of December 1998, that the Middlesex County cases listed in attachment 1 appended hereto are placed on the inactive list for a period of 120 days from the date of entry of this order; and it is further

ORDERED that entry of this order does not limit defendants from filing bail applications or constitute a finding as to any future speedy trial motions.



Barnett E. Hoffman, P.J.S.C.

BARNETT E. HOFFMAN SLB
J.S.C.

Attachment 1

HOGAN & KENNA CASES

Middlesex County Cases

Indictment No.	Defendant's Name	Defendant's Attorney
212-2-98	Brown, Carlton A.	Boretti, Joanna
357-3-98	Garnier, Rudolph	Sutherland, Ivan
903-6-98	Harris, Jerome D.	Mallon, Thomas
906-6-98	Peters, Terence B. Peters, Kitson K.	Matlaga, Martin Werner, Kenneth
721-5-98	Moye, Michael G.	Smink, Linda
946-7-98	Butler, William S.	Matlaga, M.
1524-11-98	Avans, Rohan	Toto, A.
654-5-98	Jackson, A.	Labrada, M.
905-6-98	Wilcox, Bruce B.	Hartmann, John
833-6-98	Steplight, Damian	Muraskin, David
836-6-98	Cuffee, Antoine M. Patterson, William L.	Tregoe, Elizabeth Weiner, A. Kenneth
907-6-98	Green, Kwaune, J.	Boretti, Joanna
908-6-98	McClain, Anthony L. King, Wade	Barker, R. Hartman, J.
358-3-98	Napoleon, Maria-Con Christian	Boretti, J.
1204-9-97	Ramirez, Ismael C. Medina, Edgardo V.	Weichsel, John Lippel, Alan

Indictment No.	Defendant's Name	Defendant's Attorney
1549-12-97	Donascimento, Oldrneol	Larson, Alexandra
98-07-00946-I	Underwood, Robert	Labrada, Michele
97-11-01524-I	Williams, Richard	Weiner, A. K.
98-05-00654-I	Wright, Angela	Matlaga, M.
98-06-00833-I	Penn, Rochell	Oakley, D.R.
98-06-00833-I	Berryman, Troy	Larson, A.
98-06-00904-I	Mack, Sean	Pezzullon, A.
██████████	██████████	██████████
98-10-1397	Roberts, Elijah M.	Marain, Alan

SLB

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

TO: Mary L. Cupo-Cruz, Director
Legal Affairs

FROM: John M. Fahy, Assistant Director
Legal Affairs

DATE: April 14, 1994

SUBJECT: Legal Issues - State Police

Pursuant to your memorandum of April 11, 1994, the following matters are on my agenda with the Division of State Police:

1. Ruff v. NJSP - This is a lawsuit filed in the Law Division, Mercer County, in which a former trooper alleges that he was the subject of racial discrimination when former Superintendent, Colonel Justin J. Dintino failed to reappoint him. Former Trooper Ruff was the subject of an internal affairs investigation which was initiated when the Newark Police reported to the State Police that Trooper Ruff was found in female attire in an area of Newark frequented by transvestite prostitutes. At the time he was utilizing his State Police vehicle. During the course of the investigation it appeared that Trooper Ruff provided false information to the Newark Police Department and to the Internal Affairs Bureau of the State Police regarding the incident. This matter is scheduled for trial on May 2, 1994. A motion for summary judgment will be filed next week.

2. Henig v. NJSP - This is a civil action filed in Law Division, Ocean County by former Trooper Henig alleging that various members of the Division of State Police in the agency violated his constitutional rights with regard to the internal affairs investigation conducted against him. Our office has successfully obtained a dismissal of several counts of the complaint, including plaintiff's breach of contract action.

3. Belleran v. NJSP - This is a civil rights action filed by Trooper Vincent Belleran alleging that he was the subject of racial and ethnic discrimination with regard to work conditions and a disciplinary action initiated against him. A motion for summary judgment was granted by the District Court dismissing the case in its entirety. Belleran has now appealed to the Third Circuit. The brief has been filed on behalf of all State Police defendants. The matter is pending oral argument. In May, the Third Circuit will contact our office regarding the exact date of oral argument if it is required.

Mary L. Cupo-Cruz, Director
April 14, 1994
Page 2

4. Simmerman v. State of New Jersey, et al - This is a civil action filed in the Law Division, Cape May. The plaintiffs are persons prosecuted by the State for various sexual assault offenses which allegedly occurred at a day care center they operated. Various law enforcement officials from the Division of Criminal Justice and State Police participated in the investigation and were named as defendants in this law suit. Previously, the plaintiffs filed a similar suit in Federal District Court which was dismissed. Similarly, the State court action was dismissed, but now plaintiffs have filed a motion to amend their complaint. A brief is being prepared opposing that motion.

5. Just and Rivera v. NJSP - In this case, female trooper Gail Just and former Division of Criminal Justice secretary, Nilda Rivera, alleged that they were subjected to a hostile work environment caused by former State Police Lieutenant J. P. Smith. The Attorney General's Office previously investigated the discrimination complaint filed by Detective Just in which her basic allegations were confirmed. After extensive discovery in this matter, Attorney General Poritz and former Superintendent Justin J. Dintino determined that this case should be settled. A settlement agreement is presently circulating among the parties, and the trial court has dismissed the action with prejudice.

The terms of the settlement agreement are that Gail Just receive \$250,000, including attorney's fees from the State of New Jersey. The State Police will also not oppose her application to the State Police Retirement System for medical disability retirement. Plaintiff Rivera will receive \$150,000, including attorney's fees. Judgments in the amount of \$5,000 each will be entered against J. P. Smith in favor of the two plaintiffs. Smith is also required to waive any claim he has against the State of New Jersey regarding issues of representation and indemnification.

6. State Police Rules and Regulations - See memorandum submitted by SDAG John DeCicco dated April 13, 1994, Item 2. This project needs to be reinitiated. The State Police appointed a committee to work on their rules and regulations revisions, but as far as I know it has not met since the fall. I will contact State Police representatives and schedule the next meeting.

Mary L. Cupo-Cruz, Director
April 14, 1994
Page 3

7. Internal Affairs Bureau Manual and S.O.P. B-10 - Proposed revisions to S.O.P. B-10 and preparation of a manual dealing with investigation of internal affairs complaints and the conducting of investigations has undergone several drafts. I last met with IAB representatives on January 4, 1994 and suggested a few minor changes. Det. Roy Van Tassel is working on the revisions and I have advised him to submit them by the end of this month.

JMF:lg



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
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TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500
July 24, 1996

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

Frank E. Farrell, Esquire
Assistant Deputy Public Defender
Office of the Public Defender
210 South Broad Street
Trenton, New Jersey 08608

Re: State Police Motor Vehicle Stops

Dear Mr. Farrell:

I am responding to your letter of July 8, 1996, in which you advised me of two cases involving two officers in which the defense believes the stop may have resulted from racial profiling. The first matter listed involved Patrolman James Sharkey who is not a State Trooper. The second matter involved Trooper Kevin Goldberg. Discovery has already been provided to the Public Defender's Office involving a representative sampling of Trp. Goldberg's stops. Notwithstanding the foregoing, I will forward your letter to the State Police Internal Affairs Bureau for review.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
c: Capt. Richard Touw
IAB, State Police




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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: John Varga
Deputy Director
Resource, Planning, Management
Office of the Attorney General

FROM: SDAG John M. Fahy
State Grand Jury
Division of Criminal Justice 

DATE: September 6, 1996

SUBJECT: State v. Pedro Soto, et al.

The above-captioned matter involved a consolidated motion to suppress evidence in which defendants alleged that the State Police engaged in a pattern and practice of discrimination in making racially selective stops. After a six month hearing (74 hearing days), the trial judge granted defendants' motion. Former Attorney General Deborah Poritz, with agreement by Col. Carl P. Williams, N.J.S.P., determined that an appeal should be taken of this decision. The estimate of the transcripts I provided to the Attorney General through AAG Waugh was \$22,000.

Enclosed you will find a bill for the first eleven days of transcripts received. Kindly forward to the State Police for processing.

J.M.F.

hw
Enclosure



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
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PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

September 18, 1996

Dorothy C. Boss
Gloucester County Court House
Third Floor
P.O. Box 141
Woodbury, New Jersey 08096

Re: *State v. Pedro Soto, et al.*
Docket No. L-0675-91

Dear Ms. Boss:

Evidently there was a misunderstanding regarding the cost of ordering floppy discs of the transcript of proceedings in the above-captioned matter. I have been advised by Carol H. Vendzules of the Type-Right-Er that the cost would be .50 cents per page which, due to the length of the proceedings, would result in a cost greatly exceeding the State's original understanding.

Therefore, the State withdraws its request for a copy of the record of proceedings on floppy discs made in my prior letter of September 6, 1966.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
c: Carol H. Vendzules



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OAG 006408

SP 127878

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: SDAG Nancy Stiles
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: October 21, 1996

SUBJECT: State Police Racial Discrimination Litigation

1. Ruff v. N.J.S.P., et al.

Plaintiff, a former State Trooper who was not reenlisted, filed suit against the Division of State Police and several officials alleging racial discrimination (black) and disparate treatment in non-reappointment. In addition, plaintiff claimed that he was subjected to a hostile work environment while assigned to the Flemington and Newark stations.

The matter was bifurcated for trial purposes. The first case dealing with non-reappointment was "no caused" by the jury. The second trial dealing with a hostile work environment resulted in a verdict in plaintiff's favor regarding his environment claim, but no damages were awarded. Attorneys fees were awarded in the amount of \$35,504.90. Plaintiff was assisted in the second trial by approximately 10 other minority troopers who came forward and testified that they were also subjected to a racially hostile work environment. The State defendants were assisted in both trials by the fact that defendant was found at 4:00 a.m. in an area of Newark frequented by drug dealers and transvestite prostitutes in female attire while operating his State Police vehicle. This incident lead to an investigation and his eventual non-reappointment.

Plaintiff has filed an appeal of the verdict in the first trial and the trial court's denial of his motion for a new trial as to damages in the second trial. The State is cross-appelling solely as to the attorneys fee award.

2. Bellaran v. N.J.S.P.

Plaintiff is an active duty New Jersey State Trooper of Filipino national origin. He has filed a lawsuit in federal court under Title VII claiming racial discrimination and disparate treatment with regard to discipline, job assignments and promotion. He also claims that he was subjected to a hostile work environment. Plaintiff had been suspended for 1 year due to insubordination and other charges. This disciplinary action was upheld by the Appellate Division. Trial is scheduled later this year.

3. State v. Pedro Soto, et al.

This is a consolidated criminal matter in which 18 defendants claimed they were subjected to selective stopping practices of the New Jersey State Police due to their race (black) while traveling on the New Jersey Turnpike. The matter proceeded as a consolidated motion to suppress evidence. After a hearing over a six-month period comprising 75 court days, the trial judge found that the State Police had engaged in unconstitutional selective enforcement and suppressed all evidence arising from the "illegal" stops.

The State is appealing this decision based both on claimed unsupported findings of fact and application of an inappropriate legal standard for selective prosecution. Delivery of trial transcripts is behind schedule and it appears that the State will file its appellate brief in early 1997.

4. Mercer County "Racial Profiling" Case

The Mercer County Public Defender filed a consolidated motion in 4 criminal cases seeking to suppress evidence based upon alleged racial profiling by the N.J.S.P. in making stops on the Turnpike. The defense claimed the decision in State v. Pedro Soto supported their claim. The trial judge provided the defense with limited discovery and provided a deadline by which defendant could establish a "colorable basis" showing of racial discrimination. The defense failed to take further action within the generous time frame allowed by the Court. Defendants' motion was dismissed without prejudice on October 4, 1996 and trial dates were set.

J.M.F.

hw



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

November 25, 1996

Donald E. Hoffman
Assistant Attorney General
Maryland State Police
1201 Reisterstown Road
Pikesville, Maryland 21208

Dear Mr. Hoffman:

Per our prior telephone discussion, enclosed please find the State's brief before the trial court in the matter of State v. Pedro Soto, and a recent Appellate Division decision in the State v. Curtis Kennedy matter. As of this time, the Kennedy decision is still unpublished.

I look forward to meeting with you on December 10, 1996 at 10:30 at Moorestown Station on the New Jersey Turnpike. Det. Thomas Gilbert will contact you regarding directions.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosures



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OAG 006411

SP 127881

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: John M. Fahy
Senior Deputy Attorney General

DATE: December 5, 1996

SUBJECT: Profiling Issue

A. Litigation History

As you are aware, over the past several years our office has been involved in litigation regarding allegations that the State Police engage in a pattern and practice of selective enforcement based upon race in making traffic stops. The litigation follows an even longer period in which various organizations including the A.C.L.U. and the news media have periodically raised this issue.

The first formal motion that I am aware of in which the issue of selective enforcement by the State Police as an organization was raised involved stops made on the Turnpike by troopers assigned to the New Brunswick station. This case was State v. Charles Ellis Jones, et al. At the same time the Jones motion was pending, a criminal investigation was also being conducted by the Internal Affairs Bureau and the Division of Criminal Justice regarding complaints made by black and Hispanic motorists who claimed that they were physically assaulted or falsely charged by troopers from the same station.¹

¹ Eventually four road troopers and three superior officers were charged with a variety of criminal offenses arising from this investigation. Evidence revealed that several motorists had been physically assaulted. One case of planting evidence was substantiated. Several incidents of thefts of property taken from motorists at the time of their arrests were also charged. One black trooper who was charged and thereafter agreed to testify for the State entered a guilty plea to some of the criminal offenses. The remaining troopers were acquitted of all criminal violations. The four road troopers had not acquired tenure and were not reappointed by the Superintendent following the expiration of their initial appointment periods. The three supervisors retired in accordance with settlement agreements negotiated by our office on behalf of the State Police.

The existence of the criminal investigation greatly slowed the scheduling of the suppression motion in Middlesex County. During this delay, another motion was filed in State v. Kennedy in Warren County regarding the enforcement activity of troopers on Route 80. The protected classifications asserted pertained to minority motorists and out-of-state motorists. Initially, the trial judge denied defendants' discovery request and suppression motion. On appeal, the Appellate Division ruled that defendants had established a "colorable basis" of selective enforcement entitling them to discovery. State v. Kennedy, 247 N.J. Super. 21 (App. Div. 1991). This was the first case to establish a standard for seeking extraordinary discovery in a criminal prosecution when the issue of selective racial enforcement is raised.

On remand in the Kennedy litigation, the trial court found that the defendants failed to make a prima facie showing of selective enforcement based on race. The trial court found that a prima facie case of selective enforcement of out-of-state motorists had been established and scheduled a plenary hearing. Following a four-day hearing, the trial judge concluded that the State had proven that out-of-state vehicles were not targeted for enforcement of the traffic laws and denied the motion to suppress evidence. In an unpublished opinion, the Appellate Division affirmed but noted that trial court had "improperly favored defendants" by erroneously assigning to the State the burden of disproving the defense of selective enforcement.

Following the establishment of a standard applicable for discovery requests in the Kennedy case, a decision was made to enter into a consent order regarding discovery in the Jones matter. A three-day evidentiary hearing was held and the trial court concluded that the defendants failed to establish a claim of racially selective enforcement as it pertained to the troopers assigned to the New Brunswick station as whole and denied the consolidated motion to suppress. With regard to twenty particular troopers, the trial court found that sufficient evidence existed to permit any defendants charged by these officers to pursue additional motions to suppress in their individual cases. The issue pertaining to the individual troopers was largely negated by the fact that most of the criminal arrests involved had been made by troopers who were no longer employed by the State Police due to non-reappointment decisions or discharges based upon administrative charges arising from the investigation into the activities of troopers at the New Brunswick station. No further evidentiary hearings were held regarding the suppression motion filed in Middlesex County and neither of the parties appealed.

In 1992 a consolidated motion to suppress involving 18 black motorists was filed in Gloucester County under the caption State v. Pedro Soto, et. al. Following several years of discovery and statistical studies, an evidentiary hearing began in late

1994. After 75 hearing days, the trial judge found that the State Police assigned to the Moorestown station on the Turnpike engaged in racially selective enforcement of the traffic laws and suppressed all evidence flowing from the "unconstitutional" stops. Our office is presently appealing this decision, arguing that the trial court applied the incorrect legal standard for selective prosecution and improperly shifted the burden of proof to the State. Our office is also arguing that the trial court made erroneous findings of fact regarding the statistical proofs and evidence pertaining to the finding of an intentional discriminatory motivation which is an essential element of a selective prosecution defense. The unpublished Kennedy decision which chastised the trial court for improperly shifting the burden of proof to the State was released following the Soto decision by the trial court.

It should also be noted that one area of criticism by the trial judge in Soto dealt with training provided by the State Police Drug Interdiction Unit (D.I.T.U.). This program was modeled after a federal program developed by the Federal Drug Enforcement Administration. The name of the federal program, which included a film distributed by the F.D.E.A. throughout this country, was Operation Pipeline. The federal government throughout the duration of Operation Pipeline routinely relied upon the New Jersey State Police to provide instructors at seminars for law enforcement officers throughout this country. It is our position that an objective review of both the federal and state programs clearly demonstrates that unconstitutional racial profiling was not encouraged by these programs.

In the past several months following the issuance of the Soto decision, similar motions have been filed in Hunterdon, Mercer and Bergen Counties. All of these motions have been resolved. The Hunterdon County cases were resolved through plea negotiations. The Mercer County motion was dismissed due to the failure of defendants to actively pursue the motion within the time restraints established by the trial court. The Bergen County motion was dismissed due to the failure of defendants to establish a "colorable basis" showing of selective enforcement sufficient to support their discovery application. The only pending motion of which I am aware is in Burlington County, and the State is opposing defendants' discovery application based upon a failure to make a "colorable basis" showing of selective enforcement.

This issue has also been raised in other states, often in the context of civil suits. Our office is presently cooperating with the States of Maryland and Illinois in formulating defenses to such litigation.

Finally, in May of this year, the United States Supreme Court in U.S. v. Armstrong in effect slammed the door on selective enforcement applications in federal prosecutions. The U.S. Supreme Court ruled that before a defendant is even entitled to discovery from the government when claiming selective enforcement based upon race, he must produce credible evidence that similarly situated defendants of other races could have been prosecuted, but were charged. Regardless of the label used to articulate the discovery standard, the federal test certainly in practice has become much stricter than that utilized in New Jersey for meeting the "colorable basis" test.

B. Proactive Response

Following the Soto decision, the State Police with encouragement from our office, decided to take a positive proactive approach to address the issue of racial profiling. AAG Ron Susswein and I worked with a State Police Committee headed by Lt. Col. Val Littles, which was charged with reviewing all aspects of State Police activity which could impact on ensuring that racially motivated stops were deterred. It was determined that the official policy of the State Police already clearly prohibited racial profiling. SOP F-55 prohibits all forms of enforcement action based upon constitutionally protected classifications. In fact, SOP F-55 offers protections greater than those included in the constitution by prohibiting enforcement action based upon physical attributes such as the length of a person's hair and other physical characteristics.

It was also determined that a review of present caselaw including the status of the Soto decision should be presented to all sworn personnel in a training session. This training will take place in 1997 as part of an updated search and seizure course in which AAG Susswein is participating.

A search and seizure review board was reconstituted for the purpose of monitoring all search and seizure decisions and related caselaw. Updates will be provided to all State Police officers and to every police department in this state through a period newsletter.

Col. Williams has also repeatedly emphasized to all troopers that racial targeting will not be tolerated through various communications including the State Police newsletter.

Finally, the Internal Affairs Bureau has established an auditing procedure for dealing with complaints of racially selective enforcement. It was determined that

EAAG Alexander Waugh
December 5, 1996
Page 5

while the State Police have a professional process for investigating individual incidents, a void existed when analyzing claims of a pattern of discriminatory enforcement as it pertained to an individual trooper or unit of troopers. The audit system now undertakes a review of the subject trooper's overall enforcement pattern, rather than concentrating solely on the facts of a particular case.

J.M.F.

hw
c: Terrence P. Farley, Director



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

December 17, 1996

BDK Transcribing
Attn: Ms. Evelyn Donnelly
286 Clems Run
Mullica Hill, New Jersey 08062

Re: **State v. Pedro Soto**

Dear Ms. Donnelly:

I have forwarded for payment vouchers for transcripts for the following 4 dates: 11/28/94, 1/3/95, 1/4/95 and 1/5/95. Please check your records to determine that these vouchers cover all dates for which you prepared transcripts.

I will follow up the status of payment shortly and advise you regarding same.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



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OAG 006417

SP 127887



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

December 17, 1996

Ms. Diana Doman Transcribing
P.O. Box 67
Audubon, New Jersey 08106

Re: State v. Pedro Soto

Dear Ms. Doman:

I have forwarded for payment vouchers for transcripts for the following 28 dates: 1/17/95, 1/18/95, 1/19/95, 1/23/95, 1/24/95, 1/25/95, 1/30/95, 1/31/95, 2/1/95, 2/2/95, 2/6/95, 2/7/95, 2/8/95, 2/16/95, 2/21/95, 2/27/95, 2/28/95, 3/1/95, 3/2/95, 3/6/95, 3/7/95, 3/8/95, 3/13/95, 3/14/95, 3/15/95, 3/21/95, 3/16/95 and 3/20/95. Please check your records to determine that these vouchers cover all dates for which you prepared transcripts.

I will follow up the status of payment shortly and advise you regarding same.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



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OAG 006418

SP 127888



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

December 17, 1996

TERRENCE P. FARLEY
DIRECTOR

Ms. Carol H. Vendzules
The Type-Right-Er
Box 453
Monroeville, New Jersey 08343

Re: State v. Pedro Soto

Dear Ms. Vendzules:

I have forwarded for payment vouchers for transcripts for the following 21 dates: 3/22/95, 3/27/95, 3/28/95, 3/29/95, 3/30/95, 4/5/95, 4/10/95, 4/11/95, 4/12/95, 4/17/95, 4/18/95, 4/19/95, 4/24/95, 4/25/95, 4/26/95, 4/27/95, 5/1/95, 5/2/95, 11/14/95, 5/25/95 and 4/2/96. Please check your records to determine that these vouchers cover all dates for which you prepared transcripts.

I will follow up the status of payment shortly and advise you regarding same.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



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OAG 006419

SP 127889

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Dominick Caruso
Fiscal Control & Monitoring
Office of the Attorney General

FROM: SDAG John M. Fahy
State Grand Jury
Division of Criminal Justice 

DATE: December 18, 1996

SUBJECT: State v. Pedro Soto


The above-captioned matter was a consolidated motion to suppress heard in Gloucester County involving allegations that the State Police stopped motorists based upon their race. The hearing lasted 75 days and the trial judge granted defendant's motion to suppress. Our office has appealed that decision with the approval of former Attorney General Deborah Poritz and Col. Carl Williams. The cost of the transcripts is being paid by the State Police.

Attached you will find invoices for transcripts for 54 of the 75 hearings. The total of the attached invoices is \$16,502.

Please take appropriate action to process these invoices. If I can be of assistance, please contact me at 4-4461.

J.M.F.

hw
Attachments

	STATE OF NEW JERSEY PAYMENT VOUCHER (VENDOR INVOICE)		DOCUMENT				BATCH				ACTG PER.	FY
			TC	AGY	NUMBER		TC	AGY	NUMBER			
	PP START	SCHED PAY		CHK	OFF	F	RF	CK	(A) VENDOR ID NUMBER			
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL	143-56-3808	
PO #	PV DATE											

CONTRACT NO.	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
					\$ 2,078.00

(D) PAYEE NAME AND ADDRESS	(E) SEND COMPLETED FORM TO:
Carol H. Vendzules RD#1, Box 453 Monroeville, NJ 08343	John M. Fahy, SDAG Div. of Criminal Justice 25 Market St. Trenton NJ 08625-0085

(F) PAYEE DECLARATIONS

I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

Carol H. Vendzules
PAYEE SIGNATURE

AD/CTR
PAYEE TITLE

10/23/96
BILLING DATE

LINE NO	REFERENCE				LINE	(G) PAYEE REFERENCE
	CD	AGY	NUMBER			
1						
2						
3						CC-1348J State v. Soto

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
1										
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3										

RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX
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ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State v. Pedro Soto, ET AL.			4-3-95 - 176(p)	→ 352.00
	Dk. 9104-L-675-91			4-4-95 181 p	→ 362.00
	Original + one copy (APPEAL)				
	Motion to Suppress				
	3-22-95 Motion	88 p	2	\$2.00 →	176.00
	3-27-95 "	111 "	"	" →	222.00
	3-28-95 "	144 "	"	" →	288.00
	3-29-95 "	180 "	"	" →	360.00
	3-30-95 "	159 "	"	" →	318.00
	*(Seven dates)				TOTAL \$2,078.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.

John M. Fahy
Signature

Robert A. Brown
Title

12/16/96
Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

Authorized Signature

Title

Date



STATE OF NEW JERSEY
PAYMENT VOUCHER
(VENDOR INVOICE)

144277

DOCUMENT				BATCH				ACTG PER.	FY
TC	AGY	NUMBER		TC	AGY	NUMBER			
PP START		SCHED PAY		CHK CAT	OFF LIAB	F A	RF TY	CK FL	(A) VENDOR ID NUMBER
MO	DY	YR	MO	DY	YR				143-56-3808

PO # _____ PV DATE _____

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
					\$ 2,420.00

(D) PAYEE NAME AND ADDRESS
Carol H. Vendzules
RD#1, Box 453
Monroeville, NJ 08343

(E) SEND COMPLETED FORM TO:
John M. Fahy, SDAG
Div. of Criminal Justice
25 Market St.
Trenton, Nj 08625

(F) PAYEE DECLARATIONS
I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

Carol H. Vendzules
PAYEE SIGNATURE
AD/CTR
PAYEE TITLE
10/23/96
BILLING DATE

LINE NO	REFERENCE			(G) PAYEE REFERENCE
	CD	AGY	NUMBER	LINE
1				
2				
3				CC-1348J State v. Soto

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
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RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX
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ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State v. Pedro Soto, et al DK. Glou - L-675-91 Motion to Suppress	(Orig + 1 copy)			
	4-5-95 Motion	168 pgs	2.00	→	336.00
	4-10-95 "	174	"	→	348.00
	4-11-95 "	157	"	→	314.00
	4-12-95 "	190	"	→	380.00
	4-17-95 "	183	"	→	366.00
	4-18-95 "	161	"	→	322.00
	4-19-95 "	177	"	→	354.00
	(Seven dates)			TOTAL	\$ 2,420.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.


John M. Fahy
Signature
Deputy Attorney General 12/16/96
Title Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

Authorized Signature

Title Date

PV 6/93


	STATE OF NEW JERSEY PAYMENT VOUCHER (VENDOR INVOICE)		DOCUMENT				BATCH				ACTG PER.	FY
			TC	AGY	NUMBER		TC	AGY	NUMBER			
			PP START			SCHED PAY			CHK	OFF	F	RF
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL		
PO #	PV DATE											143-56-388

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
					\$2,060.00

(D) PAYEE NAME AND ADDRESS	(E) SEND COMPLETED FORM TO:
Carol H. Vendzules RD#1, Box 453 Monroeville, NJ 08343	John M. Fahy, SDAG Div. of Criminal Justice 25 Market St. Trenton, NJ 08625

(F) PAYEE DECLARATIONS

I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.


 PAYEE SIGNATURE
 AD/CTR 10/23/96
 PAYEE TITLE BILLING DATE

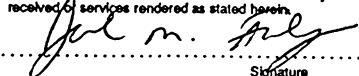
LINE NO	REFERENCE				LINE	(G) PAYEE REFERENCE
	CD	AGY	NUMBER			
1						
2						CC-1348J State v. Soto
3						

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO

RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX


ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State v. Pedro Soto, et al Dk. 4404-L-675-91 (orig + one copy) Motion to Suppress	170	pgs	2.00	340.00
	4-24-95 Motion	178	"	"	356.00
	4-25-95 "	150	"	"	300.00
	4-26-95 "	123	"	"	246.00
	4-27-95 "	78	"	"	156.00
	5-1-95 "	120	"	"	240.00
	5-2-95 "	211	"	"	422.00
	11-14-95 "				
	(Seven dates)				
				TOTAL	\$2,060.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.


 Signature
 Deputy Attorney General 11/16/96
 Title Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

Authorized Signature
 Title Date

	STATE OF NEW JERSEY PAYMENT VOUCHER (VENDOR INVOICE)		DOCUMENT				BATCH				ACTG PER.	FY
			TC	AGY	NUMBER		TC	AGY	NUMBER			
			PP START MO DY YR			SCHED PAY MO DY YR			CHK CAT	OFF LIAB	F A	RF TY
PO #		PV DATE								143-56-3808		
CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)				(C) TOTAL AMOUNT				
								\$104.00				
Carol H. Vendzules RD#1, Box 453 Monroeville, NJ 08343						(E) SEND COMPLETED FORM TO: John M. Fahy, SDA9 Div. of Criminal Justice 25 Market St. Trenton NJ 08625						
(F) PAYEE DECLARATIONS I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.												
						Central to Vendzules PAYEE SIGNATURE AD/CTR 10/23/96 PAYEE TITLE BILLING DATE						

LINE NO	CD	AGY	NUMBER	LINE	(G) PAYEE REFERENCE
1					
2					
3					CC-13485 State v. Soto

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
1										
2										
3										

RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX
1								
2								
3								

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State v. Pedro Soto Dk. GLOU-L-675-91 Orig. + one copy (APPEAL) Motion to Suppress				
	5-25-95 Motion	28 pgs	"	\$2.00	56.00
	4-296 "	24	"	"	48.00
	(Two dates)				\$104.00
TOTAL					\$104.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.

John M. Fahy
 Signature
 Deputy Attorney General 12/16/96
 Title Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

 Authorized Signature

 Title Date



STATE OF NEW JERSEY
PAYMENT VOUCHER
(VENDOR INVOICE)

PO # _____ PV DATE _____

DOCUMENT				BATCH				ACTG PER.	FY		
TC	AGY	NUMBER		TC	AGY	NUMBER					
PP START			SCHED PAY			CHK	OFF	F	RF	CK	(A) VENDOR ID NUMBER
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL	
											158-38-0590

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
					\$ 894.00

(D) PAYEE NAME AND ADDRESS	(E) SEND COMPLETED FORM TO:
BDK TRANSCRIPTION SERVICE 286 CHEMS RUN MULLICA HILL, NJ 08062	JOHN M. FAHY, SENIOR DAG DEPARTMENT OF LAW AND PUBLIC SAFETY DIV. OF CRIMINAL JUSTICE 25 MARKET STREET, CN 085 TRENTON, NJ 08625-0085

(F) PAYEE DECLARATIONS
I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

Emely H. Kelly
 PAYEE SIGNATURE
Certified Transcription 10/15/96
 PAYEE TITLE BILLING DATE

LINE NO	REFERENCE				(G) PAYEE REFERENCE
	CD	AGY	NUMBER	LINE	
1					
2					
3					STATE V. PEDRO SOTO, et al.

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO

RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	ORIGINAL TRANSCRIPT OF PROCEEDINGS: STATE OF N.J. PEDRO SOTO, et al. DOCKET NO. L-0675-91				
	HEARING DATES: 11/28/94	143 PAGES	@ \$2.00		\$ 286.00
	11/3/95	130 PAGES	@ \$2.00		260.00
	11/4/95	140 PAGES	@ \$2.00		280.00
	(ORIGINAL ONLY, SEALED) 11/4/95	4 PAGES	@ \$1.50		6.00
	11/5/95	31 PAGES	@ \$2.00		62.00
	HEARD SUPERIOR COURT - CHANCERY - GLOUCESTER COUNTY				
	TOTAL				\$ 894.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received for services rendered as stated herein.

John M. Fahy
Signature
Rep. of Nancy General 12/14/96
Title Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.


Emely H. Kelly
Authorized Signature
Certified Transcription 10/15/96
Title Date

1V 3/93

WHITE-Original CANARY-Duplicate

SP 127895

OAG 006425

 STATE OF NEW JERSEY PAYMENT VOUCHER (VENDOR INVOICE)	DOCUMENT				BATCH				ACTG PER.	FY			
	TC	AGY	NUMBER		TC	AGY	NUMBER						
	PP START		SCHED PAY		CHK	OFF	F	RF	CK	(A) VENDOR			
MO		DY		YR		CAT	LIAB	A	TY	FL	ID NUMBER		
PO #		PV DATE											
CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)				(C) TOTAL AMOUNT					
(D) PAYEE NAME AND ADDRESS						(E) SEND COMPLETED FORM TO:							
DIANA DOMAN TRANSCRIBING P.O. Box 67 Audubon, NJ 08106						JOHN M. FAHY, ESQUIRE Department of Law and Public Safety Division of Criminal Justice 25 Market Street - CN 085 Trenton, NJ 08625-0085							
(F) PAYEE DECLARATIONS I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.													
										<i>Pedro Soto</i> PAYEE SIGNATURE			
										<i>Transcriber</i> PAYEE TITLE			
										12/29/96 BILLING DATE			
LINE NO	REFERENCE				(G) PAYEE REFERENCE								
	CD	AGY	NUMBER		LINE								
1						State versus Pedro Soto							
2													
3													
	FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO		
1													
2													
3													
	RPT CT	BS ACT	DT	DESCRIPTION			QUANTITY	AMOUNT			ID	PF	TX
1													
2													
3													
ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM					QUANTITY	UNIT	UNIT PRICE	AMOUNT				
	Original and one copy of the transcripts in the matter of State v. Soto, heard on dates 1/17/95 to 3/21/95 (list attached)					4194 pages		\$2.00	\$ 8388				
									TOTAL			\$8388	
CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein. <i>[Signature]</i> Signature <i>Deputy Attorney General</i> Title 12/16/96 Date						CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved. Authorized Signature Title Date							

PV 6/93

RECEIVED

DIANA DOMAN TRANSCRIBING
P.O. Box 67
Audubon, NJ 08106
(609) 547-2506
(609) 547-8973
S.S. #147-44-1054

OCT 30 1996

STATE GRAND
JURY

October 28, 1996

TO: John M. Fahy, Esquire
Senior Deputy Attorney General

RE: State v. Soto

<u>Date</u>	<u>Disk</u>	<u>Deposit</u>	<u>Copies</u>	<u>@</u>	<u>Pages</u>	<u>Total</u>
1/17/95	cac	-0-	2	\$2.00	210	\$420
1/18/95	cac				203	406
1/19/95	pat				182	364
1/23/95	pat				162	324
1/24/95	pat				207	414
1/25/95	kd				143+a	288
1/30/95	liz				169	338
1/31/95	liz				166	332
2/1/95	as-44				190	380
2/2/95	bonita				168	336
2/6/95	as-44				131	262
2/7/95	jl-15				142	284
2/8/95	kcd-20				157	314
2/16/95	lac				188	376
2/21/95	jl-15				110	220
2/27/95	kcd-20				162	324
2/28/95	rc-8				198	396
3/1/95	jb				185	370
3/2/95	dmd				128	256
3/6/95	marge				143	286
3/7/95	jsl				283	366
3/8/95	rg-11				185	370
3/13/95	cn-11				174	348
3/14/95	sg				26	52
3/15/95	pat				144	288
3/21/95	bonita				137	274


Pages 4194 \$8388

Total for this bill is \$8388.

Two days are still outstanding. Will follow shortly.

SP 127897

OAG 006427

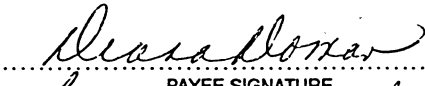
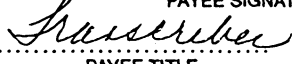
	STATE OF NEW JERSEY PAYMENT VOUCHER (VENDOR INVOICE)		DOCUMENT				BATCH				ACTG PER.	FY
			TC	AGY	NUMBER		TC	AGY	NUMBER			
	PP START	SCHED PAY		CHK	OFF	F	RF	CK	(A) VENDOR ID NUMBER			
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL	147-44-1054	
PO #		PV DATE										

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
			NET		\$558.00

(D) PAYEE NAME AND ADDRESS	(E) SEND COMPLETED FORM TO:
Diana Doman Transcribing P.O. Box 67 Audubon, NJ 08106	John M. Fahy, Esquire Div. of Criminal Justice 25 Market Street - CN-085 Trenton, NJ 08625

(F) PAYEE DECLARATIONS

I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.


 PAYEE SIGNATURE

 PAYEE TITLE
 12/1/96
 BILLING DATE

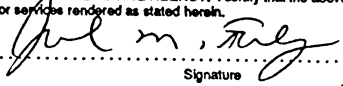
LINE NO	REFERENCE				LINE	(G) PAYEE REFERENCE
	CD	AGY	NUMBER			
1						Pedro Soto
2						
3						

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
1										
2										
3										

RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX
1								
2								
3								

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Original and one copy of the transcript in the matter of State v Pedro Soto heard on 3/16/95 and 3/20/96 - 279 pages	2		\$2.00	\$558.00
TOTAL					\$558.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.


 Signature

Reg. S. Attorney General
 Title
 12/1/96
 Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

 Authorized Signature

 Title

 Date

PV 8/93

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P.O. Box 67
Audubon, New Jersey 08106
S.S. 147-44-1054
(609) 547-2506
FAX (609) 547-8973

November 12, 1996

TO: John M. Fahy, Esquire

RE: State v. Pedro Soto

DATE	DISK #	DEPOSIT	COPIES	PAGES	@	TOTAL
3/16/95	sg/dmd	-0-	2	138	\$2	\$ 276
3/20/96	kd.			141		282
						<u>\$ 558</u>

This is the balance of our days. I am trying to put together a master index and as soon as this is possible I will send the same. Thank you for your patience and cooperation throughout.

RECEIVED

DEC 4 1996

STATE GRAND
JURY

OAG 006429

SP 127899



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

December 31, 1996

Ms. Carol H. Vendzules
The Type-Right-Er
Box 453
Monroeville, New Jersey 08343

Re: **State v. Pedro Soto**

Dear Ms. Vendzules:

In response to your letter of December 19, 1996, please be advised that I inadvertently left the dates of 4/3/95 and 4/4/95 out of the letter previously sent to you dated December 17, 1996. The voucher for these dates, however, was submitted for payment to the State Police fiscal office. These two dates were included among other dates for vouchers you submitted dated October 23, 1996.

I have not located the voucher you submitted dated October 7, 1996 for five (5) dates May 1995. You have advised me that you will resubmit your bill for these five (5) days on a new voucher. I apologize for the inconvenience.

I have been advised by the State Police fiscal department that payment will be forthcoming shortly after the New Year.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



New Jersey Is An Equal Opportunity Employer

SP 127900

OAG 006430



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085

DEBORAH T. PORITZ
ATTORNEY GENERAL

TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

TERRENCE P. FARLEY
DIRECTOR

March 7, 1996

Hon. Robert E. Francis, J.S.C.
Superior Court of New Jersey
Gloucester County Courthouse
P.O. Box 429
Woodbridge, New Jersey 08096

Re: State v. Pedro Soto, et al.
Docket No. I-492-7-88

Dear Judge Francis:

Recently the United States Supreme Court heard a matter, United States v. Armstrong, et al. No. 95-157, which involved a discovery application made by black defendants claiming selective enforcement by federal prosecutors in handling crack cocaine cases. Attached is a newspaper article concerning the case. Oral argument was held last week, but no information is available yet concerning the date on which the opinion will be issued.

I bring this case to your attention since it might have some relevance to the matter before Your Honor.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw

Attachment

c: Brent Hopkins, Asst. Pros., Gloucester
P. Jeffrey Wintner, Esq., Off. Pub. Def.
Wayne E. Natale, Esq., Off. Pub. Def.
Carrie Dingle, Esq., Off. Pub. Def.
Justin T. Loughry, Esq.



New Jersey Is An Equal Opportunity Employer

High court questions claim of court bias

■ The justices say they would need clear evidence of selective prosecution of black men before ruling there was bias.

THE LOS ANGELES TIMES

WASHINGTON — The Supreme Court justices indicated yesterday they were not ready to allow a claim of biased prosecution against black defendants without clear evidence white people were getting away with the same crimes.

"If there is selective prosecution" of blacks for selling crack cocaine, there should be many examples of whites not being prosecuted in federal court for selling crack, said Justice Stephen G. Breyer. "That should be easy. Why isn't it?"

Justice Ruth Bader Ginsburg and David H. Souter took the same view.

"You have no evidence of similarly situated whites" who are escaping prosecution, Ginsburg told a lawyer representing five black men from Inglewood, Calif., who were caught in a drug sting.

"How is there even a claim here... unless you first have that evidence?" asked Souter.

The highly skeptical questions came during an hourlong argument in another Los Angeles case that has put a national spotlight on the issues of crime, race and possible bias in the criminal justice system.

Defense lawyers and black leaders have long maintained that black men make up an undue share of the prison population because of racial bias — whether blatant or unconscious — on the part of police, prosecutors and judges.

But the justices made clear they were looking narrowly only at one aspect of this broad issue: Were federal prosecutors in Los Angeles showing racial bias by singling out black defendants in crack cocaine cases for prosecution in the federal system, where the punishments are more severe than in county courts?

In a typical year, several thousand people are arrested in Los Angeles County for selling or possessing crack cocaine. Most are prosecuted in the county courts.

Each year, however, the U.S. attorney selects about 50 cases for prosecution in federal court, where the law mandates 10 years in prison for those caught with an ounce or more of crack. In Los Angeles, and as in most urban areas, the vast majority of these cases involved black men.

Four years ago, a federal public defender challenged this pattern as a violation of the Constitution's guarantee of "equal protection of the laws." Barbara O'Connor, the public defender, filed a motion charging selective prosecution of the five black defendants who were arrested in Inglewood, a Los Angeles-area city. They were videotaped making crack sales that totaled 125 grams, or roughly 4 ounces.

She cited a single statistic to back up her claim of racial bias: all 24 crack cocaine cases handled by her office in 1991 involved black men.

Based on that fact, U.S. District Judge Consuelo Marshall ordered prosecutors to explain their criteria for taking cases into federal court. She also ordered them to furnish three years of data on state and federal crack cases in Los Angeles County.

Yesterday, Clinton administration lawyers argued that Marshall erred by not demanding that defense lawyers first show evidence that whites were not being prosecuted.

"The bottom line is that there has to be a substantial showing that individuals who are similarly situated (that is, selling like amounts of crack) are not being charged," U.S. Solicitor General Drew S. Days III told the court.

Strong

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: AAG Michael Bozza
AAG Debra Stone
AAG Ronald Susswein

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: March 11, 1996

SUBJECT: State v. Pedro Soto, et al.
(Turnpike Stops Case)

Attached you will find an opinion in which the court grants defendants' consolidated motion to suppress evidence based upon racially selective enforcement engaged in by State Troopers on the southern portion of the Turnpike. The judge found that defendants, primarily based upon statistics, established a prima facie case which the State failed to rebut.

I am preparing a memorandum which the Attorney General wants by tomorrow regarding an assessment of the viability of an appeal. Of course, the ramifications of this decision and the likelihood of success on appeal are factors relevant to our decision.

Any thoughts, suggestions or recommendations you have would be most appreciated.


J.M.F.

hw
Attachment

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: March 12, 1996

SUBJECT: State v. Pedro Soto, et al.
(Turnpike Stop Case)

Pursuant to your request, I have analyzed the decision rendered by Judge Francis in the above-captioned matter. First, it must be noted that the opinion is largely factual in nature. Unfortunately, the Court seems to totally accept all of the statistics offered by the defense as being sufficiently reliable for him to make comparisons regarding disparate treatment. Moreover, the Court went on to harshly criticize upper management of the Division of State Police for their failure to take steps to investigate and remedy the problem of selective enforcement which was brought to their attention from prior news reports, complaints and litigation. The strong factual findings made against the State Police makes this a difficult case to overturn on appeal.

In defense of this motion the State strongly challenged the public defender's assertion that a 15% standard of black stops should be adopted and applied uniformly as a benchmark or "quota." The Court relying on the public defender surveys and the opinions of their expert seems to have no problem with this benchmark. Likewise, the Court accepts that despite two-thirds missing data, that the State Police stops in actuality were 35.6% black during the selected time period, and that this figure rose to 46.2% between exits 1 and 3 at the southernmost position of the turnpike. The Court found this disparity to be "stark" citing to a civil employment case, Wards Cove Packing v. Antonio, 493 U.S. 642 (1989). The Court found that the disparity constituted a prima facie case of discrimination and then shifted the burden of proof to the State to "rebut" it.

It could be argued that the Court erred by improperly shifting the burden of proof to the State to explain the reason for the disparity. Even in employment cases, the employer need only articulate a bona fide business reason for the action taken, and the

burden of proof remains with the employee to prove discriminatory intent.

The Court relies heavily on State v. Kennedy as basis for placing the burden on the State to prove statistical disparity is not the result of racial discrimination. Kennedy is the Appellate Division decision authored by Judge Baime which adopted the "colorable basis" standard as the one to be met by defendants seeking discovery in racial profiling cases. Although the standard for prevailing with a selective enforcement defense was not at issue, Judge Baime in Kennedy stated that "[A] prima facie case is one that if unrebutted will lend to a finding of selective prosecution." What Judge Francis neglects to cite to in the present case are the State and Federal cases which clearly state that defendants have the burden of not only proving a discriminatory effect but also a "discriminatory purpose," Wayte v. United States, 470 U.S. 598 (1985); State v. DiFrisco, 118 N.J. 253 (1990). Reliance on Kennedy for redefining the standard to be applied for selective enforcement claims may be misplaced.

Further, Judge Francis by suppressing the evidence at this stage of the litigation totally ignores the requirement that a defendant must actually establish that the officer in his case acted with a discriminatory purpose. While a pattern of selective enforcement might exist, defendant's stop might not have been the product of that pattern. Defendant must not only establish that a class of persons were being treated differently, but must also place his case within the class of those adversely effected. There was no evidence in the present case as to the facts of any individual case. Therefore, at most the Court could have made its finding as to the existence of a discriminatory pattern and practice and deferred to the individual trial judges to determine whether a particular defendant was actually the victim of such a pattern.

While the Court was likely aware of the requirement of establishing a discriminatory purpose, this issue was not directly discussed in the opinion. Rather the Court chose a direct attack on Col. Pagano as a means of confronting this issue without articulating the legal standard. The attack on Col. Pagano and members of the Drug Intradiction Unit was unique and vicious. The Court chose only to note the most extreme incidents without regard for context and explanation. There was extensive evidence in the record that the State Police through standard operating procedures and training always emphasized compliance with constitutional requirements including rejection of race as a factor to be considered with regard to profiling. Unfortunately, the Court totally ignores these portions of the record and an Appellate Court will unlikely search the record to reverse factual determinations.

The Court ultimately concluded that "the utter failure of the State Police hierarchy to monitor and control a crackdown program like DITU or investigate many

EAAG Waugh
March 12, 1996
Page 3

claims of institutional discrimination manifest its indifference if not acceptance." While this is a harsh and condemning statement, one could argue it falls short of establishing a discriminatory purpose. At most it might establish recklessness or negligence. This, however, is not a desirable argument to make before the appellate courts of this state in a race case. While the trial judge might have technically misapplied the law and painted the strongest picture that he factually could for the defense, appellate courts will probably disregard these deficiencies to eradicate the evil of racially selective enforcement of traffic laws which the Court found to exist.

Finally, dicta in the opinion places a responsibility on the State Police to monitor the racial composition of stops made by troopers. This issue must be addressed or it will come back to haunt the State Police in future litigation.


J.M.F

hw

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Terence P. Farley
Director

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: March 15, 1996

SUBJECT: Selective Prosecution Litigation Involving
State Police Stops

As you are probably aware, Judge Francis rendered a decision in the Gloucester County litigation adverse to the State Police regarding racial profiling on the Turnpike. The Court found that defendants presented evidence of a prima facie case of selective stopping which the State failed to rebut. AAG Stone, AAG Susswein, AAG Paskow and I attended a meeting on behalf of the Division of Criminal Justice with the Attorney General in which the viability of an appeal was discussed. The consensus of opinion is that the trial judge based his decision on unreliable statistics and improperly shifted the burden of proof to the State. All of us concur that it is unlikely a reversal will be obtained based upon the strong adverse factual findings made against the State Police, but recognized the need for an appeal due to the legal problems created by this decision. At the conclusion of the meeting the Attorney General made a preliminary decision to appeal. I am presently drafting papers with the assistance of DAG Sims from the Appellate Section.

The Attorney General also indicated that a strong effort should be made to confront this issue in Hunterdon County where a suppression motion is presently pending regarding stops on Interstate Highway 78. The issue of who bears the cost of this type of expensive litigation has arisen in the past and will most likely be an issue in Hunterdon County.

Attached you will find a letter from the State's expert in the Gloucester County case explaining that the county claims it has no funds to complete payment of their portion of the bill. When the motion was initially filed, the State Police and Gloucester County agreed to split the bill evenly. After paying \$21,689.35 of the total bill of \$87,632.32, Prosecutor Cotton has now voiced opposition to paying the remainder of the

Director Farley
March 15, 1996

county's portion. The State Police have agreed to continue paying their half of the bill, but Col. Williams believes the county should also pay half.

The issues of responsibility for representation and costs in defense of future motions were generally raised with the Attorney General who indicated that I should bring this matter up with you for input and resolution. In effect, CJ will be working to resolve this issue between the County Prosecutors and the State Police. Perhaps we should meet to discuss the best approach to resolve this conflict. It should be noted that in press comments Assistant Prosecutor Harvey Lester who is presently handling the Hunterdon County matter indicated that the State would be responsible for defending the motion in that county. He has not communicated this sentiment to me nor formally requested supersession to date.

J.M.F.

hw
Attachment
c: Deputy Director Michael Bozza
Deputy Director Debra Stone

**THE CENTER FOR
FORENSIC ECONOMIC STUDIES**

MARYLAND OFFICE:
4440 OAKTREE ROAD
ROCKVILLE, MARYLAND 20853
(301) 929-1965

SUITE 1200 - 1608 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19103
(215) 546-5600 - FAX (215) 732-8158
INTERNET: Foreco@Hslc.Org

NEW YORK OFFICE:
180 WEST END AVENUE, #15A
NEW YORK, NEW YORK 10023
800 966-6099

March 8, 1996

RECEIVED

MAR 14 1996

STATE GRAND
JURY

John M. Fahy, Esquire
Senior Deputy Attorney General
State of New Jersey
CN081
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625-0081

Dear Jack:

Thank you for attempting to obtain payment from the State of New Jersey, Division of the State Police for the Center for Forensic Economic Studies (CFES) for our work in support of State of New Jersey v. Pedro, et al. Lt. Fred Landsky contacted our office last week and indicated that the State Police would only make payment for one-half of the total costs. He indicated that the State would forward \$27,476.38. This still leaves an unpaid balance of \$22,126.80.

We were in trial in this matter a full year ago. At that time, you indicated to me that although Gloucester County had no further funds to allocate to this matter, the State of New Jersey would pay for the balance of Gloucester County's share. Some of the unpaid invoices extend back two full years. As you well know, this trial was a marathon lasting six months, with my personal testimony and cross examination extending over several weeks. At the beginning of this project, no one could have anticipated the length of this trial, nor the number of hours which ultimately had to be expended for this effort.

CFES and I fulfilled every request made by Gloucester County and the State of New Jersey. I trust the State of New Jersey will make good on the remaining outstanding balance of \$22,126.80. I have attached a summary table of the billings/payments for your reference.

Thank you for your attention in this matter.

Sincerely,



Leonard A. Cupingood
Vice President

LAC:pas
Enclosure

STATE of NJ v. PEDRO, et al.

DETAIL OF OUTSTANDING INVOICES

<u>Bill Number/Date</u>	<u>Amount</u>	<u>Paid By</u>		<u>Balance</u>
		<u>County</u>	<u>State</u>	
	(1)	(2)	(3)	(4)
11 04/6/94	\$7,688.76	-0-	\$ 3,844.38	\$ 3,844.38
23 12/2/94	4,314.03	\$ 2,157.01	-0-	2,157.01
26 01/6/95	18,211.20	9,105.60	-0-	9,105.60
30 02/3/95	20,853.48	10,426.74	-0-	10,426.74
33 04/4/95	24,990.80	-0-	12,495.40	12,495.40
34 05/1/95	11,117.00	-0-	-0-	11,117.00
35 06/6/95	<u>457.05</u>			<u>457.05</u>
Total	\$87,632.32	\$21,689.35	\$16,339.78	\$49,603.18



DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

To: ATTORNEY GENERAL DEBORAH T, PORITZ

From: SDAG JOHN FAHY *JA* Date: 3/21/96

RE: State v. Pedro Soto, et al.

-
- | | |
|--|--|
| 1. <input type="checkbox"/> See me. | 7. <input checked="" type="checkbox"/> For your information. |
| 2. <input type="checkbox"/> Phone me. | 8. <input type="checkbox"/> For your review and comment. |
| 3. <input type="checkbox"/> For appropriate action. | 9. <input type="checkbox"/> Per our conversation. |
| 4. <input type="checkbox"/> Investigate and report. | 10. <input type="checkbox"/> Per your request. |
| 5. <input type="checkbox"/> Reply directly, with copy to me. | 11. <input type="checkbox"/> Note and return (file). |
| 6. <input type="checkbox"/> Prepare reply for | 12. <input type="checkbox"/> Circulate and return (File). |
-

REMARKS: I assisted the State Police in drafting this statement. The message is essentially what Col. Williams and his senior staff want to say. I suggested modifications of language and caveats which were accepted. I believe the statement provides an appropriate balance and is legally sufficient.

hw

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

From the desk of:

DEBORAH T. PORITZ
ATTORNEY GENERAL

Date: 3/20/96 To: Jim Ciancia, Alex Waugh,
Jeff Miller & John Fahy

FOR YOUR SUGGESTIONS, IF ANY, AS SOON AS POSSIBLE

CONFIDENTIAL



STATE OF NEW JERSEY
DIVISION OF STATE POLICE
SUPERINTENDENT'S OFFICE
P.O. BOX 7068
WEST TRENTON, N.J. 08628-0068
609-882-2000 X-2264

CONFIDENTIAL

FACSIMILE TRANSMISSION

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET 3

DATE: 3/20/96 FAX NUMBER: 633-2835

TELEPHONE NUMBER: _____

TO: ATTORNEY GENERAL J. POJITZ

FROM: Col Carl A. Williams

COMMENTS: draft communication for your review and approval.

On March 4th of this year, Robert E. Francis, J.S.C., issued his decision in State v. Pedro Soto, et al, a case consolidating motions to suppress. The judge found that the “defendants have established a prima facie case of selective enforcement which the State has failed to rebut requiring suppression of all contraband and evidence seized.”

The full impact of the judge's ruling is yet to be determined. What it means, at this point, is that this judge feels the Division allows and tolerates discrimination and that personnel of the Division have targeted minorities for investigation and arrest. Needless to say, I strongly disagree with the judge's ruling and assertions. The Division of State Police does not, and will not, condone or tolerate any type of racial profiling.

I have conferred with Attorney General Poritz on this matter, and am pleased to announce that the decision has been made to take this case to appeal. The appeal has the full support of the Governor and the Attorney General.

In the interim, I urge all troopers to rely on their training. If a trooper has the legal basis to make a stop, the stop should be made. If, after making the stop, probable cause exists to proceed further, then the trooper should proceed. **Of course, legal basis or probable cause may not be dependent on race!** If we rely on our training, training that does not and never did include racial profiling, we will stand on firm ground.

Additionally, as a result of this case, it is likely that Division patrol related arrests may be challenged by suppression motions based on racial profiling. Motor vehicle stops, summonses

and arrests may be subject to statistical analysis by defense attorneys seeking to suppress evidence based on such profiling. And, while I disagree with the speculative statistics relied upon by this judge, road troopers and the entire Division chain of command must strive to document all objective basis for motor vehicle stops, summonses and arrests within the appropriate Division reporting system. Failure to do so will expose the Division and the member to further criticism. Therefore, it is essential to call in all stops with accurate description of vehicle occupants and to make notes on the rear of yellow copies in order that our Division can successfully defend future challenges.

I should note that while I am aware that some of our troopers use their vehicle's spotlight for safety purposes, particularly as concerns vehicles with fully tinted windows, this procedure should not be routinely utilized due to the perception that its purpose is to determine the racial character of the occupants of a vehicle. I am not suggesting the spotlight should never be used. I am saying that the spotlight should not be used prior to the point in time that the decision has been made to stop a vehicle.

In conclusion, the Division of State Police will continue to support troopers who do their jobs in a lawful manner. As long as there exists a legal basis, there cannot exist a viable claim of a violation of civil rights. Do your job correctly and this office, in conjunction with the Attorney General's office, will always provide the legal representation required to defend our members.



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

March 22, 1996

Honorable Robert E. Francis, J.S.C.
Superior Court of New Jersey
P.O. Box 429
Gloucester County Court House
P.O. Box 429
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.

Dear Judge Francis:

I have received and reviewed the proposed order submitted by Mr. Wintner regarding defendants consolidated motion to suppress. It appears that some clarification might be required regarding the actual holding made in Your Honor's opinion. The State believes that the actual holding is detailed on the first page of the opinion in the section that states:

After a lengthy hearing, I find defendants have established a prima facie case of selective enforcement which the State has failed to rebut requiring suppression of all contraband and evidence seized.

I assume this finding of selective enforcement pertains to selective stopping. As recited on the first page of the Court's opinion, the subject of defendant's action dealt with the area south of Exit 3 only. Each of the defendants was a motorist stopped and eventually arrested south of Exit 3.

The portion of the opinion cited by defendants in the proposed order deals with the targeting of blacks for "investigation and arrest between April 1988 and May 1991 both south of Exit 3 and between Exits 1 and 7A of the Turnpike." From participation in the litigation I assume the "investigation" would refer to the initial stop.



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Honorable Robert E. Francis, J.S.C.
Page Two
March 22, 1996

I merely point this possible ambiguity out since the State anticipates other litigation might arise based upon this order. The specifics as to the extent of the Court's finding is important regarding who might benefit from the ruling. Of course the Court is in the best position to articulate the parameterd of the actual holding. It appears the language quoted by the defense is more expansive than that contained in the holding on the first page of the opinion.

It should also be noted that the State was always under the impression that even if there was a finding of a policy of selective enforcement, that a second hearing would be required to determine under the facts of a particular case whether a defendant was actually the victim of such a policy. Evidently, Your Honor has held otherwise and this ruling might be utilized to effect other stops made of minorities.

Finally, in your opinion you note that 19 defendants joined in the motion. My review of the proposed order lists only 17 defendants. I will communicate this discrepancy to Assistant Prosecutor Hopkins since his office and the Public Defender's Office are in a better position to determine which defendants actually pursued the motion to suppress.

Respectfully submitted,



John M. Fahy
Senior Deputy Attorney General

hw

c: Brent Hopkins, Asst. Pros., Gloucester
P. Jeffrey Witner, Esq., Off. Pub. Def.
Wayne E. Natale, Esq., Off. Pub. Def.
Carrie Dingle, Esq., Off. Pub. Def.
Justin T. Loughry, Esq.



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

March 22, 1996

Dr. Leonard A. Cupingood
Vice President
The Center for
Forensic Economic Studies
Suite 1200
1608 Walnut Street
Philadelphia, Pennsylvania 19103

Re: State of New Jersey v. Pedro Soto, et al.

Dear Dr. Cupingood:

I am responding to your letter of March 8, 1996 regarding payment for services in the above captioned matter. As I indicated in our telephone conversation today, Lt. Fred Landsky advised me that the State would be making payment on its portion of the total bill. He expects to have a check cut in the amount of \$27,476.38 sometime today or early next week.

As your letter also indicates, this leaves an unpaid balance of \$22,126.80 which is the outstanding balance due from Gloucester County. In your letter you state that I indicated that the State of New Jersey would pay the balance since Gloucester County had no further funds to allocate to this matter. This statement is not accurate. What actually took place was that during the course of this litigation while you were actually appearing in Gloucester County, Assistant Prosecutor Brent Hopkins indicated that County Prosecutor Harris Cotton advised him that the County had no further funds for this matter. I indicated to you that despite this statement attributed to the County Prosecutor, that the requested services should be provided and that your firm



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OAG 006448

SP 127918

Dr. Leonard Cupingood
Page Two
March 22, 1996

would be paid. The issue regarding allocation of the payment was a matter for the governmental agencies to decide. Be assured our office will work with the County Prosecutor's office to resolve this matter as expeditiously as possible.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

hw
c: Lt. Fred Landsky, N.J.S.P.
Brent Hopkins, Asst. Pros., Gloucester

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: March 29, 1996

SUBJECT: State v. Pedro Soto, et al.

On Thursday, March 23, 1996, I called Judge Francis' chambers to determine whether he had signed an order suppressing evidence in the above-captioned matter yet. The date of filing of the order is important since the State is filing a motion for leave to appeal an interlocutory order.

Previously, I had filed objections to the proposed order submitted by defendants. In my letter to the judge I pointed out that the extent of the proposed order was broader in scope than that originally sought by defendants. I also questioned why no phase 2 hearing was ordered where the individual troopers could testify as to the particular facts of each case. From comments made by the judge at trial and his ruling which prevented the parties from introducing evidence pertaining to the individual cases at the consolidated hearing, it was the State's belief that further hearings would be required even if an unlawful pattern was found to exist.

Judge Frances personally returned my call. He indicated that I raised interesting issues which he wanted the defense to address also. He advised me that a further hearing either in person or by telephone conference would probably be required. He also assured me that an order would not be entered without notification to our office.


J.M.F.

hw

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury

DATE: March 27, 1996

SUBJECT: State v. Pedro Soto, et al.
Authorization to Order Transcripts

It is my understanding that the Attorney General has decided to appeal Judge Francis' ruling in the above-captioned matter. As was discussed at the meeting on March 25, 1996, there will be a need for transcripts if the Appellate Division grants the State's motion for leave to appeal. AAG Ann Paskow recommended that the transcripts be ordered at this time.

The estimated cost of the transcripts is \$22,000 as calculated by Dorothy Boss, Supervisor of Court Reporters for Gloucester County. There were 73 hearing days. I assume the bill will be forwarded to State Police for payment. The County Prosecutor's office has advised me that they are deferring to our office on the issue of appeal. The County is also balking at paying their entire half share of the expert fees in this matter. Director Farley will handle the issue of expert fees with the Prosecutor. I assume that any request to the County to pay for one half of the cost of transcripts will not be positively responded to.

Please advise .

J.M.F.

hw



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
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TRENTON, NJ 08625-0085
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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

April 10, 1996

Thomas Melani, Esquire
1135 Clifton Avenue
Clifton, New Jersey 07013

Re: State v. Chalas
Indictment No. S 903 95

Dear Mr. Melani:

The Division of State Police has forwarded your subpoena duces tecum in the above-captioned matter for response. Please be advised that the State Police do not keep "statistics of minority arrests" by troopers and therefore this information would be required to be manually tabulated. While the State Police under appropriate circumstances are required to produce existing records, they are not required to compile statistics and studies requested by parties in court proceedings.

Further, it is the position of the State that the request you have made is extraordinary discovery beyond that contemplated by R.3:13-3. The appropriate practice under such circumstances is to proceed by way of motion in which defendant makes a "colorable basis" showing justifying the ordering of additional discovery. See State v. Kennedy, 247 N.J.Super. 21 (App.Div. 1991). See also State v. Kuszubinski, 177 N.J.Super. 135, 141 (L.Div. 1980).

I am also copying the Assistant Prosecutor assigned to handle this prosecution to advise him of this discovery request.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
c: Asst. Pros. James Addis
Sgt. Zelenak



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NEW JERSEY STATE POLICE
INTERNAL AFFAIRS BUREAU
FACSIMILE TRANSMISSION



TO : SOAG JACK FAHY
LOCATION : DCJ
FAX # : 292-8546
FROM : KEITH VUONO

INTERNAL AFFAIRS BUREAU
DIVISION HEADQUARTERS
FAX NUMBER - 609 882-2033

COMMENTS DEP. DIRECTOR STONE ADVISED ME TO FORWARD
THIS CRIMINAL SUBPOENA TO YOUR ATTENTION - MY
APOLOGIES - RETURNABLE 4-12-96 130 PM - BERGEN
COUNTY. PLEASE ADVISE

TODAY'S DATE 4-9-96 TIME 4 25 PM
NUMBER OF PAGES 3 INCLUDING COVER

THOMAS MELANI

Attorney-At-Law

1135 Clifton Avenue

Clifton, New Jersey 07013

Telephone: 201-779-2266

Fax: 201-779-4109

April 1, 1996

Division of State Police
River Road
P.O. Box 7068
West Trenton, NJ 09628-0068

ATTN: Records Bureau

Re: State v. Willie Chalas and Marcos Peralta
Indictment No. S 903 95

Dear Sir:

Enclosed you will find a Subpoena Duces Tecum returnable April 12, 1996 at 1:30 P.M. at the Bergen County Court House, 10 Main Street, Hackensack, New Jersey before Judge Miller.

Very truly yours,

THOMAS MELANI

DL

ENC.

cc: New Jersey State Police
Totowa Barracks
New Jersey Attorney General

THOMAS MELANI, ESQ.
1135 CLIFTON AVENUE
CLIFTON, NJ 07013
(201) 779-2266
ATTORNEY FOR PLAINTIFF

STATE OF NEW JERSEY
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

vs.

INDICTMENT NO. S 903 95

WILLIE CHALAS
Defendant

CIVIL ACTION
SUBPOENA DUCES TECUM TO TESTIFY

TO: New Jersey State Police, IAB, River Road, P.O. Box 7068, West Trenton, NJ 08628

YOU ARE HEREBY COMMANDED to attend and give testimony before the above named Court at the Superior Court of New Jersey, Bergen County Court House, 10 Main Street, Hackensack, New Jersey 07601 before Judge Miller on April 12, 1996 at 1:30 P.M. on the part of the defendant, Willie Chalas in the above entitled action, and that you have and bring with you and produce at the same time and place a copy of the statistics of minority arrests by Trooper Brian Keith Long No. 4712 for the past eight years.

Failure to appear according to the command of this subpoena will subject you to a penalty, damages in a Civil Suit and punishment for contempt of Court.


DONALD PHELAN, CLERK OF
THE SUPERIOR COURT

THOMAS MELANI, ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

On _____ 1996, I, the undersigned, being over the age of 18, served the within subpoena by delivering a copy thereof to the person named therein, at _____ and by tendering to such person the attendance fee of \$ _____ and mileage of \$ _____ as allowed by law.

I certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____



State of New Jersey
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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

April 10, 1996

Frank Farrell, Esq.
Assistant Deputy Public Defender
Mercer Region
210 South Broad Street
Trenton, New Jersey 08608

Re: Discovery Motions

Dear Mr. Farrell:

This letter will memorialize our discussions following an appearance before the Hon. Rosemarie Williams, J.S.C., on Tuesday, April 9, 1996. At that time Judge Williams indicated she had previously entered an order requiring the State Police to produce some items of discovery to allow the defense in a number of cases to determine whether they would pursue suppression or further discovery motions as to selective prosecution based upon race. Judge Williams noted that no written order has been entered.

As you are now aware, I have handled similar applications in the past. I am willing to assist with the formulation of a consolidated consent order that would allow for a meaningful review. The State Police do not keep any statistics on the stopping practices of troopers based upon race. Therefore, to obtain such information a variety of records must be gathered and analyzed including patrol logs, patrol charts, summons and arrest reports. As we discussed, this could entail a considerable volume of material, and in the past the defense and State after consultation with experts have agreed on the production of records for a representative sampling of dates which would be statistically sound. If your office wants to arrange a meeting to discuss such a possibility, I would certainly be willing to cooperate.

In the alternative, you can serve me with a copy of a proposed order detailing the specifics of Judge Williams' prior rulings. I did not appear at any of the prior hearings and therefore copies of the proposed order should also be served upon all counsel of record



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OAG 006456

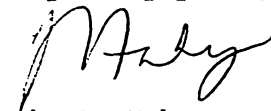
SP 127926

Assistant Deputy Public Defender Farrell
Page Two
April 10, 1996

including any assistant prosecutors, deputy attorneys general, and defense counsel who appeared detailing the matters the order pertains to and identifying the records to be produced. Merely indicating that statistics are sought as to the number of stops broken down by races of a particular trooper is insufficient. I wish the process was that easy but no existing record or report can be produced which would reveal such information. Unfortunatley, the statisttical data requested must be manually tabulated.

If you have any questions, please feel free to contact me at your convenience. It is my understanding that you will contact me once you have discussed this matter with your supervisors.

Very truly yours,




John M. Fahy
Senior Deputy Attorney General

hw
c: Hon. Rosemarie Williams

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Terrence P. Farley, Director
Division of Criminal Justice

FROM: John M. Fahy, Senior Deputy Attorney General
State Grand Jury 

DATE: April 19, 1996

SUBJECT: **Selective Prosecution Issue Involving State Police Stops.**

This memorandum is submitted to provide you with information concerning the status of developments involving the State Police "profiling" issue.

I. Litigation:

Judge Francis finally signed an Order on April 17, 1996 suppressing evidence in the Gloucester County cases. The State has 15 days to file an interlocutory appeal which is due on May 2, 1996. The motion papers and brief have been prepared by me and DAG Gerry Sims from the Appellate Section. AAG Stone and AAG Paskow will review the papers for the Division of Criminal Justice. The brief will be distributed next week to Attorney General Poritz, FAAG Ciancia, EAAG Waugh and SDAG Mary Jacobson, of the Division of Law. The Attorney General specifically requested joint DCJ and DOL review of the brief since some of the caselaw relied upon deals with the issue of disparate impact which is usually litigated in the context of civil employment cases.

In Hunterdon County, Judge Herr is holding a status conference on a Motion to Suppress based upon racially selective prosecution on Friday, April 16, 1996. I have kept in touch with Hunterdon County Assistant Prosecutor Harvey Lester who is handling the matter at the present time. The Public Defender's Office has recently retained an expert. Assistant Prosecutor Lester will suggest that the expert from the defense consult with our experts from the Center for Forensic Economic Studies to determine an adequate time period and number of days to be analyzed. Thereafter, the State and defense will enter into a discovery order by consent. This should buy some time while other efforts to resolve this matter which we discussed are pursued.

In Mercer County, I have agreed to work with the Mercer County Public Defender's Office and Prosecutor's Office in drafting a similar discovery order. This is inevitable since Judge Rosemary Williams has already made an initial ruling indicating that the defense is entitled to limited discovery to determine if an unlawful pattern exists

Director Farley
Re: State Police Stops
April 19, 1996
Page 2

in Mercer County similar to that in Gloucester County. As we discussed, seeking interlocutory appeal of discovery rulings at this time seems to be a futile option.

Apart from the discovery being provided to the public defender, the State Police are independently looking at records in the affected counties to assess whether any problem exists. I will be appraised of their findings, so this information can be considered in making tactical decisions regarding how to proceed in each county.

II. State Police:

A committee was formed by Col. Carl Williams to provide a institutional response to the Gloucester County ruling. Lt. Col. Val Little chairs the committee, which also includes representatives from the Internal Affairs Bureau, Training Bureau and the Affirmative Action Office. AAG Susswein and I also attend meetings at the request of State Police, and our input has been encouraged.

An attempt is being made to respond in a positive way to the decision by addressing the criticisms expressed by the court. This is particularly true with regard to formulating a procedure by which complaints of racial profiling can be adequately investigated. Capt. Touw of the Internal Affairs Bureau has developed a monitoring program which is being experimented with at the present time. It seems to be the consensus of the committee that a recommendation will eventually be made to Col. Williams to adopt a procedure which will formalize this program.

AAG Susswein is also working with representatives from the Academy to formulate a revised Search and Seizure training program. One aspect of this course will deal with the issue of racial profiling. Another issue being contemplated is instruction on proper report writing.

Other issues being considered are the possible inclusion of race on various State Police forms to solve the problem of missing racial data and instruction to supervisors within State Police regarding their responsibilities. I will continue to keep you advised of developments.

ca

c: James J. Ciancia, First Assistant Attorney General
Alexander P. Waugh, Jr., Executive Assistant Attorney General
Ronald Susswein, Deputy Director, Policy Bureau, DCJ



State of New Jersey
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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

April 24, 1996

Dorothy C. Boss
Gloucester County Court House
3rd Floor
P.O. Box 141
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.
Docket No. L-0675-91

Dear Ms. Boss:

I am writing to order a transcript of the proceedings in the above-captioned matter. The specific hearing dates are: November 28-30; December 6-8, 19-22, during 1995; January 3-5, 10-11, 17-19, 23-25, 30-31; February 1-2, 6-8, 16, 21, 27-28, March 1-2, 6-8, 13-16, 20-22, 27-30, April 3-5, 10-12, 17-19, 24-27, May 1-2, 15-17, 22-25, November 14 during 1995 and April 2, 1996.

Transcripts for proceedings on December 12-14, 1994 which contain the testimony of Kenneth Ruff were previously produced and are not being reordered.

If you have any questions, please feel free to contact me at (609) 984-4461. The bills can be sent to my attention at the Division of Criminal Justice, CN085, Trenton, New Jersey 08625.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



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State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

JOHN J. FARMER, JR.
Attorney General

PO Box 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

PAUL H. ZOUBEK
Director

August 17, 1999

R. Brian McLaughlin, Esq.
DeCotiis, Fitzpatrick & Gluck
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666

Dear Mr. McLaughlin:

Enclosed please find some items which I believe you left here while you were reviewing the materials from St. v. Soto. I have also made arrangements to transfer my Soto files to the Division of Law pursuant to the approval of FAAG Paul H. Zoubek.

If you have any questions, please feel free to contact me.

Very truly yours,

John M. Fahy
Assistant Attorney General
State Grand Jury

hw
Enclosures



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OAG 006461

SP 127931

DRAFT

DRAFT

DRAFT

DRAFT

TO: Peter, Dave, Paul:

FROM: Jack

Possible responses to address continuing issue of racial profiling by State Police (for discussion purposes only)

Most dramatic

- 1) appointment of a committee which would include non law enforcement members to assist the Attorney General and First Assistant in dealing with the issue.
- 2) withdrawal of State v. Soto appeal as a sign of good faith.
- 3) incorporating some non State Police component into review of the State Police internal affairs procedures.
- 4) requiring that all State Police training courses be videotaped and eliminating one to one training components.
- 5) eliminating the trooper of the year award, or at least redirecting its focus to a heroism award.
- 6) establishing a program integrity unit to monitor the stopping/searching patterns of all troopers.

Less dramatic

- 1) re-establishing a State Police Legal Advisory Unit within the Office of the Attorney General to monitor all aspects of State Police litigation, discipline, hiring, promotion, training and policy issues, or elevate such a unit within the Division of Law.
- 2) requiring that a mandatory in-service training program be conducted each year dealing with issues of racial (and other protected classifications) biases, hostile work environments and racial profiling issues.
- 3) requiring Attorney General approval of all training programs and course materials (of course this task could be delegated to a deputy attorney general or unit)
- 4) establishing procedures outside the normal internal affairs process within State Police to address complaints of racial profiling (similar to procedures for investigating bias complaints within State Police).



State of New Jersey
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P.O. BOX 085
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PETER VERNIERO
ATTORNEY GENERAL

April 1, 1998

PAUL H. ZOUBEK
DIRECTOR

LETTER IN LIEU OF FORMAL BRIEF ON BEHALF
OF THE DIVISION OF STATE POLICE

Honorable Mathias E. Rodriguez, J.S.C.
Superior Court of New Jersey
Chambers 504
Middlesex County Courthouse
1 Kennedy Square
New Brunswick, New Jersey 08903-0964

Re: State v. Ismael C. Ramirez & Edgardo V. Mendina
Indictment No. 97-09-01204-I
Docket No. 97-1891

Dear Judge Rodriguez:

Please accept this letter in lieu of formal brief in opposition to defendants' discovery motion seeking records from other cases involving the "stop of 'Hispanic,' 'Dominican' vans on the New Jersey Turnpike and/or other highways in the State of New Jersey, including but not limited to Gerardo's Transportation Service, M & J Transportation Company, and/or Ivan's Express Transportation Company, during calendar years 1995, 1996 and 1997."

The present application seeks extraordinary discovery not generally provided under R.3:13-3. The records sought are not relevant police reports involving the investigation of defendants' individual cases. See R.3:13-3(c)(8). Nor do they fall under any of the other eight delineated discovery items to which all defendants are entitled under subsection (c) of the criminal discovery rules.

Our Supreme Court has determined that under our criminal discovery



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Honorable Mathias E. Rodriguez, J.S.C.

April 1, 1998

Page 2

rule the police reports which are normally deemed to be "relevant material" and subject to disclosure are only those pertaining to defendant's own case. State v. Long, 119 N.J. 439, 489 (1990). In State v. Long, supra, the Supreme Court denied a defendant's request for police investigation reports on another individual who was never a suspect in the crime for which defendant was being charged. In addition, defendant's discovery request in Long sought evidence of other crimes in which the same caliber gun used to shoot the victims in his case had been employed. The Supreme Court found the denial of such a request to be appropriate and stated:

The court denied the request for complete information on all other county .25 caliber handgun crimes based upon overbreadth and absence of relevance required by Rule 3:13-3(a). We believe that the court properly exercised its discretion in denying the discovery.

In the present case defendant appears to be requesting records which could assist him in making a selective enforcement challenge. In such a case, the standard to be applied in assessing defendant's discovery application is that the movant "must establish a colorable basis for a claim of selective enforcement" before extraordinary discovery is ordered to be provided. State v. Kennedy, 247 N.J. Super. 21, 25 (App.Div. 1981).

A "colorable basis" standard is a lesser burden than establishing a full prima facie case. State v. Kennedy, supra at 34. The defendant, however, must produce some evidence to support each of the elements of selective prosecution claim. State v. Smith, 306 N.J. Super. 370, 377 (App.Div. 1997).

The United States Supreme Court has addressed what the proof requirements of a "colorable basis" standard of selective enforcement entail. In U.S. v. Armstrong, the Court ruled that a defendant seeking discovery in a selective enforcement case must produce some evidence tending to show the existence of the elements of the selective enforcement defense. 517 U.S. _____, 116 S.Ct. 1480, 134 L.Ed. 2d 687, (1996). In a selective prosecution case defendants must demonstrate that the prosecutorial decision had both "a discriminating effect and that it was motivated by a discriminating purpose." Wayne v. United States, 470 U.S.

Honorable Mathias E. Rodriguez, J.S.C.
April 1, 1998
Page 3

598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547, 556 (1985), State v. DiFrisco, 118 N.J. 253, 266 (1990). Therefore, the United States Supreme Court held that before the government is required to assume the burden of producing extraordinary discovery in federal prosecutions, a defendant is required "to produce some evidence that similarly situated defendants of other races could have been prosecuted, but were not . . ." U.S. v. Armstrong, supra, 517 U.S. at , 116 S.Ct. at 1488, 134 L.Ed. 2d at 701. Our Appellate Division in Kennedy appeared to have arrived at a similar conclusion by citing favorably to federal decisions which previously held that "a defendant must present some evidence tending to show the existence of the essential elements of the defense and that the documents in the government's possession would indeed be probative of these elements." State v. Kennedy, supra 247 N.J.Super. at 32. (Citations omitted). When dealing with traffic stops this evidence should contain "information on the racial composition of the group of persons who violate the traffic laws on the roadways patrolled by the State Police." Id. at 33.

Recently in the Smith decision the Appellate Division clearly accepted the Armstrong standard in affirming the denial of defendant's discovery request because defendant offered "no evidence that defines the group of persons who violate traffic law or specifies the disparate treatment of persons who could have been but were not stopped for traffic violations by the State Police." State v. Smith, supra, at 377. The Appellate Division in Smith determined that defendant's evidence in that case (which at least included some statistics and an expert analysis thereof) "[a]t best relates to defendant's belief that [the trooper] had a hidden agenda and profiled Afro-American citizens driving out-of-state vehicles by making traffic stops a pretext to arrest and search." Id. The same could be said about the application presently before this court except that in the present case defendant has failed to offer any statistics or analysis and relied entirely upon assertions made in an attorney affidavit without substantive support.

Even where defendant has made a "colorable basis" showing of selective enforcement, before the State is required to turn discovery over to defendants, the court must first conduct an in camera inspection of all materials to determine their relevancy and the State's need for confidentiality. See State v. Kennedy, supra at 35.

Honorable Mathias E. Rodriguez, J.S.C.
April 1, 1998
Page 4

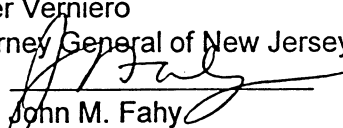
While defendant might argue that too heavy a burden has been allocated to him merely to obtain discovery, it must be remembered that the burden of proving a selective enforcement claim always remains with defendant. U.S. v. Armstrong, *supra*; State v. DiFrisco, *supra*, 118 N.J. at 266. In an unpublished opinion as to the merits of defendant's claims in Kennedy, the Appellate Division in justifying the burden placed on defendant cautioned lower courts to remember "[A] selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecution has brought the charge for reasons forbidden by the Constitution. State v. Kennedy II, Docket No. A-5756-93T4, slip opinion at 4 (App.Div. Nov. 1996).¹

In the present case defendants have totally failed to meet their burden of presenting some evidence as to the elements of selective enforcement. Instead, they attempt to rely solely upon affidavits which standing alone constitute nothing more than meaningless assertions. Clearly, this does not suffice to meet the "colorable basis" showing mandated under Kennedy to support defendants' application.

Therefore, it is respectfully submitted that defendants' motion for discovery be denied.

Simon Rosenbach is the assistant prosecutor assigned to this matter and he is authorized to represent the State at oral argument by appearing in opposition to this motion.

Respectfully submitted,

Peter Verniero
Attorney General of New Jersey
By: 
John M. Fahy

c: Simon Rosenbach, Assistant Prosecutor
John L. Weichel, Esq.

¹ A copy of the decision cited is appended hereto for the Court's convenience and is referred to as State v. Kennedy II.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5756-93T4

1750
11/12/96
A-5756-93T4
STATE OF NEW JERSEY,

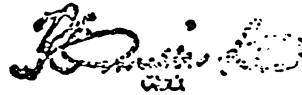
Plaintiff-Respondent,

CURTIS KENNEDY,

Defendant-Appellant.

FILING DATE
APPELLATE DIVISION

NOV 7 1996



STATE OF NEW JERSEY,

Plaintiff-Respondent,

ROBERT UNDERWOOD,

Defendant-Appellant.

A-5757-93T4

RECEIVED

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DIV. OF CRIMINAL JUSTICE
APPELLATE SECTION

Submitted October 17, 1996 - Decided NOV 07 1996

Before Judges Baime, P.G. Levy and Braithwaite.

On appeal from Superior Court of New
Jersey, Law Division, Warren County.

Susan L. Reisner, Public Defender,
attorney for appellant Curtis Kennedy
(Mordecai Garelick, Assistant Deputy
Public Defender, of counsel and on the brief).

Susan L. Reisner, Public Defender, attorney
for appellant Robert Underwood (Robert L.
Sloan, Assistant Deputy Public Defender, of
counsel and on the brief).

Peter Verniero, Attorney General, attorney
for respondent (Janet Flanagan, Deputy Attorney
General, of counsel and on the briefs).

PER CURIAM

Defendants' automobile was stopped for speeding in the westbound lane of Interstate Route 80 near the Pennsylvania border. The resulting search of the vehicle disclosed a substantial quantity of controlled dangerous substances. Following a jury trial, defendants were convicted of first degree possession of cocaine with intent to distribute (N.J.S.A. 2C:35-5b(1)) and possession of marijuana (N.J.S.A. 2C:35-10a(4)). On appeal, defendants argued that the Law Division erred by denying their pretrial motion to obtain internal State Police records allegedly supportive of their claim of discriminatory enforcement of New Jersey's traffic laws. While conceding that the stop of their automobile was objectively reasonable, they asserted it was actually prompted by an officially sanctioned or de facto State Police policy of targeting black motorists. In a reported opinion, we held that defendants established a "colorable basis" for their claim and were thus entitled to pretrial discovery on the issue of whether members of minority groups were being targeted by the State Police in their enforcement of our traffic laws. State v. Kennedy, 247 N.J. Super. 21 (App. Div. 1991).

On remand, the Law Division determined that the State Police had destroyed some internal documents and records sought by the defense in good faith and in accordance with standard operating procedures. The court also concluded that defendants had failed to present a prima facie case of selective enforcement based on race. On its own motion, however, the court found that the

Records produced by the State Police disclosed the possibility that New Jersey's traffic laws were being selectively enforced against out-of-state motorists. Although defendants never made that claim, see R. 3:5-7(a); R. 3:10-2; see also State v. McKnight, 52 N.J. 35, 48 (1968); cf. State v. DiRienzo, 53 N.J. 360, 384 (1969), and no attempt was made to seek leave to expand our remand order, see Jersey City Redev. Agency v. Mack Prop., 280 N.J. Super. 553, 562 (App. Div. 1995), a protracted evidentiary hearing was conducted to determine whether our traffic laws were being more rigorously enforced against out-of-state vehicles.

We need not describe in detail the evidence presented with reference to that issue. Suffice it to say, the defense and the prosecution presented conflicting statistical studies. At the conclusion of the hearing, the Law Division found the State's evidence far more persuasive than that presented by the defense. Defendants appeal. We affirm.

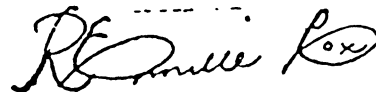
The Law Division's findings and conclusions are supported by substantial credible evidence contained in the record. State v. Johnson, 42 N.J. 146 (1964). While it is not our role to review the evidence de novo, id. at 161, we add that the statistical studies presented by the defense were flawed in many particulars and did not support the thesis that the State Police were targeting out-of-state motorists. In any event, we perceive no sound basis to disturb the result reached.

We note for the sake of completeness that the Law Division

erroneously assigned to the State the burden of disproving the defense of selective enforcement. In order to prevail on a claim of discriminatory enforcement, "the defendant must plead and prove intentional selectivity as well as an unjustifiable basis for the discrimination." State v. Di Frisco, 118 N.J. 253, 266 (1990). "A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." United States v. Armstrong, 517 U.S. ___, ___, 116 S.Ct. 1480, 1486, 134 L.Ed.2d 687, 698 (1996). Both the United States Supreme Court, ibid, and our highest court, State v. Di Frisco, 118 N.J. at 266, have taken great pains to explain that the standard is a demanding one. "In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present 'clear evidence to the contrary.'" United States v. Armstrong, 517 U.S. at ___, 116 S.Ct. at 1486, 134 L.Ed.2d at 698 (quoting United States v. Chemical Found., 272 U.S. 1, 14-15, 47 S.Ct. 1, 6, 71 L.Ed. 131, 142-43 (1926)); see also Wayte v. United States, 470 U.S. 598, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985).

The Law Division's error improperly favored defendants and obviously had no impact on the result reached. Accordingly, the order appealed from is affirmed.

hereby certify that the foregoing is a true copy of the original on file in my office.



Clerk



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STATE GRAND JURY

FAX NUMBER: (609) 292-8546

TO: JOHN L. WEICHSSEL, ESQ.

AGENCY: _____

FAX NUMBER: 201-488-3970

FROM: SDAG JOHN M. FAHY

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TO: ASST. PROS. SIMON ROSENBAUM

AGENCY: MIDDLESEX COUNTY PROS. OFF.

FAX NUMBER: 732-745-2791

FROM: SDAG JOHN M. FAHY

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PETER VERNIERO
ATTORNEY GENERAL

April 29, 1998

PAUL H. ZUBEK
DIRECTOR

LETTER IN LIEU OF FORMAL BRIEF ON BEHALF
OF THE DIVISION OF STATE POLICE

Honorable John F. Kingfield, J.S.C.
Warren County Courthouse
413 Second Street
P.O. Box 900
Belvidere, New Jersey 07823

Re: State v. Reginald Duckett, James Hamm and William White
Indictment No. S-1489-93

Dear Judge Kingfield:

Please accept this letter in lieu of formal brief in response to the unique motion by Assistant Prosecutor Michael J. Maher to have training materials of the New Jersey State Police in the court file of the Honorable John F. Kingfield, J.S.C., in the matter of State of New Jersey v. Curtis Kennedy turned over to the Honorable Joseph S. Conte for an in camera inspection in a criminal matter venued in Bergen County. Evidently, Assistant Prosecutor Maher believes he must take such action to comply with an order Judge Conte previously entered and possibly because the items are presently under seal in the Kennedy matter. I classify this motion as unique because past practice throughout this State would usually result in the County Prosecutor and Attorney General on behalf of the State Police consulting with one another in formulating a response to a Kennedy type discovery application. The Attorney General did not have such an opportunity in the Bergen County case. In fact, only today via facsimile was our office provided with defendant's moving

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Honorable Joseph S. Kingfield
April 29, 1998
Page 2

papers in the Bergen County case. In no way is this meant as a criticism of any party in the Bergen County matter. Instead, it is offered to alert Your Honor to the fact that our office was not provided sufficient notice or information prior to today to ascertain whether the "colorable basis" standard was met by defendants in support of their application in Bergen County.

Our office has also not had the opportunity to review the findings of fact and legal rulings of Judge Conte to determine whether it is appropriate for our office to file a formal motion for reconsideration. Therefore it is respectfully requested that Your Honor postpone any ruling on Assistant Prosecutor Maher's motion until our office makes such an application.

Since the time of the Kennedy litigation, caselaw has developed significantly in articulating what defendants must actually establish to meet the colorable basis test. See State v. Kennedy, 247 N.J. Super. 21 (App.Div. 1991). Defendants must now introduce some evidence that similarly situated defendants could have been stopped, arrested or prosecuted, but were not before discovery is ordered. See U.S. v. Armstrong, 517 U.S. ___, 116 S.Ct. 1480, 134 L.Ed. 2d 687 (1996); State v. Smith, 306 N.J. Super. 370, 377 (App.Div. 1997).

In State v. Smith, supra, defendants were found not to have met the "colorable basis" standard first articulated in the Kennedy case based upon their failure to produce evidence that showed disparate treatment of persons who could have been stopped but were not for traffic violations. It appears from the limited review our office has conducted that the supporting papers filed in the present Bergen County matter largely consist of those previously filed in the Smith case. This assessment by the Attorney General's office will form the basis of a possible motion for reconsideration.

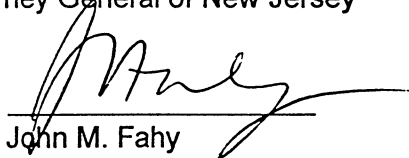
As indicated earlier, our office lacks sufficient information to date to determine whether and how the "colorable basis" standard was applied in the Bergen County case. If further review reveals that action must be taken, it would procedurally appear more appropriate to seek an appeal of the Bergen County order, rather than any action taken in Warren County. Under such circumstances it appears appropriate to adjourn the present motion until our office makes application for reconsideration in the Bergen County criminal matter.

Honorable Joseph S. Kingfield
April 29, 1998
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Finally, since the present application did not include notice to the parties in the underlying criminal action in Bergen County, I have not provided those parties with a copy of this letter. Our office has no objection to this letter being distributed to the parties in the underlying criminal matter if such action is deemed appropriate by this Court. Of course, when our office files a motion for reconsideration, the parties in the Bergen County matter will be noticed.

Respectfully submitted,

Peter Verniero
Attorney General of New Jersey

By : 
John M. Fahy

c: The Honorable Joseph S. Conte
Assistant Prosecutor William H. Schmidt
Assistant Prosecutor John Lakey

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
INDICTMENT NO. S-1489-93

STATE OF NEW JERSEY,	:	Criminal Action
Plaintiff,	:	<u>CERTIFICATION</u>
v.	:	
REGINALD DUCKETT,	:	
JAMES HAMM and	:	
WILLIAM WHITE,	:	
Defendants.	:	

I, John M. Fahy, an attorney at law in the State of New Jersey, certify as follows:

1. I am a Senior Deputy Attorney General assigned to the Division of Criminal Justice. My responsibilities include monitoring and responding to discovery applications in which defendants allege that they were stopped or arrested based upon a policy of racial profiling engaged in by the New Jersey Division of State Police and troopers employed by said agency.

2. On April 27, 1998 I received a Notice of Motion on short notice made by Bergen County Assistant Prosecutor Michael J. Maher which is returnable before Your Honor and seeks State Police training materials in the Court's file in the matter

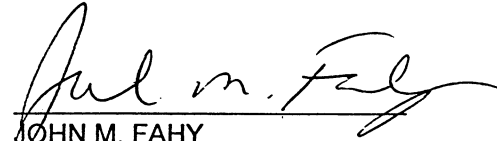
of New Jersey v. Curtis Kennedy. This motion evidently is made to allow Assistant Prosecutor Maher to comply with a discovery order previously entered by the Honorable Joseph S. Conte in a criminal matter before that court in the above captioned matter.

3. On April 29, 1998 beginning at approximately 5:00 p.m. pursuant to my request I was provided via facsimile with copies of the moving papers filed by defendants in support of their discovery motion in Bergen County.

4. From my initial and limited review of defendants' moving papers in the Bergen County matter it appears that in many respects they mirror those filed by defendants in State v. Smith, 306 N.J. Super. 370, 371 (App.Div. 1997).

5. In the Smith case the Appellate Division held that defendants had failed to make a sufficient colorable basis showing to support their discovery application.

6. Therefore, the State through the Attorney General's Office anticipates seeking to move before Judge Conte for reconsideration of the discovery order presented to this Court once an opportunity has been provided to review the findings of fact and legal rulings made in support of Judge Conte's order.


JOHN M. FAHY
Supervising Deputy Attorney General

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Attorney General Peter Verniero

FROM: SDAG John M. Fahy
Division of Criminal Justice



DATE: May 21, 1998

SUBJECT: Racial Profiling Issue

Attached is a hard copy of the draft statement you requested. It has also been sent to your secretary via e-mail. The draft statement reviews action taken to address the issue of racial profiling to date and discusses several new initiatives. Hopefully, this is in the ballpark of what you requested.

Past actions include:

- Discussion of standard operating procedure disallowing racial profiling (SOP F55, a copy of which is attached hereto. This SOP also addresses proper search procedures).
- Directive from Colonel Williams regarding procedure for documenting all stops including providing racial identifiers.
- Past in-service training regarding policy against racial profiling.
- Formation of committee to review issue of racial profiling.

New, or continued initiatives announced:

- Continuation of in-service training on racial profiling for all sworn members for "foreseeable future."
- Implementation of a parallel training program for supervisors.
- Monitoring and evaluation of stop data.
- Reinvigorating committee with goal of finding means of improving process for investigating claims of racial profiling.

Please note that the last two new initiative items are intentionally somewhat general. Before more specific recommendations can be made, all issues including

Attorney General Verniero
5/21/98
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those associated with complicating the discovery process in ongoing and future litigation must be analyzed.

I have reviewed the facts of the proposed statement with Det. Thomas Gilbert to ensure its accuracy and the existence of supporting documentation for the statements made. I believe it would be appropriate to have Col. Williams review the statement prior to its issuance and to attend the meeting.

If you require further assistance, I can be reached at :

(W) 984-2353
(H) 397-0347

J.M.F.

hw
c: Director Paul H. Zoubek, DCJ
Attachments

DRAFT

DRAFT

DRAFT

Statement

Another important issue discussed with the representatives of the Black Ministers Council of New Jersey is the continuing allegation of racial profiling made against the State Police. This issue primarily relates to enforcement action taken by troopers while patrolling the highways of this State and the belief of some that such action is disproportionately directed at members of the black community. Colonel Williams and I fully understand the seriousness of this issue, particularly in light of the unfortunate incident on the Turnpike which I previously announced is now under investigation and which will be thoroughly presented to a state grand jury.

I shared with the ministers the ongoing efforts made by the Attorney General's office and the State Police to aggressively address the issue of racial profiling over the past few years. First and foremost, everyone, including all law enforcement officers in this State, must understand that profiling based upon race or any other constitutionally protected classification is unlawful and unfair. I am confident that the vast majority of law enforcement officers comprehend and abide by this cherished constitutional protection. In fact, the New Jersey Division of State Police has a long standing policy which disallows troopers from considering any physical or personal characteristic including race, age, sex, length of hair, style of dress or type of vehicle in establishing reasonable suspicion or probable cause to take enforcement action, unless it is specifically and directly related to a particular criminal incident. Under this broad policy, officers engaged in routine traffic patrol would normally not have any justifiable reason to utilize race as a factor in making

a traffic stop.

I also apprised the ministers of an effort instituted approximately two years ago to ensure that the policy against racial profiling was being effectively implemented. A committee of officers and deputy attorneys general was formed to analyze the issue and make recommendations for improvements. Colonel Williams and I are pleased with the accomplishments made in the past, and make a commitment to the agencies we head and the public, including the Black Ministers Council of New Jersey, that we will reinvigorate this committee with the goal of making further progress.

Two areas in which success has already resulted are in the areas of training and procedure compliance. To ensure that all officers continue to understand and abide by the Constitution and State Police procedures, the State Police have, and will continue to receive, ongoing training in this area. At both the 1996 and 1997 Annual In-Service Training programs all sworn members were once again apprised of the Division's position and intolerance toward any member using race or ethnicity as a basis for enforcement criteria and the ramifications that would result from non-compliance with this policy. Both the Colonel and I are in full agreement that for the foreseeable future this topic should continue to be a part of every officer's in-service training program. As New Jersey's rich and diverse racial and ethnic population continues to grow, the best interests of the public and of the law enforcement community requires that all of us remember that justice and fairness are basic requirements of good law enforcement. I am pleased to announce that a parallel program is also being developed and will be implemented in the coming year directed at training supervisors regarding their role in addressing this important issue.

Besides training, ongoing efforts are also being made to ensure that supervisors

within the State Police have sufficient information to monitor the stopping practices and any resulting enforcement action taken by road troopers. Pursuant to standard operating procedures, each time a stop is made the officer taking action must communicate information to the dispatch center as to the location of the stop, direction traveled, a description of the vehicle stopped including registration number, and a description of the occupants of the vehicle including racial identifier. This is an important procedure which ensures both the safety of the officer and the members of the public who are the subject of the stop or enforcement action. All officers have received a written directive from the superintendent reminding them of this requirement, particularly as it applies to racial information, and I am pleased that the State Police report that adherence to this regulation has dramatically increased to nearly total compliance. A safety mechanism has also been instituted whereby the radio dispatcher must ensure that all relevant information has been provided before a stop is closed on the radio log. As with any other standard operating procedure, violations of Division policy are subject to investigation by the Internal Affairs Bureau and appropriate discipline. This procedure and the information it provides offers supervisors a valuable tool in monitoring the enforcement activity of road troopers. Similar documentation requirements are in effect regarding motor vehicle searches.

Finally, in an effort to demonstrate our commitment to resolving the issue of racial profiling, the Colonel and I are requesting that the previously mentioned committee review present procedures and make recommendations as to improvements that can be made in investigating claims of racial profiling that arise either in the context of complaints made by other officers or members of the public, or which arise in the course of litigation. I am confident that appropriate measures can be implemented involving complaint resolution

which prove as successful as those made in the areas of training and procedures compliance.

The Colonel and I appreciated the opportunity to meet with the black ministers and hear their concerns. Civil Rights and law enforcement issues are inherently intertwined.

The citizens of this State deserve, and I am certain they will continue to receive, effective and just protection by the New Jersey State Police.



S.O.P.

EFFECTIVE DATE: June 7, 1990
NUMBER: *F55

SUBJECT: MOTOR VEHICLE SEARCHES AND SEIZURES

REFERENCE	RESCINDS	O.P.I. NUMBER
S.O.P. C22, D7, F3, F31		K030

I. AUTHORITY:

By the authority vested in the Superintendent, procedures are hereby established governing motor vehicle searches and seizures.

II. PURPOSE:

The recognition of the constitutional rights of all persons and courtesy to all members of the public are fundamental to the operation of the New Jersey Division of State Police and critical to the prevention of charges of misconduct and violations of constitutional rights against its members. This Standing Operating Procedure is established to assure that members of the Division who enforce the law on the roadways of this State exercise their authority with courtesy, without bias or discrimination and within constitutional limits.

III. SCOPE:

- A. This Standing Operating Procedure establishes the guidelines for traffic stops, protective searches, motor vehicles searches, consent searches, arrests, searches incident to arrest and inventory searches of impounded motor vehicles.
- B. This Standing Operating Procedure cannot specifically address every factual situation members will encounter in the course of performing their duties. Members are expected to exercise reasonable judgement under the circumstances they encounter in light of their training, experience and the guidelines established in this Standing Operating Procedure.
- C. Table of Contents

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IV. SEARCHES AND SEIZURES, GENERALLY:

- A. The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution of 1947 protect persons from unreasonable searches and seizures. These constitutional provisions permit only "reasonable" searches and seizures.
- B. A search or a seizure is "reasonable" within the meaning of the federal and state constitutions only if it is performed;
 - 1. pursuant to a valid warrant issued by a neutral magistrate who has found that there is probable cause for the search or seizure; or
 - 2. under circumstances that fall within one of the narrow and limited exceptions to the warrant requirement that have been recognized as reasonable by the United States Supreme Court and the appellate courts of this State.
- C. An understanding of the legal definitions of "probable cause" and "reasonable suspicion" is critical: as outlined in this Standing Operating Procedure, brief motor vehicle stops and protective frisks may be performed on the basis of either reasonable suspicion or probable cause. Automobile searches, arrests and the issuance of summonses, in contrast, require probable cause.
 - 1. "Reasonable Suspicion" is a suspicion (more than a hunch, but less than probable cause to believe) based on identifiable, specific and particularized objective facts that, under the totality of the circumstances known to the member at the time, would cause a person of reasonable caution to suspect that a person is violating, is about to violate or has violated the law.
 - 2. "Probable Cause" is a firm belief based on identifiable, specific and particularized objective facts that, under the totality of the circumstances known to the member at the time, would cause a person of reasonable caution to believe

that a person is violating, is about to violate or has violated the law, or that a motor vehicle contains contraband or evidence of crime.

3. Evaluation of the Sufficiency of Objective Facts to Establish Reasonable Suspicion or Probable Cause

- a. At the time that a member takes action based on reasonable suspicion or probable cause, the member must be able to identify and describe the specific and particularized objective facts that establish the reasonable suspicion or probable cause.
- b. As long as the objective facts utilized establish reasonable suspicion or probable cause under the totality of the circumstances, the objective facts may include:
 - (1) specific information received from a reliable source or verified through observation;
 - (2) specific facts or conduct observed (including sounds heard or odors detected); and,
 - (3) knowledge gained from training and experience in detecting crime.
- c. Physical and personal characteristics such as race, age, sex, length of hair, style of dress, type of vehicle, and number of occupants of a vehicle may not be utilized as facts relevant to establish reasonable suspicion or probable cause unless the member can identify and describe the manner in which a characteristic is directly and specifically related to particular criminal activity.

V. THE NATURE OF LAW ENFORCEMENT ACTIVITIES ON THE ROADWAYS:

Members of the Division shall enforce traffic laws that protect motorists from unqualified and intoxicated drivers and unsafe and uninsured vehicles. N.J.S.A. Title 39. They shall enforce laws governing the transportation of dangerous and hazardous materials, N.J.S.A. 39:5B-18 et seq., and truck weight laws that protect our highways, N.J.S.A. 39:1-1 et seq. In addition, members shall enforce violations of tax laws such as the Motor Fuels Use Tax Act, N.J.S.A. 54:39A-1 et seq., the Cigarette Tax Act, N.J.S.A. 54:40A-1 et seq., and the Alcoholic Beverage Tax Act, N.J.S.A. 54:41-1. And, finally, they shall enforce the more traditional "criminal" activities including, but not limited to, those that deal with persons who transport controlled dangerous substance, controlled dangerous weapons or travel in stolen vehicles. N.J.S.A. Title 2C.

Enforcement of these laws requires good judgment under difficult circumstances. A lawful stop made for the purpose of issuing a motor

vehicle summons may place the member in a rapidly developing situation that eventually leads to the discovery of a more serious crime. In such a case, from stop, to arrest and confinement, the member shall avoid risks of physical danger and risks of violating the constitutional rights of the motorist. Such encounters often involve several separate searches and seizures. As indicated in the following Sections of this Standing Operating Procedure, a member shall be able to justify each separate intrusion as constitutionally reasonable.

VI. PERFORMANCE OF DUTIES THAT DO NOT ENTAIL EITHER SEARCHES OR SEIZURES

A. Members are expected to perform many duties that do not involve searches or seizures within the meaning of the State or Federal Constitutions and that do not require any special justification, apart from proper performance of the duties of a member of the Division. Examples of such duties include:

1. using radar and similar devices that detect the speed at which a vehicle is traveling;
 2. observing a vehicle, its contents or its occupants while a member is traveling or or positioned near a roadway;
 3. examining or taking control of property that has been thrown from a vehicle or otherwise abandoned in a manner that indicates that the owner has relinquished all interest in the property;
 4. patrolling -- i.e., driving alongside or behind a motor vehicle and making observations; and,
 5. rendering aid and assistance -- i.e., approaching and questioning motorists or pedestrians who are parked or standing alongside the roadway, so long as it is clear that the person is free to go, no orders or demands are made, and all questions are posed in a courteous manner.
5. Information acquired in the performance of these duties may be utilized to develop reasonable suspicion or probable cause for additional action as outlined below.

VII. MOTOR VEHICLE STOPS: INVESTIGATIVE DETENTION EXCEPTION TO THE WARRANT REQUIREMENT

A. Probable Cause

1. A member may direct a motorist to stop a vehicle if the member has probable cause to believe
 - a. that the driver or a passenger has violated, is violating or is about to violate any law for which the member is authorized to arrest or issue a summons; or

- b. that the vehicle contains contraband or evidence of crime.

B. Reasonable Suspicion

- 1. A member may direct a motorist to stop a vehicle if the member reasonably suspects,
 - a. that the driver or a passenger has violated, is violating or is about to violate any law for which the member is authorized to arrest or issue a summons; or
 - b. that the driver or an occupant of a motor vehicle is in danger or need of assistance.

VIII. CONDUCT DURING ANY AUTHORIZED MOTOR VEHICLE STOP:

- A. Caution. Each member shall approach every encounter with a motorist with caution. Members shall adhere to the procedures outlined in S.O.P. F3, concerning radio communications and assistance.
- B. Permissible Law Enforcement Techniques Following Any Valid Motor Vehicle Stop.
 - 1. A member who has lawfully stopped a motor vehicle may engage in the following activities without any further justification:
 - a. request the driver to produce license, registration and insurance card (Note: drivers operating vehicles registered out-of-state are not required to produce an insurance card pursuant to N.J.S.A. 39:6b-1 et seq.);
 - b. request the driver (or occupants suspected of criminal activity) to exit the vehicle, if desirable and safe under the circumstances;
 - c. in a courteous and non-threatening manner, make inquiries reasonably related to the investigation or offense (Miranda warnings are not required unless the person is placed under arrest or detained under circumstances that are so restrictive of liberty, either because of the length of the detention or the nature of the officer's exercise of control over the person's movements, that the person is properly considered arrested rather than briefly detained);
 - d. view the exterior of the vehicle and as much of the interior as can be seen without entry (all senses may be employed);
 - e. observe the demeanor and conduct of the driver and passengers;

- f. examine the motor vehicle identification number (even if it is necessary, to request the driver to move or for the member to move an object in order to view the number); and
 - g. in cases where suspicion or probable cause concerns the weight of a commercial vehicle, request the driver to proceed to the nearest weigh station.
 2. A member may utilize all objective facts learned while engaged in the conduct outlined above to dispel or confirm the probable cause or suspicion that led to the stop and to develop justification for additional action as outlined below.
 - D. Timely Termination of A Stop Based on Reasonable Suspicion
 1. A stop based on reasonable suspicion must be brief. This exception to the warrant requirement is a narrow one. The member may detain a motorist only for the length of time necessary to quickly dispel or confirm the suspicion that led to the stop through reasonable inquiries and observations of the kind described in subsection C above. Unless the member develops probable cause through use of the techniques described in subsection C, the member must allow the motorist to proceed. A stop that continues for too long a period of time or that involves more intrusive investigative techniques cannot be justified on the basis of reasonable suspicion.
 2. Appropriate reports should be completed. S.O.P. C22, S.O.P. D7.

IX. CIRCUMSTANCES UNDER WHICH LAW ENFORCEMENT TECHNIQUES THAT INVOLVE ADDITIONAL INTRUSION ARE PERMISSIBLE DURING A MOTOR VEHICLE STOP.

The following are examples of permissible law enforcement conduct justified by circumstances that may develop and observations that may be made during the course of a motor vehicle stop:

1. Protective Frisks: Reasonable Suspicion of Danger. If, at the time of the stop or during the course of a stop, the member has reasonable cause to believe that a person is armed and dangerous, the member may conduct a protective frisk (pat down search) of the person and search the passenger compartment of the vehicle for weapons. Weapons (or items reasonably suspected to be weapons) detected during the frisk of the person's outer clothing or the search of places in the passenger compartment likely to contain accessible weapons may be seized. Locked containers should not be searched under this exception.

2. Field Sobriety Tests: Reasonable Suspicion of DWI. If a member observes facts that confirm or give rise to a reasonable suspicion that the driver of the vehicle is under the influence of alcohol or drugs, the member may conduct field sobriety tests. The minimally intrusive searches and seizure involved in field sobriety tests are recognized as "reasonable" investigative techniques during an investigative stop. (Miranda warnings are not required unless the person is placed under arrest or detained under circumstances that are so restrictive of liberty, either because of the length of the detention or the nature of the officer's exercise of control over the person's movements, that the person is properly considered arrested rather than briefly detained.)
 3. Search for Credentials: Probable Cause.
 - a. If the driver of the vehicle is unable to produce the vehicle's registration and the member has probable cause to believe that there is a violation of a law requiring the document or probable cause to believe that the vehicle may be stolen, the member may search the places in the vehicle where such credentials are normally kept.
 - b. A member may utilize proper radio communications to verify with the Division of Motor Vehicle the ownership and the registration's expiration date of the stopped vehicle in lieu of a search for the vehicle's registration.
 4. Observations of Contraband or Evidence of Crime in Plain View. If, at any time during the course of a stop, a member is engaged in authorized conduct and unexpectedly observes contraband or items that the member has probable cause to believe are evidence of a crime, the member may:
 - a. Seize the contraband or evidence; and,
 - b. Rely on the contraband or evidence observed as objective facts giving rise to probable cause to conduct a search, make an arrest or issue a summons as outlined below.
- X. Probable Cause to Search the Automobile:
- A. Basis. If at the time of the stop or during the course of the stop, the member has probable cause to believe the the automobile contains contraband or evidence of crime the member may search the places in the automobile in which there is probable cause to believe that the suspected contraband or evidence would be found. Such a search is valid, without a warrant, under the Automobile exception to the warrant requirement.

- B. Scope. The scope of the search must be confined by the scope of the probable cause. For example, discovery of a small amount of a controlled substance consistent only with personal use, absent other evidence, would not justify a search of the trunk. In contrast, objective facts supporting the conclusion that the motor vehicle is being used to transport a substantial quantity of drugs would justify a search of a trunk.
 - C. Containers. If there is probable cause to believe that the motor vehicle contains evidence or contraband, containers capable of holding the contraband or evidence may be opened.
 - D. Timing. A motor vehicle search based upon probable cause may be performed without a warrant at the time of the stop or within a reasonable period of time following the stop, provided that the probable cause has not dissipated with the passage of time.
- XI. Probable Cause to Arrest or Issue a Summons
- A. If at the time of the stop or during the course of the stop, the member has probable cause to believe that any law for which the member is authorized to issue a summons or make an arrest has been violated the officer may issue the summons or make the arrest.
 - B. Arrest.
 - 1. A member who has probable cause to believe that a person has violated a motor vehicle law may make an arrest for a motor vehicle violation committed in the member's presence. An offense is committed in the officer's presence if the officer knows of the offense through use of his or her senses. As a matter of Division policy, however, a member who can complete a uniform traffic ticket for a violation of a statute or ordinance relating to the operation or use of motor vehicles, should issue a uniform traffic ticket without taking the violator into custody, unless
 - a. further tests for Dwi are appropriate;
 - b. the person has previously failed to respond to a summons;
 - c. there is reason to believe that the person is dangerous to himself, others or property;
 - d. there is one or more outstanding warrants for the person;
 - e. prosecution of the offense or prosecution of another offense would be jeopardized by release;
 - f. the person cannot provide satisfactory evidence of personal identification;

- g. there is reason to believe that the person will not appear in response to the summons.
 - h. the person is a juvenile not of age to legally drive in the state the person resides.
2. A member may who has probable cause to believe that a person has committed an offense other than a violation of the motor vehicle law may make an arrest for any offense punishable by more than one year imprisonment (whether or not the offense is committed in the officer's presence) or for any offense committed in the member's presence. As a matter of Division policy, however, a member should complete and issue the summons portion of a complaint-summons form (CDR-1) and later, complete the complaint portion of that form before the officer in charge of the station or before the judge, clerk or deputy clerk of the appropriate court, unless
- a. the offense is murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, aggravated criminal sexual contact, criminal sexual contact, aggravated assault, aggravated arson, arson, burglary, a drug offense that is a crime of the first or second degree, a crime involving the possession or use of a weapon, or a conspiracy or attempt to commit any of the foregoing crimes; or
 - b. any of the circumstances described in subsections b. through g. of the preceding subsection exist.

XII. SEARCH INCIDENT TO ARREST

- A. Basis. A member who has made a valid arrest may conduct a search incident to that arrest to protect the officer and preserve evidence.
- B. Timing. A search incident to an arrest must closely follow or be contemporaneous with an arrest.
 - 1. The search may not precede the arrest, and no evidence uncovered during a search incident to an arrest may be utilized to justify the existence of probable cause for the arrest.
 - 2. The search may not follow so long after the arrest that the justification for the search (preservation of evidence and protection of the officer and others) no longer exists. (For example, where the sole occupant of the vehicle is handcuffed and confined in a troop car and there is no physical danger to any person or danger of destruction of evidence, a search of the automobile could not be justified as a search incident to arrest. A search of the automobile at this stage could only be justified if the member had probable cause to believe that the vehicle contained contraband or evidence of the crime).

- C. Scope. In conducting a valid search incident to arrest the member may search the arrestee and the passenger compartment of the vehicle, including unlocked containers in the vehicle that may contain weapons or evidence.

XIII. ISSUANCE OF COMPLAINT-SUMMONS OR WARRANT COMPLAINT FOLLOWING ARREST.

- A. Following an arrest by a member, the officer in charge of the station should issue a complaint-summons unless any of the following circumstances justifying the preparation of a complaint-warrant exist:
1. the offense is murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, aggravated criminal sexual contact, criminal sexual contact, aggravated assault, aggravated arson, arson, burglary, a drug offenses that is a crime of the first or second degree, a crime involving the possession or use of a weapon, or a conspiracy or attempt to commit any of the foregoing crimes; or
 2. the person has previously failed to respond to a summons;
 3. there is reason to believe that the person is dangerous to himself, others or property;
 4. there is one or more outstanding warrants for the person;
 5. prosecution of the offense or prosecution of another offense would be jeopardized by release;
 6. the person cannot provide satisfactory evidence of personal identification;
 7. there is reason to believe that the person will not appear in response to the summons.
- B. Where circumstances justifying the preparation of a complaint-warrant exist, the officer in charge shall prepare a complaint-warrant forthwith, and the person shall be taken without unnecessary delay before the nearest available committing judge.

XIV. IMPOUNDMENT AND INVENTORY SEARCH

- A. A vehicle may be impounded under the following circumstances:
1. There is probable cause to believe the vehicle is stolen, N.J.S.A. 39:5-47, 39:10-6, 2C:65-1;
 2. There is probable cause to believe that the vehicle is unregistered or uninsured, N.J.S.A. 39:3-4, 39:10-6, 39:6b-2;

3. The vehicle is subject to forfeiture pursuant to N.J.S.A. 2C:64-1, because it was used in furtherance of illegal activity, is an integral part of criminal activity, or was obtained as a result of the sale of prima facie contraband;
 4. The vehicle is obstructing traffic or poses a danger to traffic;
 5. The condition of the vehicle renders it unsafe to drive;
 6. No occupant of the vehicle is in a condition to or eligible to drive.
- B. Absent probable cause to believe that a vehicle contains contraband or evidence of crime, an impounded vehicle may be searched in accordance with the Standing Operating Procedure governing inventory searches for the purpose of itemizing and protecting the property it contains only if:
1. the driver of the vehicle consents or has been given a reasonable opportunity to use alternative means of safeguarding property in the vehicle; or
 2. the vehicle is one that was impounded because it was abandoned and the owner is not present or available.

XV. CONSENT SEARCHES

- A. Consent searches are not "searches" within the meaning of the state or federal constitution because the person, by consenting, waives any expectation of privacy in the place searched.
- B. Consent is valid, under the law of this State, only if it is given knowingly and voluntarily. All the following conditions shall be met:
1. The member has made a valid stop or arrest;
 2. The member has requested consent to search in a manner that is neither threatening, harassing, coercive or intimidating;
 3. THE MEMBER HAS CLEARLY ADVISED THAT THE PERSON HAS A RIGHT TO REFUSE TO CONSENT;
 4. THE MEMBER HAS CLEARLY ADVISED THE PERSON THAT HE OR SHE CAN WITHDRAW CONSENT AT ANY TIME;
 5. THE MEMBER SHALL IMMEDIATELY CEASE A SEARCH UPON CONSENTEE'S WITHDRAW OF ORIGINAL CONSENT;
 6. The person granting the consent has a sufficient apparent interest in the property searched to grant consent; and
 7. The scope of the search is limited to the permission granted by the consenting party.

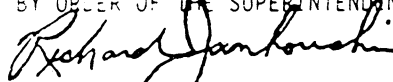
- C. As a matter of Division policy, no member will request consent to search a motor vehicle or its contents unless the member reasonably suspects that the search will yield contraband or evidence of crime.
- D. As a matter of Division policy, no member will perform a consent search unless the person granting consent has completed the Division's authorized consent to search form. See S.O.P. F31.

XVI. MOTOR VEHICLE STOPS NOT BASED ON REASONABLE SUSPICION OR PROBABLE CAUSE: DWI AND CREDENTIALS CHECK ROADBLOCKS.

- A. No member will conduct random stops of motor vehicles (stops not based on either reasonable suspicion or probable cause) unless each of the following conditions is met:
1. the stop is performed at a checkpoint or roadblock;
 2. the particular checkpoint or roadblock has been specifically approved by the Superintendent; and,
 3. the specific procedures to be employed at the checkpoint or roadblock have been specifically approved by the Superintendent.
- B. A member who has made an authorized, random motor vehicle stop may check credentials, observe the vehicle and its occupants and take other action as is specifically authorized according to the procedures for the particular random stop or as is warranted by observations made during the stop (See Sections VIII through XII).

XVII. In accordance with S.O.P. A1, "Orders," the Training Bureau Chief shall notify the Planning Bureau Chief, via channels, of any changes that may be necessary in this order.

BY ORDER OF THE SUPERINTENDENT



Richard Jankowski, Lt. Colonel
Deputy Superintendent

From: John Fahy
To: lpa1.lpa_ag.lparebu
Date: 8/24/98 5:42pm
Subject: In-car camera SOP -Reply

Yes

>>> Dave Rebuck 08/24/98 03:15pm >>>

Are you available to meet with DAG Bill Flahive on Thursday August 27 at 2:00 to review DSP SOP D-5 "Evidence" ?

CC: lpa1.lpa_ag.lpacacc


From: Dave Rebuck
To: LPC.LPCP1(fahyj)
Date: 8/25/98 10:09am
Subject: In-car camera SOP -Reply -Reply

We will meet in the conference room outside my office on the third floor. See you Thursday.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Attorney General Peter Verniero

FROM: SDAG John M. Fahy 
Division of Criminal Justice

DATE: May 26, 1998

SUBJECT: Violator Survey

In the past our office has consulted with experts regarding the viability of conducting a violator survey to determine the population of persons most likely to be stopped based upon offenses committed. We have been advised that such a survey would be complex and costly if it were to truly account for all the variables that constitute the collective decision-making process of the unit of troopers being studied. To our knowledge, no sufficiently reliable survey has been designed and undertaken anywhere in the United States to date. We can continue to consult with experts in the field of statistical analysis and monitor litigation from other jurisdictions to determine whether an acceptable survey is developed.

It should be noted that some experts would argue that a simple traffic survey which measures the race of the general driving population is sufficient to draw conclusions regarding issues of racially selective stopping practices. In State v. Pedro Soto, the Gloucester County case presently on appeal, the court did in part rely upon a traffic survey. Our position has been that a traffic survey is too simplistic and does not accurately measure the "most serious" offender population, which would also reflect the population of persons most likely to be stopped in a race neutral environment.

J.M.F.

hw

c: First Assistant Attorney General David C. Hespe
Director Paul H. Zoubek, DCJ



see memo to 1/25/98
Oct. 7, 1998
SAL - 17202 1:30

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

July 24, 1998

PAUL H. ZOUBEK
DIRECTOR

Robin Kay Lord, Esq.
210 So. Broad St. Suite B
Trenton, N.J. 08650

Re: State v. Omar Gittens
Indictment No. 98-03-0337
Prosecutor File No. 98-0079

Dear Ms. Lord:

Enclosed please find State Police records applicable to the discovery order entered by the Hon. Andrew J. Smithson, J.S.C. in the above captioned matter. Specifically the records provided are the patrol charts and radio logs for the arresting officer in this case for the period of January 1, 1998 to January 24, 1998. If you have any questions please feel free to contact me at your convenience.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

JMF:ca
Encls.

c: Matthe Regulski, Asst. Prosecutor, Mercer County

Note:
The info will be
brought to present
a Council present
in records on
1/25/98




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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Det. Keith Vuono, Internal Affairs Bureau
New Jersey State Police

FROM: SDAG John M. Fahy 
Division of Criminal Justice

DATE: September 2, 1998

SUBJECT: State v. Ishmael C. Ramirez and Edgardo V. Medina
Indictment No. 1204-9-97
Discovery Order

Attached please find an opinion entered by the court in response to defendants' discovery request in the above-captioned matter. Defendant sought copies of police reports and investigation reports of any stops of transportation vans carrying "Hispanics" or "Dominicans" including all vans owned and operated by Gerardo's Transportation Company, M & J Transportation Company and/or Juan's Express Transportation Company during calendar years 1995, 1996 and 1997. I filed a brief in opposition to this request, which was relied on by the assistant prosecutor at the hearing on the motion. The court without providing reasoning has granted defendants' request. The items must now be turned over to the trial judge, the Honorable Mathias E. Rodriguez, for an *in camera* inspection.

Our office has determined that it is highly unlikely that the Appellate Division would ever consider granting an interlocutory appeal. Further, there was a delay by the prosecutors' office in forwarding the decision to me which allowed the time period allocated for such an appeal to be filed to expire. Therefore, the order of the court must now be complied with by the State Police.

Your assistance in ensuring compliance with the discovery order would be appreciated. The attorney assigned to the case from the Middlesex County Prosecutor's Office is A. P. Christine Calandra who can be contacted at (732) 745-3342. Thank you for your cooperation.

hw
Attachment

SENT BY:

9- 1-98 ; 15:13 ; MIDD CO PROS OFF 9FL-609 292 8546

:# 1/ 4



Glenn Berman
Prosecutor

Lawrence R. West
1st Assistant Prosecutor

Julia L. McClure
Deputy 1st Assistant Prosecutor

(732) 745-3300
FAX (732) 745-2791

COUNTY OF MIDDLESEX
PROSECUTOR'S OFFICE

P.O. BOX 71
NEW BRUNSWICK, N.J. 08903-0071

Thomas D. Rizzo
Chief

Joseph W. Krisza
Deputy Chief

John F. Mumber
Deputy Chief

FAX (732) 745-2089

FACSIMILE

SENDER'S NAME: SIMON ROSENBAUM

FAX NUMBER: (732) 745-2791 (9th floor)

VOICE NUMBER: (732) 745-3300

DATE: 7/1/98

TO: DAE JOHN FAHY

ATTN: _____

MESSAGE: _____

To AAG Stone
I wrote a brief
opposing discovery which
Middlesex County relied
upon a handwritten
argument. As you
can see the trial judge
ruled against us w/o
providing reasons.
Any slight
adjustment
appeals

TOTAL NUMBER OF PAGES TRANSMITTED, INCLUDING COVER SHEET 9

THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION FROM THE MIDDLESEX COUNTY PROSECUTOR'S OFFICE MAY BE PRIVILEGED AND CONFIDENTIAL AND IS INTENDED FOR THE SOLE USE OF THE PERSONS OR ENTITIES NAMES ON THIS TRANSMITTAL COVER SHEET. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS TRANSMISSION, THE DISSEMINATION, DISTRIBUTION, COPYING OR USE OF THE INFORMATION IT CONTAINS IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL THE SENDER IMMEDIATELY TO ARRANGE FOR THE RETURN OF THIS INFORMATION.

[Signature]
9/1/98

SP 127973

OAG 006503

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
MATHIAS E. RODRIGUEZ
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 804
NEW BRUNSWICK, NEW JERSEY 08903 - 0004

July 16, 1998

John L. Weichsel, Esq.
79 Main St.
Hackensack, NJ 07601

Alan C. Lippel, Esq.
79 Main St.
Hackensack, NJ 07601

Dennis Nieves, Esq.
280 Hobart St.
Perth Amboy, NJ 08861

Simon Rosenbach, Esq.
Middlesex Co. Pros. Office
New Brunswick, NJ 08903

re: State v. Ishmael C. Ramirez and Edgardo V. Medina
Ind. No. 1204-9-97
Pros. No. 97001891

Dear Counselors:

This is a motion pursuant to R3:13-3; Brady v. Maryland 373 U.S. 83 (1983); State v. Garfole 76 N.J. 445 (1978) and State v. Kennedy 247 N.J. Super. 21 (App. Div. 1991).

The defense seeks copies of the police reports and investigation reports of any stops in New Jersey of any transportation vans carrying "Hispanics" or "Dominicans" including all vans owned and operated by Gerardo's Transportation Service, M & J Transportation Company, and/or Juan's Express Transportation Company during the calendar years 1995-1996 and 1997. They also seek the criminal history of the operator of the van in which they were passengers.

Succinctly, the defense contends that the discovery requested with regards to other stops of these transportation vans will assist them in defending against the charges pending against them at a trial of the matter. Their defense is simply that they were paying passengers in a van transporting Hispanics between New York City and Philadelphia. It is their contention that the owners of the van company, which operates under various corporate names, are involved in the transport of drugs, and

 If you require any accommodations as a result of a disability, please call (732) 081-3211/3210

the defendants are no more than innocent scapegoats.

Additionally, they claim the initial stop of the van was not based on "reasonable and articulable" suspicion as required by Delaware v. Prouse 440 U.S. 648 (1979) but rather on the trooper's previous experience with similar vans as a result of "numerous previous investigations in which large quantities of CDS were discovered on the vans", and information he claims to have received from "different law enforcement agencies" regarding Gerardo's Transportation vehicles.

Therefore, the claim is that the initial stop was a "selective" stop of a van known to transport Hispanics between New York City and Philadelphia because of the "hunch" of the trooper that drugs may be aboard rather than on any observation of a motor vehicle violation.

The last piece of discovery requested is the criminal history of the operator of the van who is also the only witness that provides an alleged nexus between the drugs and the two defendants. This person was the only employee of the corporate owner in the vehicle at the time of the stop.

After considering all of the arguments, the testimony of the trooper before the Grand Jury, his police report, the certifications of Dennis Nieves, Esq. and the attachments thereto, as well as the certification of Mr. Weichsel and Mr. Lippel, Esqs. I am granting the motion for discovery as follows:

- (1) The prosecutor and the State shall provide the defendants with copies of all police reports and other criminal investigation reports regarding stops of any and all transportation vans during the years 1996-1997 and 1998. Those reports shall be forwarded to the court for in camera review and redaction to insure the confidentiality of any information which may be irrelevant or immaterial.
- (2) The State shall provide the defendant the criminal history of the driver/operator of the van, Pablo Rodriguez.

SENT BY:

9- 1-98 : 15:14 :MIDD CO PROS OFF 9FL-609 292 8546

4/ 4

The new Status Conference date is Friday, September 11, 1998 at 9:00 am. Please advise your clients that they must appear at that time.

Yours very sincerely,



MATHIAS R. RODRIGUEZ, J.S.C.

MER/cr

CALL

AND TELL HER WHAT YOUR ACTION
IS. THANKS,
SIRON



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

December 31, 1998

PAUL H. ZUBEK
DIRECTOR

Robin Kay Lord, Esq.
210 South Broad Street
Suite B
Trenton, New Jersey 08608

Matthew P. Regulski
Mercer County Prosecutors Office
P.O. Box 8068
Trenton, New Jersey 08650-0068

Re: State v. Omar Gittens
Indictment No. 98-03-0337

Dear Counselors:

Enclosed please find a signed copy of an order placing the above-captioned criminal case on the inactive list for a period of 120 days.

Very truly yours,

John M. Fahy
Supervising Deputy Attorney General

hw
Enclosure

LTIPS

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OAG 006507

SP 127977

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

A True Copy

DONALD F. PHELAN
CLERK OF SUPERIOR COURT
RECEIVED

DEC 23 1998

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
Indictment No. 98-03-0337

STATE OF NEW JERSEY :
V. :
OMAR GITTENS :

ORDER

RECEIVED

DEC 30 1998

STATE GRAND JURY

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the captioned matter on the inactive list for a period of 120 days, and Robin Lord, Esq., appearing in opposition thereto on behalf of defendant and the Court having considered the papers submitted and having heard oral argument in support and opposition thereto and having found good cause;

IT IS HEREBY ORDERED on this 23rd day of December 1998, that this matter be placed on the inactive list for a period of 120 days from the date of entry of this order; and it is further

ORDERED that entry of this order does not constitute a finding as to any future speedy trial motions.



Andrew Smithson, J.S.C.

SP 127978

OAG 006508



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

PAUL H. ZOUBEK
DIRECTOR

February 2, 1999

Emile R. Cox, Esq.
Clerk, Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: **In Re The Attorney General's Application to
Place Cases on the Inactive List**

Dear Mr. Cox:

Enclosed herein for filing in the above captioned matter are five copies of the State's letter in lieu of brief and appendix. Also enclosed is an Affidavit indicating service upon our adversary.

Very truly yours,

John M. Fahy
Supervising Deputy Attorney General

hw
Enclosures
c: Office of the Public Defender
Attn: Thomas F. Scully, Esq.

LIPS

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OAG 006509

SP 127979

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT
BY: JOHN M. FAHY
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625
(609) 984-2353

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-

In Re The Attorney General's : CRIMINAL ACTION
Application to Place Cases :
on the Inactive List : AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY:
: SS
COUNTY OF MERCER :

HELEN WEXLER, of full age, being duly sworn according to law upon her oath deposes and says:

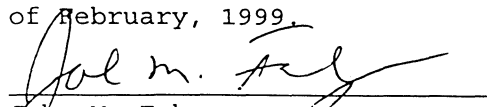
1. I am a secretary in the employ of the State of New Jersey, Division of Criminal Justice, Office of State Grand Jury.

2. I did mail, by regular U.S. mail, two copies of the State's letter brief and appendix on February 2, 1999 to:

Office of the Public Defender
172A New Street
New Brunswick, New Jersey 08901
Attn: Thomas F. Scully, Esq.


Helen Wexler

Sworn to and subscribed
before me this 2nd day
of February, 1999.


John M. Fahy
An Attorney-At-Law of New Jersey



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
P.O. BOX 085
TRENTON, NEW JERSEY 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

PAUL H. ZOUBEK
DIRECTOR

John M. Fahy
Supervising Deputy
Attorney General
Of Counsel and on the
Letter Brief

February 2, 1999

LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: In Re The Attorney General's Application to
Place Cases on the Inactive List

Criminal Action: On Appeal From an Interlocutory
Order Granting the State's Motion to Place Cases
on the Inactive List of the Superior Court
of New Jersey, Law Division, Middlesex County.

Sat Below: Hon. Barnett Hoffman, J.S.C.

Honorable Judges:

Pursuant to R. 2:6-2(b), and R. 2:6-4(a), this letter
in lieu of formal brief is submitted on behalf of the State.

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OAG 006511

SP 127981

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COUNTER-STATEMENT OF PROCEDURAL HISTORY

By means of a verified petition filed on November 6, 1998, Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Supervising Deputy Attorney General, moved to place certain criminal prosecutions venued in Mercer and Middlesex Counties on the inactive list for a period of 120 days. (Pa1 to 5)¹. An attachment was filed with the verified petition which listed the affected cases. (Pa6 to 7). The original application involved 2 indictments in Mercer County naming 2 defendants and 16 indictments in Middlesex County naming 20 defendants. (Pa6 to 7). Counsel for all defendants who were listed in the application were served with copies of the moving papers. (Pa4).

On December 11, 1998, the Honorable Barnett E. Hoffman, P.J.C.D., heard the State's application and opposing argument thereto made by counsel for defendants. (T1 to 21). Judge Hoffman granted the State's application on the date of the hearing and thereafter entered a formal order to that effect

¹ "Pa refers to the appendix filed by the State with this letter in lieu of brief.

"T" refers to the transcript of proceedings for the hearing on the motion decided below heard on December 11, 1998.

"Db" refers to appellants'/defendants' brief filed in support of the present motion for interlocutory appeal.

which was filed on January 5, 1999. (T16-6 to 17-8; T20-11 to 15; Pa8). The final order listed twenty cases that were moved inactive involving 27 defendants. (Pa9 to 10). The judge also made himself available to hear bail applications on short notice. (T20-16 to 22).

A notice of motion for leave to appeal dated January 5, 1999 was filed by the Office of the Public Defender as to eleven of the cases placed on the inactive list by order of Judge Hoffman.

COUNTER-STATEMENT OF FACTS

As related in the verified petition filed below, the State's application to place cases on the inactive list was due to a unique and problematic situation in which the State was responsible for conducting an ongoing investigation into the activities of two State Troopers, John Hogan and James Kenna, who were also officers that participated in the enforcement actions taken in the cases which were the subject of the petition. (Pa3). The State believed the two officers constituted relevant witnesses in the subject criminal prosecutions. The nature of the ongoing investigation involved the actions of the two officers following a motor vehicle stop on the Turnpike in which several occupants of the vehicle stopped were allegedly shot by said officers. (Pa4).

The State had received at least one notice of motion by a defendant in a criminal prosecution which was the subject of the petition in which that defendant sought information concerning the status and contents of the pending investigation against Trooper Hogan. (Pa4 to 5). The State, after assessing the request, determined that due to the ongoing investigation involving Troopers John Hogan and James Kenna, no informed determination could be made as to the legal and ethical obligations of the prosecutor regarding discovery issues. Furthermore, the State was uncertain about the propriety of proceeding with the pending prosecutions in which the two troopers would be relevant witnesses. (Pa5). Based upon this reasoning, the State requested that the cases which were the subject of the application be placed on the inactive list for a period of 120 days to allow time for the investigation to be completed and informed decisions to be made as to discovery issues, as well as the ability of the State to proceed with the subject prosecutions. (Pa7).

LEGAL ARGUMENT

POINT I

LEAVE TO APPEAL THE INTERLOCUTORY
ORDER ENTERED BELOW SHOULD BE
DENIED.

Motions for leave to appeal are not routinely allowed and pursuant to R.2:2-4 should involve cases in which "the interest of justice" requires such action. The Supreme Court of New Jersey has stated that such relief "is customarily exercised very sparingly, and its denial by the appellate court will not prejudice its further review in the event it is presented in a later appeal. State v. Reldon, 100 N.J. 187, 205 (1985). The Appellate Division has similarly stated that

Leave to appeal is "highly discretionary" extraordinary relief and granted only to consider a fundamental claim which could infect a trial and would otherwise be irremedial in the ordinary course. State v. Reldon, 100 N.J. 187, 205, 495 A.2d 76 (1995); Pressler, Current N.J. Court Rues, Comment on R.2:2-4.

State v. Alfano, 305 N.J. Super. 178, 190 (App.Div. 1997).

The motion for leave to appeal presently before this Court should be denied because appellants would not suffer irremedial

harm. Appellants do not claim that they are presently incarcerated or that they will be denied a fair trial. Indeed, both the Court below and the State were fully cognizant of the fact that the State's application to place cases on the inactive list for 120 days would require reassessment of the bail status of any defendant who was incarcerated at the time the application was granted. (T3-24 to 25; T17-2 to 20-22). Moreover, the motion judge agreed to hear bail applications on "short notice" the very afternoon the application was heard on December 11, 1998. (T20-18 to 22). In addition, the court below was fully cognizant of the fact that if defendants believed their speedy trial rights were violated that motions for dismissal could be filed with the trial court. (T3-25 to 4-9; T21-8 to 14). In fact, the order entered by the court specifically states "ORDERED that entry of this order does not limit defendants from filing bail applications or constitute a finding as to any future speedy trial motions." (Pa 8). Under such circumstances ample remedies are available for defendants before the trial court. The extraordinary relief sought by defendants is both premature and unnecessary. If defendants' rights are impacted by delay, trial courts can address the issue and provide remedies by granting speedy trial motion and ordering dismissal of the indictments.

Here, no extraordinary relief is required by the Appellate Division at this time to protect defendants' rights.

POINT II

THE COURT BELOW HAD THE AUTHORITY
TO AND PROPERLY DID GRANT THE
STATE'S APPLICATION TO PLACE CASES
ON THE INACTIVE LIST.

The appellants argue that the court below lacked the authority to grant the State's application to place cases on the inactive list. (Db1). Appellants specifically argue that "no such judicial or administrative mechanism exists [either in the Rules of Court or case law] for inactivating criminal matters. (Db2). Without appropriate analysis, appellants also argue that their rights to due process of law and speedy trial were also denied by the court below in granting the State's application. (Db3). Appellants' arguments are without merit and the issues of the denial of their rights to due process and speedy trial are premature since they were not properly raised below.

The State acknowledges that no specific court rule deals with the basis for the State's application. Instead the State relies upon the more generalized authority provided in the court rules and the inherent authority of the courts to manage matters before them.

Assignment judges are "responsible for the supervision and efficient management of all court matters within the vicinage..." R. 1:33-4(c). A presiding judge of each functional unit within the vicinage may be delegated judicial duties and responsibilities allocated to the assignment judge when so designated. R. 1:33-6. In the case before this Court the presiding criminal judge ruled on the State's application.

While the basis for the application to place cases on the inactive list was not specifically provided by court rule, trial courts clearly have the power to grant stays and to place cases on the inactive list in criminal matters. See State v. Clay, 230 N.J. Super. 509, 519 (App. Div. 1989) (case placed on inactive list while defendant was incarcerated in another state); State v. Ellis, 280 N.J. Super. 533 (App. Div. 1995) (citing to statutory provision N.J.S.A. 2C:1-3 allowing case to be placed on inactive list with permission of defendant being tried in another jurisdiction for offense based on same conduct); State v. County, 278 N.J. Super. 80 (App. Div. 1994) (case placed on inactive list where defendant was fugitive); State v. Mraovitch, 176 N.J. Super. 141, 146 (App. Div. 1980) (case was on inactive list while defendant was a fugitive); State v. Davis, 131 N.J. Super. 484 (App. Div. 1974) (murder indictment placed on inactive list based

upon *ex parte* application of prosecutor after defendant was convicted of a prior death-carrying murder charge, although 11 years on inactive list was held to have denied defendant's right to speedy trial). These cases stand for the proposition that even without specific court rule, trial courts have the inherent authority to make case management decisions, including placing cases on an inactive list.

The State's application below to place cases on the inactive list was necessitated by the unique situation in which the State is responsible for conducting an ongoing investigation which concerns the activities of two State Troopers, John Hogan and James Kenna, who are also relevant witnesses in the subject criminal prosecutions. The ongoing investigation involves the actions of both officers in a matter in which a motor vehicle stop on the Turnpike resulted in the shooting of several occupants of the vehicle stopped. Clearly this is an important matter of public interest which must be investigated. At the same time, it is easy to envision a scenario whereby such an investigation might lead to discoverable information which the State is obligated to provide to defendants in other criminal prosecutions in which the subject troopers are involved. Indeed, the very viability of the prosecutions might be affected.

Equally evident is the fact that the integrity of the ongoing investigation and fairness to the subjects thereof should not be compromised by piecemeal decisions regarding the discovery rights of defendants in the subject criminal case. For this reason the State deemed it appropriate to make application to place the cases on the inactive list for a limited period.

It is important to recognize the serious obligations of prosecutors regarding discovery which underlay the application below. The State must provide relevant police reports and statements of witnesses and other information which are within the possession, custody or control of the prosecutor. R.3:13-3(c)(6), (7) and (8); State v. Long, 119 N.J.Super. 439, 490 (1990). This is a continuing obligation of the prosecutor under our discovery rules. R. 3:13-3(g); State v. Laganella, 144 N.J.Super. 268, 281 (App. Div. 1976), appeal dismissed 74 N.J. 256 (1977). Moreover, the State has a constitutionally-mandated obligation to turn over exculpatory evidence within its knowledge or possession in whatever form to a defendant being prosecuted by the State. Under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 1963) and its progeny "[t]he suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment, irrespective

of the good or bad faith of the prosecution." 373 U.S. at 87.

The Supreme Court of this State also explained and clarified when evidence will be deemed to be "material" in this jurisdiction for Brady purposes. In State v. Marshall, 148 N.J. 89, 156 (1997), it was held that evidence will be deemed to be "material" regardless of the status of defendant's discovery requests, in all instances "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. (quoting United States v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383 (1985)).

Fully cognizant of its discovery obligations and the need to protect the integrity of an important ongoing investigation, the State had no other option but to seek the court's approval in moving the subject cases to the inactive list for a period of 120 days. The court below determined that "120 days, for non-jail cases, is a reasonable application." The court further ensured that defendants' rights would be protected by entertaining bail applications and specifically ruling that defendants were not precluded from filing speedy trial motions with the trial court. Under such circumstances defendants' constitutional rights could be fully addressed and protected by the trial court.

If defendants were to file speedy trial applications, the

trial court could consider whether the delay was "unreasonable" under the standards articulated in Baker v. Wingo, 407 U.S. 514, 519-20, 92 S.Ct. 2182, 2186-87, (1972); see State v. Long, 119 N.J. 439, 469 (1970). Two important factors the court would consider are the length of the delay and the reason for the delay. Id. While the court below in granting the State's application specifically stated that the length of delay was not unreasonable, the court also implicitly recognized the important public interest asserted by the State as the reason for the delay. Defendants still have the option of filing formal speedy trial motions with the court. The court could then assess other speedy trial factors articulated in Baker such as assertion of the right and any prejudice defendant personally suffers. Id. With such an option available, it is clear that intervention by the appellate court is not required in the interest of justice and that defendants' rights can be fully addressed by the trial court below.

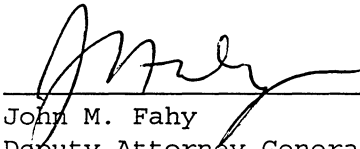
CONCLUSION

For the foregoing reasons, the State respectfully urges this Court to deny defendants' motion for leave to appeal the interlocutory order entered below.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT

BY: _____


John M. Fahy
Deputy Attorney General

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
BY: JOHN M. FAHY
SENIOR DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
CN 085
TRENTON, NEW JERSEY 08625
(609) 984-7420

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF THE)
ATTORNEY GENERAL'S APPLICATION) VERIFIED PETITION
TO PLACE CASES ON THE INACTIVE LIST)

STATE OF NEW JERSEY)
SS.
COUNTY OF MERCER)

John M. Fahy, of full age, being duly sworn according to
law, upon his oath, respectfully petitions the Court as follows:

1. I am a deputy attorney general of the State of New
Jersey employed by the Division of Criminal Justice.

2. In the course of my employment I have become aware of
an issue effecting certain prosecutions within Mercer and Middlesex
Counties. Specifically, this issue involves the ability of the
State to proceed with prosecutions while the State troopers who
participated in the enforcement actions in said prosecutions are
themselves the subject of an investigation being jointly conducted
by law enforcement agencies in this state including the State
Police and Division of Criminal Justice.

Pal

3. The subject troopers are John Hogan and James Kenna.

4. The subject criminal cases are listed in Attachment 1 which is appended hereto.

5. As has been reported by the press, and confirmed by the Attorney General, a case involving a motor vehicle stop on the Turnpike in which several motorists were shot in which Troopers Hogan and Kenna participated is the subject matter of the investigation referred to in paragraph 2 above.

6. I am aware of the fact that Trooper Hogan has retained the legal services of Robert Galantucci, Esq. and Trooper Kenna has retained the legal services of John Arseneault, Esq. Both attorneys have been provided with notice of this petition as a courtesy. The State makes no representations in support of this motion as to the positions or opinions of Troopers Hogan or Kenna on this issue.

7. The issue which I bring to the courts attention first came to my attention in the matter of State v. Omar Gittens, Indictment No. 98-03-0337, presently venued in Mercer County before the Honorable Andrew J. Smithson J.S.C.

8. Defense counsel in the Gittens matter, Robin J. Lord, Esq., in letters of July 24, 1998 and September 3, 1998 has sought information concerning the status and contents of the pending investigation involving the conduct of Trooper Hogan which she claims is discovery her client is entitled to in part because it

might contain "discoverable information affecting the credibility of a State witness." Letter of July 24, 1998. Copies of both letters from Attorney Lord to Matthew Regulski, Assistant Mercer County Prosecutor, on which I was also copied, can be provided to the Court if necessary. While not directly affecting matters other than the Gittens case, this example is offered to illustrate the problem presently being faced by the State.

9. The State does not contest the fact that Trooper Hogan is a relevant witness in the Gittens matter.

10. I have consulted with Assistant Attorney General Debra Stone who is aware of status and factual information developed to date in the investigation referred to in paragraph 2 above which in part involves Trooper Hogan. I have been advised by AAG Stone that the investigation is ongoing and for that reason no informed determination can be made at this time as to the legal and ethical obligations of prosecutors regarding discovery or proceeding with the pending prosecutions in which Troopers Hogan and Kenna are relevant witnesses.

11. Further, it is the position of the Attorney General's office that information regarding the ongoing investigation cannot and should not be revealed at this time due to concerns about

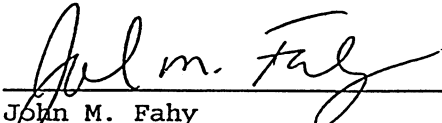
maintaining the integrity of the investigation.

12. Based upon the foregoing, the State, with authorization of the Attorney General, Peter Verniero, has filed the present consolidated verified petition requesting that the subject cases be placed on the inactive list for a period of 120 days to allow the State the opportunity to complete the investigation referred to in paragraph 2 and make an informed decision regarding the State's discovery obligations in the pending cases.

13. In drafting the papers in support of the present application I have been in contact with officials from the Mercer and Middlesex County Prosecutor's Offices who have assisted with the preparation of the case list, Attachment 1. I have been advised that the Mercer and Middlesex County Prosecutor's offices will offer no opposition to the present application.

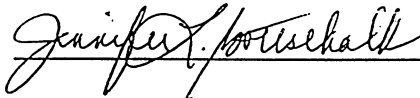
14. While the relief being sought is made by means of an ex parte verified petition pursuant to R.1:4-7, as a professional courtesy, defense counsel in the subject criminal cases listed in the accompanying Affidavit of Service have also been served copies with the moving papers.

15. In support of this verified petition the State also submits a letter in lieu of formal brief.



John M. Fahy
Deputy Attorney General
Division of Criminal Justice

Sworn and subscribed to
before me this 6th day
of November, 1998.



An Attorney at Law of New Jersey

Attachment 1

HOGAN & KENNA CASES

Mercer County Cases

Indictment No.	Defendant's Name	Defendant's Attorney
98-03-0337	St. v. Omar Gittens	Robin Lord
97-06-0762	St. v. Omar G. Goodall	Gabriel Lependorf

Middlesex County Cases

212-2-98	Brown, Carlton A.	Boretti, Joanna
357-3-98	Garnier, Rudolph	Sutherland, Ivan
903-6-98	Harris, Jerome D.	Mallon, Thomas
906-6-98	Peters, Terence B. Peters, Kitson K.	Matlaga, Martin Werner, Kenneth
721-5-98	Moye, Michael G.	Smink, Linda
946-7-98	Butler, William S.	Matlaga, M.
1524-11-98	Avans, Rohan	Toto, A.
654-5-98	Jackson, A.	Labrada, M.
905-6-98	Wilcox, Bruce B.	Hartmann, John
833-6-98	Steplight, Damian	Muraskin, David
836-6-98	Cuffee, Antoine M. Patterson, William L.	Tregoe, Elizabeth Weiner, A. Kenneth
907-6-98	Green, Kwaune, J.	Boretti, Joanna
908-6-98	McClain, Anthony L. King, Wade	Barker, R. Hartman, J.

Indictment No.	Defendant's Name	Defendant's Attorney
358-3-98	Napoleon, Maria-Con Christian	Boretti, J.
1204-9-97	Ramirez, Ismael C. Medina, Edgardo V.	Weichsel, John Lippel, Alan
1549-12-97	Donascimento, Oldrneol	Larson, Alexandra

PETER VERNIERO
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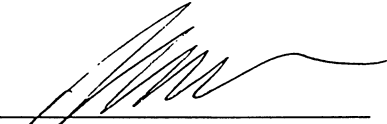
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

IN THE MATTER OF :
THE ATTORNEY GENERAL'S : ORDER
APPLICATION TO PLACE CASES :
ON THE INACTIVE LIST :

Peter Verniero, Attorney General of New Jersey, by John M. Fahy, Senior Deputy Attorney General, having made written and oral application to place the criminal matters contained in attachment 1 which is appended hereto on the inactive list for a period of 120 days, and the Court having considered the basis for the application, and having heard oral argument in support and opposition thereto and having found good cause;

IT IS HEREBY ORDERED on this 11th day of December 1998, that the Middlesex County cases listed in attachment 1 appended hereto are placed on the inactive list for a period of 120 days from the date of entry of this order; and it is further

ORDERED that entry of this order does not limit defendants from filing bail applications or constitute a finding as to any future speedy trial motions.


Barnett E. Hoffman, P.J.S.C.

BARNETT E. HOFFMAN SLB
J.S.C.

Pa8

Attachment 1

HOGAN & KENNA CASES

Middlesex County Cases

Indictment No.	Defendant's Name	Defendant's Attorney
212-2-98	Brown, Carlton A.	Boretti, Joanna
357-3-98	Garnier, Rudolph	Sutherland, Ivan
903-6-98	Harris, Jerome D.	Mallon, Thomas
906-6-98	Peters, Terence B. Peters, Kitson K.	Matlaga, Martin Werner, Kenneth
721-5-98	Moye, Michael G.	Smink, Linda
946-7-98	Butler, William S.	Matlaga, M.
1524-11-98	Avans, Rohan	Toto, A.
654-5-98	Jackson, A.	Labrada, M.
905-6-98	Wilcox, Bruce B.	Hartmann, John
833-6-98	Steplight, Damian	Muraskin, David
836-6-98	Cuffee, Antoine M. Patterson, William L.	Tregoe, Elizabeth Weiner, A. Kenneth
907-6-98	Green, Kwaune, J.	Boretti, Joanna
908-6-98	McClain, Anthony L. King, Wade	Barker, R. Hartman, J.
358-3-98	Napoleon, Maria-Con Christian	Boretti, J.
1204-9-97	Ramirez, Ismael C. Medina, Edgardo V.	Weichsel, John Lippel, Alan

Indictment No.	Defendant's Name	Defendant's Attorney
1549-12-97	Donascimento, Oldmeol	Larson, Alexandra
98-07-00946-I	Underwood, Robert	Labrada, Michele
97-11-01524-I	Williams, Richard	Weiner, A. K.
98-05-00654-I	Wright, Angela	Matlaga, M.
98-06-00833-I	Penn, Rochell	Oakley, D.R.
98-06-00833-I	Berryman, Troy	Larson, A.
98-06-00904-I	Mack, Sean	Pezzullon, A.
██████████	██████████	██████████
98-10-1397	Roberts, Elijah M.	Marain, Alan

SLB

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Deborah T. Poritz
Attorney General

James J. Ciancia
First Assistant Attorney General

Alexander P. Waugh
Executive Assistant Attorney General

Mary Jacobson, Assistant Attorney General
Division of Law

FROM: John M. Fahy, SDAG
State Grand Jury

DATE: April 25, 1996

SUBJECT: State v. Pedro Soto, et al.
(Turnpike Cases)

Attached you will find the State's Notice of Motion for Leave to Appeal and supporting papers in the above-captioned matter which seeks to overturn Judge Francis' decision suppressing evidence based upon a de facto policy of discrimination on the part of the State Police in stopping black motorists. The motion papers have been reviewed and approved within the Division of Criminal Justice. The papers must be filed by next Thursday, May 2, 1996.


J.M.F.

hw
Attachments



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 086

DEBORAH T. PORITZ
ATTORNEY GENERAL

TRENTON, NJ 08625-0086
TELEPHONE: (609) 984-6500

TERRENCE P. FARLEY
DIRECTOR

May 1, 1996

Emille R. Cox
Clerk, Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Complex
CN 006
Trenton, New Jersey 08625

Re: State v. Pedro Soto, et. al
Docket No.

Dear Mr. Cox:

Enclosed herein for filing in the above entitled matter are an original and four copies of the State's Notice of Motion for Leave to Appeal and supporting brief and appendix. Also enclosed is an Affidavit indicating service upon our adversaries. Please be advised that the trial court has also been notified. I am also simultaneously filing herewith a motion for leave to file an overlength brief.

Very truly yours,

John M. Fahy
Deputy Attorney General

/vvm

Enclosures

c: Hon. Robert E. Francis, J.S.C.
Brent Hopkins, Assistant Prosecutor
P. Jeffrey Wintner, Deputy Public Defender
Carrie D. Dingle, Assistant Deputy Public Defender
Wayne E. Natale, Deputy Public Defender II
William H. Buckman, Esq.
Justin T. Loughry, Esq.



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DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-MOVANT
BY: JOHN M. FAHY
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-

STATE OF NEW JERSEY, :
Plaintiff-Movant, : CRIMINAL ACTION
v. : NOTICE OF MOTION
PEDRO SOTO, et. al., : FOR LEAVE TO APPEAL
Defendant-Respondent. :

COUNSEL:

PLEASE TAKE NOTICE that the State of New Jersey by Deborah T. Poritz, Attorney General (John M. Fahy, Deputy Attorney General and Gerard C. Sims, Jr. Deputy Attorney General appearing), hereby moves before the Superior Court of New Jersey, Appellate Division, for Leave to Appeal the Order of the Honorable Robert E. Francis, J.S.C. filed on April 17, 1996, which suppressed all evidence seized from defendants in the above-captioned matters.

PLEASE TAKE NOTICE that in support of this motion, the State will rely upon the accompanying brief and appendix.

Respectfully submitted,

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

BY: _____
John M. Fahy,
Deputy Attorney General

DATED: May 1, 1996

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-MOVANT
BY: JOHN M. FAHY
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
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TRENTON, NEW JERSEY 08625
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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-

STATE OF NEW JERSEY, :
Plaintiff-Movant, : CRIMINAL ACTION
v. : AFFIDAVIT OF SERVICE
PEDRO SOTO, et. al., :
Defendant-Respondent. :

STATE OF NEW JERSEY:
: SS
COUNTY OF MERCER :

VERONICA A. VENOSA-MORRIS, of full age, being duly sworn according to law upon her oath deposes and says:

1. I am a secretary in the employ of the State of New Jersey, Division of Criminal Justice, Appellate Bureau.

2. I did mail, by regular U.S. mail, two copies of the State's Motion for Leave to Appeal and supporting brief and appendix on May 1, 1996 to:

Hon. Robert E. Francis, J.S.C.
Superior Court of New Jersey
P. O. Box 429
Court House
Woodbury, NJ 08096

Brent E. Hopkins, Asst. Pros.
Justice Complex
P. O. Box 623
Hunter & Euclid Streets
Woodbury, NJ 08096

Wayne E. Natale, D.P.D. II
1700 Galloping Hill Rd.
Kenilworth, NJ 07033

Carrie D. Dingle, A.D.P.D.
65 Newton Avenue
Woodbury, NJ 08096

Affidavit of Service

Page 2

Justin T. Loughry, Esq.
Tomar, Simonoff, Adourian & O'Brien
41 S. Haddon Avenue
Haddonfield, NJ 08033

William H. Buckman, Esq.
P.O. Box 6388
Rutland, VT 05701

Jeffrey P. Wintner, D.P.D.
65 Newton Avenue
Woodbury, NJ 08096

Veronica A. Venosa-Morris

Sworn to and subscribed
before me this 1st day
of May, 1996.

John M. Fahy,
An Attorney-At-Law of New Jersey



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
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TRENTON, NJ 08625-0086
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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

May 1, 1996

Hon. Robert E. Francis
Superior Court of New Jersey
P. O. Box 429
Court House
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et. al.

Dear Judge Francis:

Enclosed please find a copy of the State's Motion for Leave to Appeal and supporting brief and appendix in the above-captioned matter. Pursuant to R. 3:5-6(a), I have filed the original notice with the Clerk of the Superior Court, Appellate Division.

Very truly yours,

John M. Fahy
Deputy Attorney General

/vmm

c: Brent Hopkins, Assistant Prosecutor
P. Jeffrey Wintner, Deputy Public Defender
Carrie D. Dingle, Assistant Deputy Public Defender
Wayne E. Natale, Deputy Public Defender II
William H. Buckman, Esq.
Justin T. Loughry, Esq.



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State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
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May 1, 1996

Emille R. Cox
Clerk, Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Complex
CN 006
Trenton, New Jersey 08625

Re: State v. Pedro Soto, et. al
Docket No.

Dear Mr. Cox:

Enclosed herein for filing in the above entitled matter are an original and four copies of the State's Notice of Motion and supporting supporting affidavit for leave to file an overlength brief. Also enclosed is an Affidavit indicating service upon our adversaries.

Very truly yours,

John M. Fahy
Deputy Attorney General

/vvm

Enclosures

c: Brent Hopkins, Assistant Prosecutor
P. Jeffrey Wintner, Deputy Public Defender
Carrie D. Dingle, Assistant Deputy Public Defender
Wayne E. Natale, Deputy Public Defender II
William H. Buckman, Esq.
Justin T. Loughry, Esq.



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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-

STATE OF NEW JERSEY, :
Plaintiff-Movant, : CRIMINAL ACTION
v. : NOTICE OF MOTION
PEDRO SOTO, et. al., : FOR LEAVE TO FILE
Defendant-Respondent. : AN OVERLENGTH BRIEF

COUNSEL:

PLEASE TAKE NOTICE that the State of New Jersey by Deborah T. Poritz, Attorney General (John M. Fahy, Deputy Attorney General appearing), hereby moves before the Superior Court of New Jersey, Appellate Division, for an order relaxing the page limitation set forth in Rule 2:8-1(a) and permitting the filing by respondent of an overlength brief not to exceed 33 pages.

PLEASE TAKE NOTICE that in support of this motion, the State will rely upon the accompanying affidavit.

Respectfully submitted,

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

BY: _____
John M. Fahy,
Deputy Attorney General

DATED: May 1, 1996

DEBORAH T. PORITZ
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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-

STATE OF NEW JERSEY,	:	
Plaintiff-Movant,	:	<u>CRIMINAL ACTION</u>
v.	:	AFFIDAVIT IN SUPPORT
PEDRO SOTO, et. al.,	:	OF MOTION FOR LEAVE TO
Defendant-Respondent.	:	FILE AN OVERLENGTH BRIEF

JOHN M. FAHY, of full age, being duly sworn according to law upon his oath deposes and says:

1. I am a Deputy Attorney General of the State of New Jersey and am presently assigned to the above-captioned matter.
2. On March 4, 1996, the Hon. Robert E. Francis, J.S.C. issued an opinion in which he found the New Jersey Division of State Police guilty of purposeful racial discrimination against the seventeen defendants herein.
3. As a result of that decision, on April 17, 1996, Judge Francis entered an order granting defendants' motion to suppress any and all evidence seized from each of them during the course of their traffic stop by the State Police.

4. On even date, the Attorney General is filing a Motion for leave to appeal on behalf of the State in this matter.

5. The hearing in this matter extended over a period of six months and also involves complex legal issues. Despite my best efforts, a concise but complete discussion of the relevant questions has resulted in 33 pages, or eight pages more than the page limitation set forth in Rule 2:8-1(a).

6. The State respectfully requests that this Court relax the page limitation set forth in Rule 2:8-1(a) and permit the filing of an overlength respondent's brief not to exceed 33 pages.

7. The above recited facts are true to the best of my knowledge.

Respectfully submitted,

John M. Fahy
Deputy Attorney General

Sworn to and subscribed
before me this 1st day
of May, 1996.

Gerard C. Sims, Jr.
An Attorney-At-Law of New Jersey

Superior Court of New Jersey

Appellate Division

DOCKET NO.

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Movant,	:	On Appeal From an Interlocutory
v.	:	Order of the Superior Court
PEDRO SOTO, et. al.,	:	of New Jersey, Law Division,
Defendants-Respondents.	:	Gloucester County.
	:	Sat Below:
	:	Hon. Robert E. Francis, J.S.C.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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OF COUNSEL AND ON THE BRIEF

Procedural History

Seventeen criminal defendants pursued a consolidated suppression of evidence motion based upon the defense of racially selective prosecution in which African-Americans were allegedly targeted for traffic stops on the southern portion of the New Jersey Turnpike.¹ Initially, individual motions were filed. A consolidated Amended Notice of Motion to Suppress Evidence and Discovery Application was filed on behalf of defendants on April 6, 1990. (Pa160). The State and defense agreed to the entry of a discovery order by consent which was entered on February 27, 1992 by the Hon. John E. Wallace, J.S.C. (Pa167).

A hearing on the merits was held before the Hon. Robert E. Francis, J.S.C. over a six month period which included 72 hearing dates.² Briefs and proposed findings of fact were filed and oral argument was heard on November 14, 1995. (Pa19). Judge Francis rendered his decision in a letter opinion dated March 4, 1996. (Pa1). He ruled that defendants' motion was granted and the evidence in each of the subject cases was suppressed. A hearing on the form of order was held before Judge Francis on April 2, 1996. The order suppressing the evidence in the subject cases was entered on April 17, 1996. (Pa17).

¹ Originally twenty-five defendants joined in the motion but only 17 criminal defendants pursued the motion at the time of hearing.

² The hearing dates in 1994 were November 28-20; December 6-8, 12-14, 19-22; during 1995 the hearing dates were January 3-5, 10-11, 17-19, 23-25, 30-31; February 1-2, 6-8, 16, 21, 27-28; March 1-2, 6-8, 13-16, 20-22, 27-30, April 3-5, 10-12, 17-19, 24-27, May 1-2, 15-17, 22-25.

STATEMENT OF FACTS³

Defendants alleged that State troopers assigned to the Moorestown Station on the New Jersey Turnpike between April 17, 1988 through May 18, 1991 engaged in the practice of selective prosecution based upon race in stopping black motorists. The defense primarily relied upon statistical evidence. It wished to identify the number of vehicles with at least one black occupant that was available to be stopped and compare that result with the number of black motorists that were actually stopped.

Initially, the defense conducted a traffic survey over fourteen consecutive days from June 11, 1993 to June 24, 1993. The survey was limited to the most southern portion of the Turnpike between exits one and three, and took place during the daylight hours only. The survey was conducted primarily by members of the public defenders' office, including attorneys participating in this litigation.⁴ Defendants contended that the traffic census counted 42,706 vehicles and that the race and state of origin was determined for virtually every vehicle. The overall percentage of vehicles with a black occupant was alleged

³The undersigned hereby certifies that the following facts are a true account to the best of his knowledge. The complete transcripts of the six months of evidentiary hearings will be provided to the court if leave to appeal is granted.

⁴ The field supervisor of the survey was Assistant Deputy Public Defender Fred Last who served as lead counsel in this consolidated motion until disqualified by order of the Appellate Division. Thereafter, Deputy Public Defender P. Jeffrey Wintner assumed the role of lead counsel. Mr. Wintner and Deputy Public Defender Wayne Natale, who also represented defendants in this matter, both participated in conducting the traffic survey.

to be 13.5%.

The State's expert testified that, even if properly conducted, the defense survey failed to measure the more relevant figure of those motorists most likely to be stopped based upon their conduct. In response to this criticism, the defense conducted a hastily designed violator survey. However, the entire violator survey consisted of one assistant public defender traveling up and down the Turnpike between Exits one and three for a total of 28 and 3/4 hours over four days between June 11, 1993 and July 14, 1993. Assistant Public Defender Fred Last had calibrated the speedometer on his car for sixty miles per hour by using a stop watch and marked milepost on the Turnpike. The persons who were determined to be violators were all those motorists who passed Mr. Last as he drove along the Turnpike.

According to Mr. Last, he observed 2,096 vehicles, of which only 34 did not commit a violation by passing him. He concluded that 98% of the traffic on the Turnpike was traveling at a speed greater than 60 mph and thus were violators. All these persons were deemed to be equally likely to be stopped. No information was developed regarding nighttime activity. Scant information was gathered regarding any offense other than speeding over sixty mph. Of this violator population, Mr. Last determined 15% of the vehicles contained at least one black occupant.

The State, through expert testimony, strongly contested application of a 15% quota or benchmark across the board for all types of offenses. The State's expert, Dr. Leonard Cupingood,

believed the violator survey captured insufficient relevant data to conclude whether the State troopers were engaging in a practice of discriminately stopping blacks. Dr. Cupingood testified that the 15% figure proffered by the defendants' violator survey is, at best, a rough estimate of the percentage of motorists going over sixty mph broken down by race. According to Dr. Cupingood, one cannot assume that this figure remains constant and can be applied uniformly to all types of violations, including all speeding offenses. It is reasonable to assume that it is the most serious violators who are most likely to be stopped. This assumption was supported in the record by the testimony of State Police officials. Dr. Cupingood believed that many other factors which are race neutral, and unaccounted for in defendants' violator survey, could have impacted these numbers.

The State also introduced data to demonstrate the danger of adopting a benchmark or quota for universal application. One example was the percentage of persons arrested for driving while intoxicated (DWI). According to State Police records, in cases where a motorist was involved in an accident and was thereafter charged with a DWI offense, 23% of the offenders were black. Troopers have very little discretion in issuing a ticket under such circumstances. Thus, the 23% figure demonstrates an important differential in the number of black violators when compared to the 15% benchmark.

Other studies introduced by the State similarly demonstrated that unquestioning adoption of a uniform 15% benchmark of black

traffic violators was an erroneous methodology. Significantly, the percentage of black traffic offenders ticketed in the studied area rose during nighttime hours as compared to the daytime hours. This fact is meaningful because the State Police officials who testified uniformly attested to the difficulty they experienced in identifying the race of motorists at night before the stop was actually made.

In addition, black motorists account for 23.5% of all motor vehicles stops involving the use of radar where there is minimal discretion. Further, while defendants would argue that general patrol troopers had the highest percentage of black stops through the use of radar as compared to other specialty units with limited interest in making criminal arrests, all units had figures higher than the 15% proffered by the defense.

The State attempted to introduce New Jersey Department of Transportation records which demonstrated that Mr. Last's study was flawed. The percentage of motorists determined to be speeding on the Turnpike by the assistant deputy public defender was much higher than that established by official governmental studies. The trial judge excluded this compelling evidence both during the State's case in chief and as rebuttal evidence.

In an attempt to determine the actual number of stops made by troopers during the relevant time period and the racial distribution thereof, a data base was created and analyzed from a variety of State Police records. A major problem arose since the racial identity of the motorist could not be determined for two-

thirds of the stops. This situation was caused by a variety of factors. Primary were the fact that race is not required to be noted on tickets and the failure of the troopers to follow the standard operating procedure instructing them to provide information as to race when they call in a stop. Both the state and defense experts believed that the great amount of missing data presented a serious problem. While various assumptions were applied by the experts to assign a racial distribution to the missing data, the State's expert testified that such efforts were necessarily speculative.

Despite the lack of a racial identifier for 64.2% of the stops, the trial court concluded in its opinion that it could be determined that 35.6% of the stops between exits 1 and 7a were of black motorists and 46.2% were of blacks if the area studied was limited to stops made between exits 1 and 3.⁵ (Pa4; 15). The State's expert pointed out that reliance on such a large unknown in the database could lead to erroneous findings. If blacks, for some reason, were twice as likely to have their race recorded for stops made over the entire patrol area, the percentage of black stops would drop to 19.6%. If the assumption utilized was that the race of blacks was recorded three times more than white, the percentage of black stops fell to 14%, which is below the 15% benchmark.

⁵The State asserted that limiting the area of study to only a portion of the roadway patrolled by the same troopers was improper without identifying specific factors to distinguish their behavior in this limited area.

Testimony and exhibits regarding State Police training materials and the activities of the Drug Interdiction Training Unit were also presented by both the State and defense. The training materials included course outlines and videotapes for programs such as the organized crime activities of the Jamaican Posse and of drug interdiction techniques developed under a program entitled "Operation Pipeline" by the Federal Drug Enforcement Administration. The Operation Pipeline film has been widely seen by law enforcement agencies throughout this country and the program engaged in by the State Police is similar.

Various statements made by Col. Clinton Pagano, former superintendent of the State Police, were also admitted into evidence. They came from an edited report of a Channel 9 program entitled "Without Just Cause," and tapes he made in response thereto. When called as a witness, Col. Pagano fully explained these earlier statements and testified that he never encouraged racial profiling. In fact the official policy of the State Police rejected this procedure as a law enforcement technique.

The State's expert, Dr. Lawrence W. Sherman, a professor of Criminology at the University of Maryland and renowned national expert who leads the National Crime Control Institute, testified that an objective review of these materials clearly demonstrates that no law enforcement official is directed to abuse the rights of any citizen, nor are any more subtle persuasive efforts made to encourage such unlawful activity. The defense's expert offered various criticisms of the State Police program and

heavily criticized Col. Pagano based upon the limited information before him. The trial court relied heavily on this critique in its opinion granting defendants' motion. (Pa12-16). The court did not look to the facts of any of the seventeen cases before it to determine if any defendant was the subject of discrimination.

LEGAL ARGUMENT

POINT I

THE STATE'S MOTION FOR LEAVE TO
APPEAL SHOULD BE GRANTED.

In the case sub judice, seventeen criminal defendants jointly moved to suppress the evidence in their cases, that is, illegal drugs discovered in their motor vehicles after a traffic stop on the New Jersey Turnpike. The basis for the motion was a flawed statistical analysis which attempted to demonstrate that defendants were subjects of racial discrimination in the stopping of their vehicles.⁶ The courts of this country, however, have been extremely reluctant to find selective prosecution based on statistical models.⁷

Indeed, the present case, which is unprecedented in its scope, is clear evidence of the wisdom of that approach. Unfortunately, as discussed in Point III, infra, the lower court improperly interpreted defendants' defective statistical information. Further, the court ignored the State's evidence

⁶In his opinion below, Judge Francis plainly stated, "Defendants based their claim of institutional racism primarily on statistics." (Pa1).

⁷See the discussion in Point II, infra.

questioning and rebutting same, as well as the State's other evidence demonstrating the absence of any selective enforcement.

Additionally, as discussed in Point II below, the trial court applied an erroneous legal standard in determining that there was selective prosecution by the State Police. The lower court also erred in determining that the proper remedy was automatic suppression of the evidence against all of these defendants. That court ignored the legal requirement that, even if discrimination against some individuals is proven, each defendant must also demonstrate that he or she was personally the subject of discrimination. That is, that his traffic stop was a result of racial bias and not because of a lawful nondiscriminatory reason.

The Attorney General has filed this motion for leave to appeal because of these clearly erroneous actions by the lower court. This court may grant leave to appeal from an interlocutory order of a trial court "in the interest of justice." R. 2:2-4. The State acknowledges that this power is discretionary and to be exercised "only sparingly." State v. Reldan, 100 N.J. 187, 205 (1985). However, it is submitted that the interest of justice militates in favor of granting the present motion because the trial court's decision, if not corrected, works a manifest injustice, unjustly enriches defendants who were properly the subject of law enforcement action and will have a major impact on law enforcement in New Jersey.

With the lower court's suppression of the critical evidence in each of these seventeen drug cases, the State will be unable to prosecute them. It will have no choice but to move to dismiss each of the indictments.⁸ Further, eight other defendants originally joined in the motion, but were later dismissed. While the State would dispute the merit of such arguments, these other defendants could well seek to utilize the holding of this case in their actions. Indeed, any minority defendant who was arrested on the section of the New Jersey Turnpike studied for any offense, criminal or traffic, including driving while intoxicated, and is presently awaiting trial or pursuing a direct appeal, could attempt to raise the issue as well.

As important as the above considerations are, even more significant is the fact that other courts in this state could be improvidently led to apply the erroneous legal and factual analyses utilized by the lower court herein to similar cases before them. Indeed, there is an analogous action presently pending in Hunterdon County regarding defendants arrested on Interstate Route 78. Similar motions have also been filed in Bergen and Mercer counties. Thus, the issues presented in this case need to be addressed by our appellate courts.⁹

⁸In light of that reality, the lower court's ruling is not truly "interlocutory", but is, in a real sense, a final order.

⁹The lower court's decision is also a terrible indictment of an agency of the Executive Branch of the New Jersey state government. The trial judge has accused the New Jersey Division of State Police of purposeful racial discrimination. That agency is entitled to challenge the soundness of the trial court's opinion.

Moreover, it is respectfully submitted that summary disposition is not appropriate in this case. See R. 2:11-2. The merits of this appeal should be decided only after the matter has been fully briefed and reviewed on the complete record. See R. 2:8-3(b). There was a full six months of hearings in this matter. Also, the case is very fact sensitive. It is therefore necessary for this court to have the transcripts in this matter. The parties' analysis of the testimony, and the applicable law, will also be of great assistance to the court in determining the very significant issues presented by this case.¹⁰

For the foregoing reasons, the errors of fact and law which occurred below, as well as the enormous impact of this decision on the prosecution of these defendants and other defendants elsewhere in the State, this court should grant the State's motion for leave to appeal. Further, the merits of this appeal should be decided only after the matter has been fully briefed.

¹⁰After review of the transcripts in this matter, it may become evident that other errors occurred during the course of the hearing below and in the opinion of the trial court. The State reserves the right to address these and other issues in its merits brief. For example, there is a serious question as to whether the evidence demonstrates that the actions of the troopers assigned to the Moorestown Station is sufficient to prove a discriminatory purpose on the part of the Division of State Police. See Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). See also McClesky v. Kemp, 481 U.S. 279, 107 S.Ct. 1756, 1767-70 (1987).

POINT II

THE LOWER COURT APPLIED AN
INCORRECT STANDARD OF PROOF IN
REACHING ITS DECISION AND
IMPROPERLY SUPPRESSED THE EVIDENCE
AGAINST THESE DEFENDANTS.

For good reason, claims of selective or discriminatory prosecution are rarely successful. People v. Smith, 155 Cal.App.3d 1103, 1127, 203 Cal. Rptr. 196, 207 (Cal. App. 1984) ("No finding of discriminatory prosecution has ever barred a conviction in a California criminal proceeding."), cert. denied, 469 U.S. 1160, 105 S.Ct. 910, 83 L.Ed.2d 924 (1985); LaFave & Israel, Criminal Procedure (West 1984) § 13.4(a), p. 186 ("Whether raised in federal court or state court, the claim is not likely to succeed...."); John S. Helbrand, Annotation, What Constitutes Such Discriminatory Prosecution Or Enforcement Of Laws As To Provide Valid Defense In State Criminal Proceedings, 95 A.L.R. 3d 280, 288; Cardinale & Feldman, The Federal Courts and the Right to Nondiscriminatory Administration of the Criminal Law: A Critical View, 29 Syracuse L. Rev. 659, 691 (1978) ("Since 1886, only eight persons have been able to meet the burden of proof necessary to prove discriminatory law administration in the federal courts."); Note, 83 Geo. L.J. 839, 842 (1995) ("A prosecutor's decision to bring charges rarely violates the Equal Protection Clause.").

Courts have often recognized a prosecutor's broad discretion to initiate and conduct criminal prosecutions, in part out of regard for the separation of powers doctrine, see United States

v. Palmer, 3 F.3d 300, 305 (9th Cir. 1993), cert. denied, 114 S.Ct. 1120 (1994); State v. DiFrisco, 118 N.J. 253, 265 (1990), cert. denied, 116 S.Ct. 949 (1996) and in part because the decision to prosecute is ill-suited to judicial review. Wayte v. United States, 470 U.S. 598, 607, 105 S.Ct. 1524, 1530, 84 L.Ed.2d 547 (1985); United States v. Brock, 782 F.2d 1442, 1444 (7th Cir. 1986); State v. DiFrisco, 118 N.J. at 265-66. See also State v. Perry, 124 N.J. 128, 168 (1991).

Indeed, it is well-established in New Jersey that prosecutors have very broad discretion in determining whom to prosecute and whom not to prosecute. In fact, there is a "presumption of validity" to the conduct of the prosecutor. State v. Perry, 124 N.J. at 167; State v. DiFrisco, 118 N.J. at 265-66; State v. McCrary, 97 N.J. 132, 142 (1984); State v. Mitchell, 164 N.J. Super. 198, 201 (App. Div. 1978).

Accordingly, courts presume, in the absence of contrary evidence, that criminal prosecutions are undertaken in good faith and in a nondiscriminatory manner. See United States v. Parham, 16 F.3d 844, 846 (8th Cir. 1994); United States v. Redondo-Lemos, 27 F.3d 439, 444 (9th Cir. 1994). As long as a prosecutor has probable cause to believe that the accused has committed an offense, the decision to prosecute rests within her or his discretion. Wayte v. United States, 470 U.S. 598, 607, 105 S.Ct. 1524, 1530, 84 L.Ed.2d 547 (1985); United States v. Esposition, 968 F.2d 300, 306 (3d Cir. 1992); State v. Perry, 124 N.J. at 167; State v. DiFrisco, 118 N.J. at 265-66.

In State v. DiFrisco, 118 N.J. 253, the New Jersey Supreme Court considered and rejected a defendant's claim that he was the subject of unconstitutional selective prosecution. The Court held that, a defendant's "burden in such cases is heavy." Id. at 266 (emphasis added). Relying on Wayte v. United States, 470 U.S. 598, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985), the Supreme Court of New Jersey further held that,

In order to prevail on a claim of discriminatory enforcement, the defendant must plead and prove intentional selectivity, as well as an unjustifiable basis for the discrimination. "The standards require petitioner to show both that the...enforcement system has a discriminatory effect and that it was motivated by a discriminatory purpose."

State v. DiFrisco, 118 N.J. at 266 (emphasis added) (quoting Wayte v. United States, 470 U.S. at 608, 105 S.Ct. at 1531, 84 L.Ed.2d at 556). Accord State v. Perry, 124 N.J. at 168; State v. Sutton, 80 N.J. 110, 121 (1979); State v. Savoie, 128 N.J. Super. 329, 337 (App. Div. 1974), rev'd on other grounds, 67 N.J. 439 (1975); State v. Boncelot, 107 N.J. Super. 444, 453 (App. Div. 1969).

Thus, the test for selective enforcement has two prongs. In order to be successful, a defendant has the difficult task, the "heavy" burden, of first proving that the government's actions have had a discriminatory effect. Second, defendant must also prove that the government acted, not from a lawful or neutral purpose which may have had an unintended discriminatory effect, but rather acted with a conscious intent or purpose to discriminate against defendant because of his race, her gender or

because of some other unjustifiable and unconstitutional consideration. Wayte v. United States, supra; Giano v. Senkowski, 54 F.3d 1050, 1057 (2d Cir. 1995); Jones v. White, 992 F.2d 1548, 1571-72 (11th Cir.), cert. denied, 114 S.Ct. 448 (1993); State v. Perry, supra; State v. DiFrisco, supra; State v. Sutton, supra; State v. Savoie, supra.

As explained by the Supreme Court, "'Discriminatory purpose'...implies more than...intent as awareness of consequences. It implies that the decisionmaker...selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." Wayte v. United States, 470 U.S. at 610, 105 S.Ct. at 1532, quoting Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 279, 99 S.Ct. 2282, 2296, 60 L.Ed.2d 870 (1979).

In McClesky v. Kemp, 481 U.S. 279, 107 S.Ct. 1756 (1987), the Supreme Court expounded further on this second prong.

A corollary to this principle [the existence of discriminatory purpose] is that a criminal defendant must prove that the purposeful discrimination 'had a discriminatory effect' on him. Thus, to prevail under the Equal Protection Clause, [defendant] must prove that the decision-makers in his case acted with discriminatory purpose.

481 U.S. at 292, 107 S.Ct. at 1767 (emphasis in original).

Consequently, a defendant must do more than prove that there has been unlawful and purposeful discrimination exercised against others. Rather, if a criminal defendant is to avoid liability for his own misdeeds, he must also demonstrate that he,

individually, was the subject of invidious discrimination. Ibid.
Accord Jeffers v. Lewis, 38 F.3d 411, 419 (9th Cir. 1994);
Carrigen v. Lewis, 948 F.2d 588 (9th Cir. 1991); Elledge v.
Dugger, 823 F.2d 1439, 1450 (11th Cir. 1987); Cain v. State, 422
S.E.2d 535, 536 (Ga. 1992).

This requirement is in accord with New Jersey law. As stated by our Supreme Court, "...in order for a defendant to prevail on an equal protection challenge, he must demonstrate that the decision to prosecute him and not others was 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification'." State v. Sutton, 80 N.J. at 121. See also Hyland v. Smollok, 137 N.J. Super. 456, 462-63 (App. Div. 1975), certif. denied, 71 N.J. 328 (1976); State v. Boncelot, 107 N.J. Super. at 453 ("The mere fact that a law has not been fully enforced against others does not give a defendant the right to violate it"). Cf. State v. Bruzzese, 94 N.J. 210 (1983), cert. denied, 465 U.S. 1030, 104 S.Ct. 1295 (1984).

In sum, defendants have the "heavy" burden of first proving that the New Jersey State Police enforced the motor vehicle laws of this State in such a fashion as to have a clear discriminatory effect on African-Americans. However, even if defendants had been able to make such a showing, which they did not, that fact is plainly insufficient in itself. Defendants must next demonstrate that such action by the New Jersey Division of State Police was the intended result of conscious and deliberate racial

discrimination by that governmental agency.¹¹ Finally, as a corollary to the second element, each defendant is required to prove that he or she, as an individual, was personally the subject of such invidious and purposeful discrimination.

Absent such evidence, the only "true issue" here is whether the defendant violated the traffic laws. Hyland v. Smollok, 137 N.J. Super. at 462-63; State v. Boncelot, 107 N.J. Super. at 453. Indeed, to permit these defendants to escape liability for their grave criminal acts in the absence of unambiguous proof clearly demonstrating the above elements would transgress the well-established law in this area and constitute a manifest injustice. See State v. Bruzzese, 94 N.J. at 222-23 (defendant not entitled to a "windfall" because of an officer's "bad thoughts").

Applying these principles to the case at bar, it is immediately evident that the lower court indulged in several serious errors of law. First, in evaluating the evidence presented, the court did not hold defendants to the "heavy" burden of proof required by our Supreme Court in State v. DiFrisco, 118 N.J. at 266. Instead, Judge Francis stated, "I find defendants have established a prima facie case of selective

¹¹Judge Francis specifically states in his opinion that the basis of defendants' claim is an allegation of "institutional racism." (Pa1). Also, as a matter of law, defendants must prove a discriminatory purpose on the part of a governmental agency. Our courts have held that the subjective intent of the individual officer effectuating the arrest is an insufficient basis for suppression of evidence, State v. Bruzzese, supra, absent additional proof of institutional racism. State v. Kennedy, 247 N.J. Super 21, 27-30 (App. Div. 1991). See also Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

enforcement which the State has failed to rebut requiring suppression of all contraband and evidence seized." (Pa1).

Thus, the trial judge required defendants to present merely a prima facie case, at which point he transferred the burden of proof to the State to rebut defendants' claims. Plainly, this procedure violates the holding of DiFrisco. Not only did that decision place a "heavy" burden on defendants, it never authorized the shifting of the burden of proof to the State once a prima facie case has been presented by defendants.

It is apparent that Judge Francis' error arose when he borrowed, for use herein, procedural standards applicable to actions under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e et seq., (hereinafter "Title VII"). However, those standards are plainly inapplicable in the present context which involves questions of constitutional criminal, not statutory civil law. Indeed, Judge Francis even misinterpreted the caselaw applicable to civil Title VII actions since the burden of proof always remains with the party alleging unlawful discrimination.

First, the United States Supreme Court has made it perfectly plain that the legal test applicable in Title VII litigation is significantly different from that utilized in determining constitutional claims of selective prosecution in a criminal case. The two bodies of caselaw are not interchangeable. In Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), the Court of Appeals made the same error there as did

Judge Francis in the present case, i.e., application of Title VII standards of proof in the context of a constitutional claim. The Supreme Court reversed the Court of Appeals stating,

As the Court of Appeals understood Title VII, employees or applicants proceeding under it need not concern themselves with the employer's possible discriminatory purpose but instead may focus solely on the racially differential impact of the challenged hiring or promotion practices. This is not the constitutional rule. We have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today.

426 U.S. at 238-239, 48 L.Ed.2d at 607.

Second, even under Title VII law, the burden of persuasion does not shift to the defending party when the complaining party makes out a prima facie case. The United States Supreme Court dealt with this issue in Wards Cove Packing Co., Inc. v. Atonio, 490 U.S. 642, 109 S.Ct. 2115, 104, 104 L.Ed.2d 733 (1989). In that Title VII case, the Court of Appeals there again made the same error as did Judge Francis below. The Supreme Court held that, even when a plaintiff has made out a prima facie case,

The burden of persuasion, however, remains with the disparate-impact plaintiff. To the extent that the Ninth Circuit held otherwise in its en banc decision in this case...suggesting that the persuasion burden should shift to petitioners once respondents established a prima facie case of disparate impact--its decisions were erroneous. "The ultimate burden of proving that discrimination against a protected group has been caused by a specific employment practice remains with the plaintiff at all times."

490 U.S. at 659, 109 S.Ct. at 2126 (emphasis in original;

citations omitted).¹² Thus, Judge Francis was plainly in error when he shifted the burden of proof to the State.

The trial court also erred when it concluded that the second prong of the selective prosecution standard, a discriminatory purpose, could be inferred from the type of statistical studies presented here.¹³ (Pa15). In support of that conclusion, the court relied on McClesky v. Kemp, *supra*, State v. Kennedy, *supra* and Castaneda v. Partida, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977). However, an examination of those decisions will reveal that they do not, in fact, support that proposition.

Judge Francis stated that State v. Kennedy "implies" that statistics can be used to infer discriminatory purpose. (Pa15). However, even a superficial reading of Kennedy makes it plain that that case dealt only with the issue of pretrial discovery. It held that discovery would be permitted after a defendant demonstrated a "colorable basis" for his claim of selective prosecution. The court's only discussion of statistics involved the faulty statistics submitted by the Public Defender and the nature of the studies which could establish a colorable basis.

¹²It should be noted that in Wards Cove, the Supreme Court distinguished between the burden of production and the burden of persuasion. In a Title VII action, once a prima facie case has been established, the defending party has the burden of production, but does not have the burden of persuasion. Id. 490 U.S. at 660, 109 S.Ct. at 2126. Of course, however, even this principle is inapplicable in the context of a criminal case where a defendant asserts a constitutional challenge of selective prosecution. Washington v. Davis, *supra*.

¹³The specific defects of those studies are discussed in Point III, infra.

It did not address the use of statistics to prove a discriminatory purpose.

In McClesky v. Kemp, the Supreme Court rejected defendant's statistical studies purporting to demonstrate selective enforcement of Georgia's capital punishment system. The Court held that, even assuming a discriminatory effect, defendant's statistics could not prove a discriminatory purpose.

Implementation of these laws necessarily requires discretionary judgments. Because discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer that the discretion has been abused...Accordingly, we hold that the Baldus study is clearly insufficient to support an inference that any of the decisionmakers in McClesky's case acted with discriminatory purpose.

Id., 481 U.S. at 297, 107 S.Ct. at 1770 (emphasis added). See also Washington v. Davis, 426 U.S. at 242.

Finally, the lower court's reliance on Castaneda v. Partida is also misplaced. That case involved discrimination in grand jury selection. However, as noted in McClesky, jury selection cases present an exception to the general rule in the use of statistics because there is no reason in logic that the grand jury should not mirror the general population. McClesky v. Kemp, 481 U.S. at 293-94, n.14, 107 S.Ct. at 1767-68, n.14. In criminal cases, however, there is no basis on which to assume that the violator population will mirror the general population. Therefore the same assumption cannot be made and, consequently, the language from Castaneda quoted by Judge Francis is inapplicable in the present context. In fact,

"[M]ost courts have found statistical evidence insufficient to establish a prima facie case of intentional discrimination." For example, evidence comparing the percentage of blacks in the population with the percentage of prosecutions for certain kinds of offenses involving black defendants has been held insufficient to establish invidious discrimination. . Such statistical analysis, which has been used with success in challenges to alleged discriminatory jury selection, does not have similar utility in this context, as the statistics "reveal nothing about the number of minority and majority group members who in fact have committed the particular crimes or about how many violations by each group are known to law enforcement authorities."

2 W. LaFave & G. Israel, Criminal Procedure § 13.4(a), at 186 (West 1984). See also United States v. Redondo-Lemos, 27 F.3d at 443-44 (statistics insufficient evidence to prove discriminatory purpose); Jones v. White, 992 F.2d at 1573 ("The instances in which the [Supreme] Court has recognized constitutionally impermissible discrimination evidenced by statistical data showing discriminatory impact are rare and blatant."); Pittman v. State, 633 So.2d 1125 (Fla. App. 1994); Stephens v. State, 456 S.E.2d 560, 561 (Ga. 1995); Cain v. State, 422 S.E.2d at 536; Gifford, Equal Protection and the Prosecutor's Charging Decision: Enforcing an Ideal, 49 Geo. Wash. L. Rev. 659, 696 (1981).

Thus, it is plain that the cases cited by Judge Francis do not support his decision to infer discriminatory purpose from the statistics presented herein. Indeed, the case law is quite to the contrary.

Similarly, Judge Francis cited Bazemore v. Friday, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986), for the proposition that the State cannot rebut defendants' statistical presentation

by demonstrating its flaws. (Pa15). Putting aside the fact that the cases cited by Judge Francis are inapplicable Title VII cases, Bazemore does not stand for the proposition cited.

In Bazemore, the district court had refused to admit plaintiff's statistical study into evidence because it did not address certain variables. The Supreme Court held that in some cases such a deficiency could render a study inadmissible. However, "[n]ormally, failure to include variables will affect the analysis' probativeness, not its admissibility." Id. 478 U.S. at 400, 106 S.Ct. at 3009.

Significantly, the Court expressly pointed out that, while admissible, the flaws in a study could still, in fact, affect the final determination of whether a plaintiff had met his burden of proof. Ibid. Thus, under Bazemore, one could theoretically defeat an action by simply demonstrating the fatal weakness in an opponent's statistical proofs such that the opponent fails to carry her burden of proof. Plainly, Bazemore dealt with an evidentiary issue, not the method by which a defending party can ultimately challenge a party's proofs.

Finally, no evidence was presented at the hearing below regarding the reasons for the traffic stop of each individual defendant herein. That being the case, the trial judge did not, of course, address the issue of whether any of these individual defendants was the subject of racial discrimination when his vehicle was stopped. As discussed above, the law requires a defendant to make such a showing in order to establish a

selective prosecution defense. McClesky v. Kemp, 481 U.S. at 292, 107 S.Ct. at 1767; Jeffers v. Lewis, supra; Carrigen v. Lewis, supra; Elledge v. Dugger, supra; State v. Sutton, 80 N.J. at 121. See also Hyland v. Smollok, 137 N.J. Super. at 462-63; State v. Boncelot, 107 N.J. Super. at 453.

Thus, even assuming there were no other error herein, there should have been a further step to the trial court's analysis prior to suppressing the evidence herein. Even if the lower court's decision were correct, each of the defendants herein must now prove before his own trial judge that his individual stop was part of the pattern of discrimination and was, in fact, caused by racial discrimination. In the absence of such evidence, it would be unjust to suppress the drugs seized from that defendant.

In sum, it is evident that the trial court utilized the wrong standards for judging the evidence in the case sub judice. First, the court did not hold defendants to the "heavy" burden of proof required by our Supreme Court in State v. DiFrisco, 118 N.J. at 266, but merely required defendants to establish a prima facie case of selective enforcement. Second, the court improperly applied civil Title VII concepts to this constitutional challenge and consequently unlawfully shifted the burden of proof to the State. Third, the trial court erred in concluding that the second prong of the selective prosecution standard, a discriminatory purpose, could be inferred from the type of statistical studies presented here. Fourth, the court mistakenly found that any statistics, no matter how flawed, are

sufficient to establish a selective prosecution defense unless the opposing party can present "specific evidence" proving the absence of discrimination. Finally, the court also erred in suppressing the evidence in each defendant's case while refusing to consider proof of whether the traffic stop of that defendant was, in fact, the result of discrimination.

POINT III

THE TRIAL COURT'S
FINDINGS ARE SO
SPECULATIVE AND ERRONEOUS
AS TO WARRANT DE NOVO
APPELLATE REVIEW.

As discussed in Point II, supra, defendants bear a "heavy" burden of proof. State v. DiFrisco, 118 N.J. 253, 266 (1990), cert. denied, 116 S.Ct. 949 (1996). They must prove both discriminatory effect and discriminatory purpose by the law enforcement agency involved. Moreover, where defendants primarily base their case upon statistical evidence, that evidence must be "exceptionally clear." McClesky v. Kemp, 481 U.S. 279, 297, 107 S.Ct. 1756, 1770 (1987).

In the instant case, the trial court incorrrectly found that the statistical disparity between the percentage of black motorists violating the law and the number actually stopped was so stark that it constituted at least a de facto policy of discrimination by the New Jersey Division of State Police. The primary problem with this factual determination is that it is dependent upon faulty and speculative data.

The State's expert correctly pointed out to the court that there was insufficient data from which one could draw statistically based conclusions that the State Police were engaging in a pattern and practice of discrimination. Further, Mr. Last's woefully inadequate violator survey, utilized for comparison with a data base in which two-thirds of the data is missing, is hardly a basis for making statistically reliable

findings of such far-reaching consequence.

Such circumstances warrant original fact finding by the appellate court. The State fully recognizes that this is a function of appellate courts that is utilized only sparingly. See Rova Farm Resort, Inc. v. Investors Ins. Co. Of Am., 65 N.J. 474, 484 (1974). However, an appellate court's scope of review is broader when findings of the trial court are based upon an "alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom..." C.B. Snyder Realty Inc. v. BMV of N. Am. Inc., 233 N.J. Super. 65, 69 (App. Div.) certif. denied 117 N.J. 165 (1989). Accord State v. \$36,560.00 In U.S. Currency, ___ N.J. Super. ___ (App. Div. 1996) (slip opinion at 20). That principle would appear to be particularly apropos where the evidence in question is statistical in nature, that is, able to be objectively weighed by any interested observer, rather than based on one's subjective evaluation of the credibility of the witnesses.

Indeed, where an objective review leaves an appellate court "with the definite conviction that the trial judge went so wide of the mark that a mistake must have been made" then the appellate court may "appraise the record as if [it] were deciding the matter at inception and make [its] own findings and conclusions." C.B. Snyder Realty Inc. v. BMV of N. Am. Inc., 233 N.J. Super. at 69 (quoting Pioneer Nat'l. Title Ins. Co. v. Lucas, 155 N.J. Super. 333, 338 (App. Div. 1978)). Accord State v. \$36,560.00 In U.S. Currency, ___ N.J. Super. ___ (App. Div. 1996)

(slip opinion at 20-21). Additionally, when expert opinions are formed without a proper basis, a trial or reviewing court may find them to be not worthy of consideration. Polyard v. Terry, 160 N.J.Super. 497, 511 (App.Div. 1978).

In the present case the State asserts that the trial judge erroneously accepted defendants' biased and flawed violator survey which failed to capture sufficient relevant data. He accepted it solely on the "opinion" of the defense experts. It is absurd to believe that one assistant public defender could, by riding up and down a highway for only 4 days (28 and 3/4 hours) counting cars that passed him, gather sufficient data to assess the many factors leading to a patrol officer's decision to stop motorists.

The defense, defendants' experts and the trial court all recognized the fact that, at best, defendants' violator survey attempts to determine the percentage of motorists who drive over sixty mph and the racial composition of such violators. They also submit that all such persons are deemed equally likely to be stopped for the purpose of statistical comparison to those who were actually stopped. However, the State's expert warned that it is highly speculative to assume that the pool of persons going over sixty mph is the same pool of persons most likely to be stopped. Moreover, there is no data available concerning this latter figure.

The only response offered by the trial judge to this fatal flaw in defendants' proofs was that the state troopers who testified did not notice a difference in the driving patterns of

blacks and whites. With all due respect to the troopers, these opinions are hardly the equivalent of a scientific study.

The State submits that the fact that black drivers were involved in 23% of DWI related accidents in and of itself points up the problem with adopting this simplistic assumption. Perhaps for another category of offense whites would be the disproportionately higher number of offenders. What causes such fluctuations is not explained by the defense violator survey. Even more basic is the failure of that study to even attempt to capture information regarding the numerous types of potential offenses, including the various ranges of speeding, which could cause a trooper to stop a motorist.

Just as disturbing is the court's reliance on a data base where two-thirds of the data are missing. Experts for both sides called this a serious problem which was never solved. The opinion of the trial judge barely addresses this "serious problem." Rather, the court merely states that whether you assume "the probability of having one's race recorded if black and stopped is the same as white and stopped or two or three times as likely, the log odds were still greater than .99 that blacks were stopped at higher rates than whites on the Turnpike between exits 1 and 3 during the period April 1988 and May 1991." (Pa4).

Incredibly, the court does not reveal the degree of the extent of the disparity. Rather, the court simply accepts the most extreme figures beneficial to the defense. Even the defense

expert agreed there is a chance that the percentages could be appropriately proportional. Furthermore, the State's expert established that if blacks were more likely to have their race recorded, this alone is a factor which could dramatically change the statistics. The point is no one really knows, based upon firm scientific evidence, where the numbers and percentages fall. Therefore defendants failed to sustain their "heavy" burden of proof. It was simply error for the trial judge to adopt the most extreme figures painted by the defense and use it as a scientifically reliable basis of comparison to find "stark" patterns under such circumstances.

The State also believes other findings by the court below further demonstrates that this trier of fact was clearly mistaken, to the point of being "wide of the mark." In its attempt to support a finding of discriminatory purpose, the trial court found fault with virtually everything the State Police did. An illustrative statement made by the trial judge is the following:

. . . teaching Hispanics are mainly involved in drug trafficking and showing films depicting mostly Hispanics and black traffickers in drugs at training sessions worked at cross-purposes with concomitant instruction pointing out that neither race nor ethnicity may be considered in making traffic stops.

(Pa12).

This statement plainly acknowledges that the State Police training stated that race and ethnicity should not be considered in making traffic stops. Nevertheless, criticism is directed at the State Police because blacks were depicted in a training

session on the Jamaican Posse?! This training was only one forty minute segment of the 1989 in-service training program taught by a State Police detective who is black and of Jamaican descent. The film footage was largely taken from news accounts about this violent emerging organized crime group.

As the State's expert testified, police officers are sophisticated enough to know that, when a training session deals with a particular organized crime group such as the traditional Mafia or emerging groups such as Russian organized crime, disclaimers need not be utilized alerting the police to the fact that not all persons of that ethnic background are criminals. Reports on the Mafia, the skinheads, the Asian gangs, the new Russian organizations, the Columbian drugs lords and the Jamaican Posse are not meant as disparagements of those ethnic groups, but rather are statements of objective fact. Should the State Police hire actors of a wide range of ethnic backgrounds rather than utilize available film footage actually depicting Jamaican Posse members? Including such a requirement pushes the bounds of political correctness to an absurd level that disservices the public safety.

Similar findings regarding the Operation Pipeline Drug Interdiction training, which has been viewed nationwide without known prior negative judicial comment, can be determined by a mere viewing of the film. The State not only disagrees with the trial court's subjective critique, but also asserts that this is hardly evidence of the "purposeful" discrimination required to

prove a selective prosecution claim. See McClesky v. Kemp,
supra, 481 U.S. at 292; State v. DiFrisco, supra at 266.

Finally, the attack made on Col. Pagano in the trial court's opinion was totally unsupported and bordered on being vicious. How anyone can objectively draw conclusions about a person's fifteen year tenure in the position of superintendent from an edited news piece, the Colonel's response thereto and other fragmented pieces of evidence is truly incredible. Both the State and the State's expert pointed out the danger of drawing negative inferences from such limited information, particularly when the superintendent flatly stated on the record that the violation of an individuals' constitutional rights is "wrong."

Perhaps the trial court's opinion was negatively influenced by conclusions reached in reliance upon defendants' defective statistics. This fact could have caused the court to lose objectivity and to conduct a painstaking search of the record for isolated tidbits to piece together something which would satisfy the motive requirement of a selective prosecution finding. Even a cursory reading of the trial judge's opinion reveals that this type of analysis was utilized.

In truth, at no point does the trial judge identify actual evidence of purposeful discrimination. Rather, the court below relies upon dubious statistics and a negative vision of State Police leadership and training procedures. The State submits that a full and objective reading of the entire record is essential and will lead to the opposite conclusion. At a

minimum, the purposeful discrimination element of selective prosecution defense should not be reduced to the negligence or recklessness standard which is implicit in the lower court's opinion.

The New Jersey Division of State Police has always and will continue to provide leadership and instruction which is consistent with the mandates of the law. Manifestly, based on the full record, defendants have failed to demonstrate either a discriminatory effect or a discriminatory purpose. The decision below must be reversed.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the lower court manifestly made numerous errors in both its legal and factual determinations. For these reasons, the State's motion for leave to appeal should be granted and, ultimately, the lower court's decision should be reversed and defendants' motion for the suppression of evidence should be denied.

Respectfully submitted,

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-MOVANT

BY: _____
John M. Fahy
Deputy Attorney General

John M. Fahy
Gerard C. Sims, Jr.
Of Counsel and On the Brief



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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLE
DIRECTOR

May 28, 1996

Mr. Edward Costantini
Case Manager
Superior Court of New Jersey
Appellate Division
CN006
Trenton, New Jersey 08625

Re: State v. Pedro Soto
Docket No. Below :L-0675-91

Dear Mr. Costantini:

This will confirm our telephone conversation of Tuesday, May 28, 1996 in which you indicated that the State's Motion for Leave to Appeal was granted in the above-captioned matter. The State has ordered transcripts in this matter which consisted of 75 hearing dates. Transcripts for only 3 days were previously ordered. It is my understanding that the Court reporters have split the request into three parts and have been granted an extension until September 15, 1996 to complete the transcripts. Attached you will find paperwork dealing with the order placed by the State and extension request.

If you have any questions, please feel free to contact me at you convenience at 984-4461.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw



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TERRENCE P. FARLEY
DIRECTOR

May 3, 1996

The Honorable Harris Y. Cotton
Gloucester County Prosecutor
P.O. Box 623
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.

Dear Prosecutor Cotton:

Enclosed please find the State's Notice of Motion for Leave to Appeal and supporting papers in the above-captioned matter. As you will observe, the State challenges both the legal standard Judge Francis utilized in applying the selective prosecution defense and the trial court's factual findings. The State also seeks to file an additional merits brief once the transcripts have been completed. There were 72 hearing days and it will take several months before all of the transcripts are completed.

I will continue to keep you advised regarding the status of this matter.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosures
c: Brock Jenkins, Asst. Prosec.



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OAG 006580

SP 128050

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: James J. Ciancia
First Assistant Attorney General

FROM: SDAG John M. Fahy 

DATE: May 17, 1996

SUBJECT: Selective Prosecution Case

Attached for your information is the recent United States Supreme Court decision, United States v. Armstrong, et al., dealing with the selective prosecution defense when racial discrimination is raised. There is strong language in the opinion placing a heavy burden on defendants to establish that persons similarly situated who are not part of the "protected class" are not similarly prosecuted. It is interesting to note that this strong burden is also placed on defendants merely to obtain discovery. Of course, New Jersey courts can set more liberal standards under the State constitution.

Presently discovery motions are pending in six counties, Hunterdon, Mercer, Gloucester, Salem, Morris and Bergen, in which defendants primarily rely upon the State v. Pedro Soto decision by Judge Francis to support a "colorable basis" showing of selective enforcement based upon race. I have provided sample briefs to each county and will also make them aware of the Armstrong decision in an effort to oppose or limit discovery. In Hunterdon and Mercer counties, in preliminary decisions the trial judges have already ordered limited discovery. Our office is assisting with the drafting of consent orders regarding the scope of discovery to be provided.

On Monday, May 20, 1996, Captain Richard Touw, Internal Affairs Bureau, N.J.S.P. and I will meet with Hunterdon County Prosecutor Sharon J. Ransavage to provide her with some statistical information concerning the arresting officers in the two Hunterdon county cases which are the subject of the Kennedy application. The Hunterdon County Prosecutor's office is uncomfortable with pleading these cases out to reduced charges at this time due to the fact that first degree crimes are charged based upon the type and amount of drugs involved.

J.M.F.

hw
Attachments
c: Alexander P. Waugh, Executive Assistant Attorney General
Terrence P. Farley, Director, DCJ



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DEBORAH T. PORITZ
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

June 11, 1996

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Assistant Deputy Public Defenders
Office of the Public Defender
210 South Broad Street
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Steve Hallett, Esq.
539 West State Street
Trenton, New Jersey 08618

Re: State v. Kirk Douglas
Indictment No. 95-98-00901

State v. Albert Busano
Indictment No. 95-06-0728

State v. Willie Tyler
Indictment No. 95-12-1463

State v. Kenneth Matthews
Indictment No. 95-09-01105

Dear Counselors:

Enclosed please find a proposed consent order granting defendant's discovery application for preliminary records to allow the defense to determine whether to bring discovery and suppression motions pursuant to State v. Kennedy, 293 N.J. Super. 21 (App.Div. 1991). As you will observe, I referred to the arresting officers only by initials



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SP 128052

Counselors
June 11, 1996
Page Two

at this time to protect their privacy.

Please advise me regarding your position concerning the proposed order at your earliest convenience.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

hw
Enclosure



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STATE GRAND JURY

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TO: CAPT RICHARD TOUW

AGENCY: I A B

FAX NUMBER: 882-2033

FROM: JOHN M. FAHY, SDAG

DATE: 6/12/96

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DEBORAH T. PORITZ
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June 11, 1996

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Re: State v. Kirk Douglas
Indictment No. 95-98-00901

State v. Albert Busano
Indictment No. 95-06-0728

State v. Willie Tyler
Indictment No. 95-12-1463

State v. Kenneth Matthews
Indictment No. 95-09-01105

Dear Counselors:

It has come to my attention that one or more of the above-captioned matters are assigned to you to prosecute. Defendants in these cases have filed discovery and suppression motions alleging that the arresting officers in their cases engaged in selective prosecution based upon the race of the defendant. All of these cases involve stops on the New Jersey Turnpike.

On behalf of the State Police, the Attorney General's office is consenting to



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Counselors
Page Two
June 11, 1996

the release of a limited number of records to allow the defense to determine whether to pursue a motion pursuant to State v. Curtis Kennedy, 247 N.J. Super. 21 (App.Div. 1991). The State Police Internal Affairs Bureau will also conduct a review to determine if there is any substance to defendants' allegations. Once the results of this review are available, this information will be shared with the Mercer County Prosecutor's Office.

As you are probably aware, the issue of racially selective stopping practices by the State Police is being litigated throughout this State. Presently, two cases, one in which the State prevailed (Warren County) and one in which defendants prevailed (Gloucester County) are pending before the Appellate Division. Hopefully, later this year we will receive a clearer picture of the applicable legal standard in resolving such motions.

I have attached a copy of a proposed consent order dealing with the four above-captioned cases. Once the records are provided, the defense will have approximately one month to determine whether they want to pursue a selective prosecution suppression motion. If you have any comments regarding the proposed order, please contact me as soon as possible.

Your understanding in this matter is appreciated. Feel free to contact me at 984-4461 to discuss this issue further.

I have briefed First Assistant Dennis J. Slaboda regarding this matter.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

hw
Attachment
c: First Asst. Pros. Dennis J. Slaboda

STATE V. PEDRO SOTO

Would you please supply the below
correct spellings?

1
2
3 DR. Hoase Naus

4 DR. Leonard Cupingood ✓

5 DR. Siskin ✓

6 Lamberth ✓

7 DR. ~~Adame~~ Kudare

8 Troopers Wilson + ~~Roth~~ Ruff

9 Trooper Rant or Ramp? Grant

10 Trooper Nameth Nemeth

11 Trooper Manicus ~~Mannicus~~ Mannikus

12 ^{Sprainis}
13 ~~Sprainis~~ case in Warren County

14 Coyle v. ~~Charles~~ Estate of Simon

15 Waselov

16
17
18 Macy v. Rollins

19 State v. Mingo

20
21 Raymond DelGaudio v. Ernesto Rodriquero

22 Dr. or Mr. Somby

23 Judge ~~Gerry~~ GERRY

24 Trooper Madden

25 ^{Haenszel}
Mantle-~~Hansel~~ Test

Flice (author of ref. bk. on statistics)

NERA ✓

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Dominick Caruso
Fiscal Control & Monitoring
Office of the Attorney General

FROM: SDAG John M. Fahy
State Grand Jury
Division of Criminal Justice



DATE: January 7, 1997

SUBJECT: State v. Pedro Soto

This memorandum is a follow-up to my prior memorandum of December 18, 1996. Attached you will find an invoice for an additional five (5) days of transcripts for the appeal of the above-captioned matter. This invoice totals \$1,922.00. Kindly process same and forward to State Police for payment.

J.M.F.

hw
Attachment

THE TYPE - RIGHT - ER

Carol H. Vendzules
Director



(609) 881-2422

RECEIVED

JAN 03 1997

STATE GRAND JURY

December 31st, 1996

John M. Fahy,
Senior Deputy Attorney General
Dept. of Law & Public Safety
25 Market Street
Trenton, NJ 08625

RE: State v. Pedro Soto, et al.; Docket L-0675-91

Dear Mr. Fahy:

Pursuant to our phone conversation this morning, I have enclosed a "duplicate" State of New Jersey voucher for payment of the five (5) May dates of which has been misplaced. The total is \$1,922.00

You have informed me that payment of the previous three (3) vouchers is to be sent early January 1997 from the New Jersey State Police budget.

Please sign and forward this voucher so that I can be paid expeditiously. Thank you for your kind assistance.

Sincerely yours,

THE TYPE-RIGHT-ER


Carol H. Vendzules

Encs.

RD #1, Box 453 ■ Monroeville, NJ 08343

OAG 006595

SP 128065

STATE OF NEW JERSEY
PAYMENT VOUCHER
 (VENDOR INVOICE)

DOCUMENT						BATCH				ACTG PER.	FY	
TC	AGY	NUMBER				TC	AGY	NUMBER				
PP START			SCHED PAY			CHK	OFF	F	RF	CK	(A) VENDOR ID NUMBER	
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL		
PO #						PV DATE						143-56-3808

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
			immediate		\$ 1,922.00

(D) PAYEE NAME AND ADDRESS	(E) SEND COMPLETED FORM TO:
Carol H. Vendzules RD#1, Box 453 Monroeville, NJ 08343	John M. Faly, SDA9 Div. of Criminal Justice CN-085/Market St. Trenton NJ 08625

(F) PAYEE DECLARATIONS

I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

Carol H. Vendzules
 PAYEE SIGNATURE

AD/CTR
 PAYEE TITLE

12-31-96
 BILLING DATE

LINE NO	CD	AGY	NUMBER	LINE	(G) PAYEE REFERENCE
1					
2					CC-1348M State v. Pedro Soto, et al

THE TYPE - RIGHT - ER

Carol H. Vendzules
 R.D. #1, Box 453
 Monroeville, NJ 08343
 Certified Court Transcriber



(609) 881-2422

ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO

QUANTITY	AMOUNT	ID	PF	TX

NO.	COMMODITY	EM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State vs. Pedro Soto, et al Suppression Hearing Original + 1 copy for Appeal					
	5-15-95 - Motion		164	pgs	\$ 2.00 →	328.00
	5-16-95 - "		273	pgs	\$ 2.00 →	546.00
	5-17-95 - "		108	pgs	\$ 2.00 →	216.00
	5-22-95 - "		208	pgs	\$ 2.00 →	416.00
	5-24-95 - "		208	pgs	\$ 2.00 →	416.00
					TOTAL	\$ 1,922.00

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.

John M. Faly
 Signature
 Deputy Attorney General
 Title

1/7/97
 Date

CERTIFICATION BY APPROVAL OFFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

Authorized Signature

Title

Date

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: John M. Fahy
Senior Deputy Attorney General

DATE: January 7, 1997

SUBJECT: Profiling Issue

Attached is a first rough draft of a proposed letter to the U.S. Justice Department. Your thoughts regarding revisions including subjects to be added or deleted would be appreciated before the rough draft is forwarded to the Attorney General.

I have also reviewed the sample document request obtained from the U.S. Attorney's Office. Background information including organization charts and operational jurisdictions have already been gathered. These items are routinely included in the State Police annual report. I have also, with the assistance of Det. Thomas Gilbert, attempted to gather all memoranda concerning policy and procedures. Relevant standard operating procedures can also be included. The policy concerning the auditing of stations regarding allegations of racial profiling is still an effort in progress. While some initial audits have been undertaken, the formalization of an investigative procedure is still under development. Training materials can be gathered quickly. The State Police, as a result of the Soto litigation, are working on procedures to ensure retention of lesson plans and other training materials.

Internal Affairs Bureau complaints and studies can be gathered relatively quickly. I can prepare a summary of litigation activity involving allegations of racial profiling from my own records.

The largest problems and most time consuming effort would be to reproduce copies of all traffic stops for a two year period. Even the defense experts agreed in the Kennedy and Soto litigation to limit their study to a random number of days to reduce the overwhelming volume of paper. If such items are requested by the federal government, hopefully a similar arrangement can be worked out with them.


J.M.F.

hw

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: FILE

FROM: John M. Fahy, Deputy Attorney General
State Grand Jury

DATE: January 7, 1997

SUBJECT: Profiling Issue

On Tuesday, January 7, 1997, I met with Administrator Thomas O'Reilly, EAAG Alex Waugh, Director Robert Caccese and Administrative Assistant Ed Varga to discuss the issue of conducting a violator survey on the southern portion of the Turnpike. Administrator O'Reilly approved an initial consultation meeting with the Center for Forensic Economic Studies to discuss how such a study could be developed. The cost of the meeting is \$162 per hour for each of 2 experts. The meeting is expected to last 2 hours and cost a total of \$648 ($\$162 \times 2 \text{ experts} \times 2 \text{ hours} = \648).

Administrator O'Reilly also directed his staff members (Caccese, Varga) to contact officials at NITSA and N.J.I.T. to see if they can provide any assistance in developing a violator survey.

Director Caccese, Detective Tom Gilbert and I will attend a meeting at the Center for Forensic Economic Studies in Philadelphia on Wednesday, January 8, 1996 with Dr. Bernard Siskin and Dr. Leonard Cupingood.

SP 128068


OAG 006598

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

CONFIDENTIAL

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: John M. Fahy 
Senior Deputy Attorney General

DATE: January 9, 1997

SUBJECT: Profiling Issue

On Wednesday, January 8, 1997 representatives from this department met with Dr. Bernard Siskin and Dr. Leonard Cupingood from the Center for Forensic Economic Studies in Philadelphia to explore options for conducting a violator survey on the southern portion of the Turnpike. Bob Caccese, Director, OAG, Alvin Beveridge, Operations Audit, Det. Thomas Gilbert, N.J.S.P. and I attended on behalf of the State.

As a result of that meeting, a consensus was reached that a study could be conducted in stages, with an evaluation made after each stage as to whether further data is required. Initially, a photo radar survey could be conducted in which the rates of speed, and photographs of the vehicle including license plate and driver are documented. This will allow for analysis of the number and percentage of violators at various rates of speed by race.

If additional data is required, a further violator survey measuring other types of motor vehicle violations can be designed. Conducting such a survey utilizing radar guns and personal observations from a stationary mode appears workable. The primary costs would involve payment of observers (possibly college students) for data collection and fees associated with analysis of the data. The larger problem deals with capturing data when officers are working a mobile patrol. Det. Gilbert strongly believes that having observers ride with troopers would have a major impact on the reliability of the data because the work habits of the troopers would be effected. Other options can be considered if we progress to that point.

EEAG Alex Waugh
Page 2
January 9, 1997

I recommend that the limited speed survey utilizing photo radar be conducted. Director Caccese has contacted Highway Traffic Safety and determined that appropriate equipment could be rented at a cost of \$250 a week. Of course, before we progress any further Attorney General Verniero and Col. Williams must be briefed and their approval obtained. Perhaps we should have another meeting to discuss this particular issue and the status of the overall matter.

Please advise.

J.M.F.

hw
c: Administrator Thomas O'Reilly
Director Robert Caccese
Management Analyst Al Beveridge
Det. I Thomas Gilbert
DAG George Rover



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

January 3, 1997

DRAFT

DRAFT

DRAFT

Loretta King
Deputy Assistant Attorney General
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. King:

Initially I want to extend my appreciation to you, Steven Rosenbaum, Mark Posner and Craig Haugen for meeting with me and members of my legal staff on December 12, 1996. I believe the meeting was productive and hope that it assured you that our two offices are mutually committed to the goal of ensuring that the civil rights of all persons are protected as they travel the highways of New Jersey and throughout this country. I have also reviewed a copy of the information request form which your office utilizes in analyzing allegations of discriminatory law enforcement practices. I am certain that our two offices can work professionally and in cooperation to gather and review all relevant information. The New Jersey State Police has a long and proud history which can only be enhanced by dealing directly and honestly with the issue of alleged racial disparity in enforcement practices.



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Deputy Assistant Attorney General King
January 3, 1997
Page 2

As discussed at our meeting and as you will observe upon review of documentation, the New Jersey State Police has been at the forefront of developing and implementing professional law enforcement procedures. The official policy of the State Police is communicated through statements from the Superintendent, standard operating procedures, official rules and regulations and progressive training. With oversight and input from the Attorney General's Office, the New Jersey State Police has taken steps in the past to convey to every road trooper the importance of complying with constitutional mandates. These steps included adoption of a standard operation procedure, SOP F-55 which specifically provides:

Physical and personal characteristics such as race, age, length of hair, style of dress, type of vehicle, and number of occupants of a vehicle may not be utilized as facts relevant to establish reasonable suspicion or probable cause unless the member can identify and describe the manner in which a characteristic is directly and specifically related to particular criminal activity.

As you will observe, the mandates of SOP F-55 offer protections greater than those included in the Constitution and required by caselaw. Such a step was taken to make it emphatically clear to every trooper that law enforcement action should not be effected by a person's physical characteristics, including those which are provided a constitutionally protected classification. While the New Jersey State Police through official training had previously advised officers that racial profiling was constitutionally prohibited, inclusion of a broad anti-discriminatory provision in a standard operating procedure was undertaken to reinforce this policy.

Deputy Assistant Attorney General King
January 3, 1997
Page 3

Similarly, other standard operating procedure provisions have been designed to ensure that the public is protected. Another section of SOP F-55 precludes consent searches without first obtaining the written consent of the motorist. The trooper requesting consent must also reasonably suspect that the search will yield contraband or evidence of crime. Once again, the requirements mandated by the New Jersey State Police exceed those required by the Constitution or caselaw.

SOP F-3 dealing with State Police Patrol Procedures specifically requires a trooper to call in each stop and provide a "Description of people (number of persons, race, sex and other distinguishing characteristics)." Admittedly, even official procedures are not always followed. The State Police, however, do investigate and discipline troopers for any known violation. The Internal Affairs Bureau, Staff Inspection Unit, has recently undertaken audits to determine the extent of compliance with this procedure and to reenforce the Superintendent's directives.

The existence of a modern and professional internal affairs program to address violations of procedures, rules and regulations is also essential. The New Jersey State Police has such a program in place as detailed in SOP B-10. This internal investigation procedure requires that all citizen complaints be documented and investigated. An internal affairs investigation manual was also developed to assist officers assigned to the task of investigating allegations made against other members. Most recently, steps have been undertaken to assess ways in which the internal affairs bureau can more effectively investigate complaints of illegal profiling by conducting station audits.

Deputy Assistant Attorney General King
January 3, 1997
Page 4

The above-described official policies of the New Jersey State Police are all documented and available for review. In addition, in-service training has for many years been a priority of the New Jersey State Police and will continue. Compliance with all lawful requirements is stressed and instructors from the Attorney General's Office have routinely participated in training sessions. In fact, as part of an upcoming in-service training program on search and seizure, the issues confronted in the case, State v. Pedro Soto, will be discussed and compliance with SOP F-55 will be reiterated.

Despite the best efforts of administrators in providing guidance through official policy, training and effective disciplinary action when required, I and the Division of State Police recognize the importance of taking additional steps to ensure that the traffic laws are administered in a fair and racially-neutral manner. New Jersey has a rich and diverse racial and ethnic population. Our residents must be confident that the issue of racial profiling is reviewed and addressed.

As you are aware, the State Police were the subject of an adverse ruling in State v. Pedro Soto. It is unfortunate that one trial judge misinterpreted the law and statistics presented in that case which resulted in the first adverse decision for the State concerning racial profiling. This decision is on appeal and our office is confident of a reversal. Previously, a trial court in State v. Kennedy reviewed the issue of alleged racial profiling on Route 80 in the northwest portion of the State. This issue was resolved in the State's favor during the early stages of the litigation. A further review regarding the alleged targeting of out of state motorists was also proven to be false. The Appellate

Deputy Assistant Attorney General King
January 3, 1997
Page 5

Division concurred in this finding and found that "the statistical studies presented by the defense were flawed in many particulars and did not support the thesis that the State Police were targeting out-of-state motorists." It is interesting that the experts employed by the State and defense in the Kennedy and Soto matters, were the same and their method of analysis was similar. The difference is that in the Kennedy matter a decision has now been made by an appellate court rejecting the defense analysis. A copy of the Appellate Division's unpublished opinion in Kennedy has already been provided to you.

The reason I stress the status of the Kennedy and Soto litigation is my concern that the 15% figure proffered by the defense as the appropriate number of blacks to be stopped on the southern portion of the Turnpike will be accepted as reliable, without sufficient basis. I strongly believe that the reliability of the defense violation survey in the Soto matter is in doubt. This study entailed one assistant public defender traveling primarily alone as he drove between a limited portion of the Turnpike during daylight hours at a speed of 60 miles per hour and noted the number and race of motorists who passed him. The entire survey took place over four days for a total 28 and $\frac{3}{4}$ hours. Our expert's concluded, and I believe, that this is a woefully inadequate survey on which to base statistically reliable conclusions.

I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violator survey. The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike patrolled by troopers assigned to the Moorestown Station remains near the level reported in the Soto

Deputy Assistant Attorney General King
January 3, 1997
Page 6

case. This figure is also higher than that reported at other State Police stations in this State, including those along the Turnpike. It is difficult for me to believe that despite a clear official policy prohibiting racial profiling and repeated declarations requiring adherence to this policy, that troopers assigned to one station would continue to reject it. This is particularly true since troopers are routinely reassigned to a variety of duties and the personnel stationed at Moorestown including supervisors is fluid. Perhaps the answer lies in factors which can be accounted for in a professional and unbiased violator survey.

Therefore, I request your patience as New Jersey undertakes a costly and ambitious study of the traffic and violator patterns on the southern portion of the Turnpike. Your input in developing and reviewing such a study is welcomed. As far as I am aware, no comprehensive traffic violator study with racial distributions has been undertaken in this nation in the past. Once again New Jersey will be at the forefront of taking steps to ensure that racial discrimination is eradicated and that professional law enforcement is provided to the citizens of this State, and motorists from throughout this nation who utilize our highways.

Very truly yours,

Peter Verniero
Attorney General of New Jersey

hw



copy

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

November 13, 1997

Steve Sullivan
Assistant Attorney General
Maryland Attorney General's Office
200 St. Paul Place
Baltimore, Maryland 21202

Dear Mr. Sullivan:

Enclosed please find a copy of Exhibit D118B from the State v. Pedro Soto litigation in New Jersey. As you explained you believed your adversaries in a pending matter in Maryland already have a partial copy of this item.

Exhibit D118B was an internal memorandum prepared for former Superintendent Clinton Pagano to assist him in responding to allegations of racial profiling made against the State Police. Our office respectfully requests that you only use this document to the extent necessary to assist your office in the pending litigation and otherwise maintain the confidential nature of the report.

If you have any question, please feel free to contact me at your earliest convenience.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosure



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State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
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TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

November 21, 1997

Steve Sullivan
Assistant Attorney General
Maryland Attorney General's Office
200 St. Paul Place
Baltimore, Maryland 21202

Dear Mr. Sullivan:

Per your request, enclosed are the transcripts of December 7, 1994, and December 8, 1994, in the matter State v. Pedro Soto, et al. Hopefully, they will provide you with assistance in your ongoing litigation.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosures



New Jersey Is An Equal Opportunity Employer

OAG 006608

SP 128078



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

November 13, 1997

Boris Moczula
First Assistant Prosecutor
Passaic County Prosecutors Office
Administration Building
401 Grand Street
Paterson, New Jersey 07505

Re: State v. Pedro Soto, et al.

Dear Boris:

I enjoyed our recent telephone conversation. Thank you for taking the time to discuss the saga of the ongoing selective prosecution case involving State Police motor vehicle stops. As always your insights are respected and appreciated.

I have enclosed copies of the State's two briefs and defendants two briefs presently filed with the Appellate Division. No word yet on the status of the amicus application in support of defendant's position. After you get a chance to peruse the briefs, your thoughts would be appreciated.

Hopefully we will soon be hearing some positive news about your future endeavors.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosures



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OAG 006609

SP 128079



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
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TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

October 17, 1997

Donald Hoffman
Assistant Attorney General
c/o Maryland State Police
1201 Reisterstown Road
Pikesville, Maryland 21208

Dear Mr. Hoffman:

Per our telephone conversation, enclosed please find a copy of the State's brief in State of New Jersey v. Pedro Soto and a copy of the magistrate's decision in Chavez, et al. v. Illinois State Police. Hopefully these items will help your agency in defending against similar allegations.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosures



New Jersey Is An Equal Opportunity Employer


OAG 006610

SP 128080

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Dominick Caruso
Fiscal Control & Monitoring
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury
Division of Criminal Justice

DATE: August 11, 1997

SUBJECT: State v. Pedro Soto

Attached you will find a bill from the Center for Forensic Economic Studies (CFES) for \$418.13 for professional consultation services. Following the decision by the trial judge in the above-captioned matter which found a pattern and practice of racially selective stops made by the State Police on the Turnpike, the U.S. Department of Justice began a review of the same issue. AAG Alexander Waugh, DAG George Rover and I have been dealing with the U.S. Justice Department inquiry. As part of our internal analysis, it was determined that statistical consultants should be retained for the limited purpose of advising our office as to options available in responding to the U.S. Justice Department, including the viability of conducting a violator survey on the Turnpike.

CFES estimated that the cost of a two hour consultation meeting would be \$635. AAG Waugh and Administrator Thomas O'Reilly were apprised of this estimate and approved the expenditure. Attorney General Verniero and Col. Williams have also been apprised of the status of this matter at several meetings.

DAG Rover and I did attend the consultation meeting with experts from CFES. A bill for \$418.13 was submitted but returned by me to CFES for the purpose of completing a State invoice. The invoice was returned on August 8, 1997.

The consultation expense tangentially arises from ongoing State Police litigation in the State v. Pedro Soto matter which is presently pending in the Appellate Division. I recommend that the bill be forwarded to the State Police for payment.

If you have any questions or require further input from me, please contact me at your convenience at 4-4461.

J.M.F.

hw
Attachments
c: DAG George Rover

(1) TRANSACTION CODE S/C	(2) BATCH NUMBER	(3) NEW/MATCH	(4) FISCAL YEAR	(5) TRANSACTION DATE	(6) DOC TYP	(7) DOCUMENT NUMBER	(8) REJECT INDICATOR
0			X	06/02/97			

STATE OF NEW JERSEY

INVOICE

(9) VENDOR STATUS: BLANK - NO CHANGE
 1 - NEW VENDOR
 2 - ADDRESS CHANGE
 3 - LOCATION CODE
 4 - NEW VENDOR AND LOCATION
 5 - VENDOR NO. CORRECTION

(10) ACCOUNT NUMBER	(11) ORGANIZATION	(12) PROJECT ACTIVITY	(13) EXTENDED NUMBER	(14) TOTAL AMOUNT	(15) AGENCY ORDER NO.	(16) OBLIGATION NUMBER

(10) PAYEE NAME AND ADDRESS

(18) NAME (19) STREET (20) CITY (21) STATE (22) ZIP CODE

Center for Forensic Economic Studies
 1608 Walnut St. Ste. 1200
 Philadelphia PA 19103
 Attn: Bernard R. Siskin

(11) PAYEE DECLARATION:

I certify that the within invoice is correct in all its particulars, that the described goods or services have been furnished or rendered, and that no bonus has been given or received on account of said invoice.

X *Bernard R. Siskin*
 PAYEE SIGNATURE

(12) DEPARTMENT/AGENCY

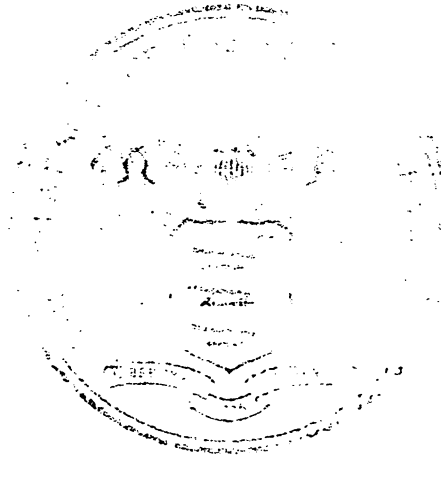
(13) BILLING DATE

MONTH	DAY	YEAR

(14) TITLE: Sr. Vice President

(24) COMMODITY CODE	(25) 1099 INDICATOR	(26) PAYEE REFERENCE - (LIMIT 34 CHARACTERS)	(27) PAYEE IDENTIFICATION NUMBER	(28) CONTRACT NUMBER
			X 23-264597	
(32) LAST INVOICE	(33) PROMPT PAYMENT START DATE	(34) CHECK	(35) ACCOUNTING USE ONLY	(36) TERMS
	MONTH DAY YEAR	SERIES NUMBER	(36) ERROR SUSPENSE NUMBER (37) DEL REPR.	PAYMENT DUE DATE
				MONTH DAY YEAR

PAYEE-SEE INSTRUCTIONS ON REVERSE SIDE

ITEM NO.	QUANTITY	UNIT	DELIVERY IS <input type="checkbox"/> F.O.B. DESTINATION <input type="checkbox"/> F.O.B. SHIPPING POINT	DESCRIPTION	UNIT PRICE	AMOUNT
				X See attached Invoice Please.		
						
TOTAL						

CERTIFICATION BY RECEIVING AGENCY
 I CERTIFY THAT THE ABOVE ARTICLES HAVE BEEN RECEIVED OR SERVICES RENDERED AS STATED HEREIN.

Paul M. Feely
 SIGNATURE
 Senior Deputy Attorney General 8/8/97
 TITLE DATE

AR 50/54 (9/87)

CERTIFICATION BY APPROVAL OFFICER
 I CERTIFY THAT THIS INVOICE IS CORRECT AND JUST, AND PAYMENT IS APPROVED.

 AUTHORIZED SIGNATURE

 TITLE DATE

THE CENTER FOR
FORENSIC ECONOMIC STUDIES

RECEIVED

JUN 10 1997

June 2, 1997

FEDERAL TAX I.D. #23-2644597
SUITE 1200 - 1808 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19103
(215) 546-5800 - FAX (215) 732-8158

STATE GRAND JURY

Billed through 05/31/97

Bill number 001270-00021-005 BRS

State of New Jersey Attorney General Off.
Attn: John M. Fahy, Esquire
CN 081
Richard J. Hughes Justice Complex
Trenton, NJ 08625-0081

For professional services in connection with the racial
profiling matter.

FOR PROFESSIONAL SERVICES RENDERED

For the period through May 31, 1997.

Senior Consultant	2.25 hrs.	\$ 365.63
Analysis Support Staff	1.50 hrs.	52.50

Total fees for this matter \$ 418.13

BILLING SUMMARY

Fees \$ 418.13

TOTAL CHARGES FOR THIS BILL \$ 418.13

Please make check payable to The Center for Forensic
Economic Studies.
Include Bill Number on all Checks.

RECEIVED

AUG 8 1997

STATE GRAND JURY

OAG 006613

SP 128083



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

July 29, 1997

Ms. Patricia A. Schwaiger
The Center for Forensic Economic Studies
1608 Walnut Street
Suite 1200
Philadelphia, Pennsylvania 19103

Re: State v. Pedro Soto

Dear Ms. Schwaiger:

Enclosed you will find a State invoice that must be completed to effectuate payment of the attached bill. Please complete the invoice in the places marked with an (X), and return it to me.

If you have any questions, please feel free to contact me at your convenience.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosure



New Jersey Is An Equal Opportunity Employer

OAG 006614

SP 128084

THE CENTER FOR
FORENSIC ECONOMIC STUDIES

RECEIVED

JUN 10 1997

June 2, 1997

FEDERAL TAX I.D. #23-2644597
SUITE 1200 - 1608 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19103
(215) 548-5600 - FAX (215) 732-8158

STATE GRAND JURY

Billed through 05/31/97

Bill number 001270-00021-005 BRS

State of New Jersey Attorney General Off.
Attn: John M. Fahy, Esquire
CN 081
Richard J. Hughes Justice Complex
Trenton, NJ 08625-0081

For professional services in connection with the racial
profiling matter.

FOR PROFESSIONAL SERVICES RENDERED

For the period through May 31, 1997.

Senior Consultant	2.25 hrs.	\$ 365.63
Analysis Support Staff	1.50 hrs.	52.50

Total fees for this matter \$ 418.13

BILLING SUMMARY

Fees \$ 418.13

TOTAL CHARGES FOR THIS BILL \$ 418.13

Please make check payable to The Center for Forensic
Economic Studies.
Include Bill Number on all Checks.

OAG 006615

SP 128085

11 TRANSACTION CODE: 54
 12 BATCH NUMBER: 2
 13 NEW AMOUNT

STATE OF NEW JERSEY
 DEPARTMENT OF THE TREASURY
 ACCOUNTING BUREAU

14 FISCAL YEAR
 15 TRANSACTION DATE
 16 DEC. TYP.
 17 DOCUMENT NUMBER
 18 RECOR NUMBER

TRAVEL EXPENSE INVOICE

19 VENDOR CODE
 20 BLANK = NO CHANGE
 1 = NEW EMPLOYEE
 2 = ADDRESS CHANGE
 3 = \$ NO CORRECTION

110 ACCOUNT NUMBER
 111 ORGANIZATION
 112 FUND
 113 PROGRAM
 114 OBJECT
 115 COST CENTER
 116 PROJECT ACTIVITY
 117 EXTENDED NUMBER
 118 TOTAL AMOUNT
 119 C NUMBER: C

NAME AND ADDRESS OF EMPLOYEE
 119 NAME, 119-11 STREET, 119-12 CITY, 119-13 STATE, 119-14 ZIP CODE
 121 COMMODITY CODE
 122 SOCIAL SECURITY NUMBER
 123 CHECK (23)
 124 SERIES
 125 ACCOUNTABLE ONLY
 126 (12) EMPLOYER'S EMPLOYEE NUMBER
 127 DEL. REPT.

DATE	ITEMS (In Detail)	TRANSPORTATION		SUBSISTENCE		OTHER MEALS (Specify)	SUNDRIES (Explain Fully)
		AUTO Miles	OTHER (Specify)	HOTEL	MEALS		
1/8/97	State v. Pedro Soto Philadelphia, Pa. Parking		9 00				
TOTALS		9 00					

EMPLOYEE CERTIFICATION

I certify that the above expenses are correct in all respects, that the distances as charged have been actually and necessarily traveled by me on the dates therein specified, that the amount as charged has been actually paid for by me for traveling expenses, that no part of the account has been paid by the State, but the full amount is due. I also CERTIFY that on the date(s) when the above items of expense were incurred the vehicle I was using on State business was covered by liability insurance as follows:

Company: Prudential
 Coverage: \$ 300,000 (BODY INJURY) \$ 100,000 (PROPERTY DAMAGE)
 Employee's Signature: [Signature]
 Official Position: Senior Deputy Attorney General

Travel Form "B" Number: _____
 Official Station: DCJ - Trenton
 Travel Assignment Class: _____
 Normal Commutation - Mileage: _____ Cost: _____
 Supervisor Approval: [Signature]
 APPROVED: _____
 DEPARTMENT AGENCY: _____
 AUTHORIZED SIGNATURE: _____
 TITLE: _____ DATE: _____

4024 (1-10-85) AT TACH ORIGINAL RECEIPTS WHEN REQUIRED PURSUANT TO STATE TRAVEL REGULATIONS.

Adm
PARKING RECEIPT



TICKET # 26 594

TIME/DATE 1/8/97

\$ 9.00

Spec. Adm Sats

PAID


RECEIPT **254-217**

TOLEDO TICKET CO., TOLEDO, OH

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Dominick Caruso
Fiscal Control & Monitoring
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury
Division of Criminal Justice

DATE: March 13, 1997

SUBJECT: State v. Pedro Soto

As you are aware, the above-captioned matter involved litigation over the course of six months in which it was alleged that the State Police targeted black motorists for stops on the southern portion of the Turnpike. Extensive expert testimony was required. The State and county agreed to share costs equally. The county has now paid its portion of the bill in its entirety. A balance of \$12,285.10 remains for the State to pay.

Some confusion arose over who was responsible for payment of the balance. Attached you will find correspondence from Terrence P. Farley, Director, Division of Criminal Justice and Patricia A. Schwaiger providing further details regarding the billing history in this matter.

Also attached is the invoice submitted by the Center for Forensic Economic Studies for payment of the outstanding balance.

Your assistance in processing the invoice for payment is appreciated.

J.M.F.

hw
Attachments

TRANS CODE 50 - PA 54 - UA

(1) TRANSACTION CODE S/C: 0

(2) BATCH NUMBER

(3) NEW/MATCH

(4) FISCAL YEAR

(5) TRANSACTION DATE

(6) DOC TYP

(7) DOCUMENT NUMBER

(8) REJECT INDICATOR

INVOICE STATE OF NEW JERSEY

(10) ACCOUNT NUMBER	(11)	(12)	(13)	(14) TOTAL AMOUNT	(15) AGENCY ORDER NO.	(16)	(17) OBLIGATION NUMBER
ORGANIZATION	FUND	PROGRAM	OBJECT	COST CENTER	PROJECT ACTIVITY	EXTENDED NUMBER	
				\$12,285	10		

(18) NAME: Center for Forensic Economic Studies
 1608 Walnut Street, Ste 1200
 Philadelphia, PA 19103

Bernard R. Siskin, Sr. Vice President

PAYEE DECLARATION:

I certify that the within invoice is correct in all its particulars, that the described goods or services have been furnished or rendered, and that no bonus has been given or received on account of said invoice.

Pat Siskin
 PAYEE SIGNATURE

Sr. Vice President
 TITLE

BILLING DATE		
MONTH	DAY	YEAR

(19) DEPARTMENT/AGENCY

(24) COMMODITY CODE

(25) 1099 INDICATOR

(26) PAYEE REFERENCE - (LIMIT 34 CHARACTERS)

(27) PAYEE IDENTIFICATION NUMBER: 232644597

(28)

(29) PROMPT PAYMENT EXEMPT CODE

(30) CONTRACT NUMBER

(31)

(32) LAST INVOICE

(33) PROMPT PAYMENT START DATE

(34) CHECK

(35) ACCOUNTING USE ONLY

(36) ERROR SUSPENSE NUMBER

(37) DEL REPL

TERMS

PAYMENT DUE DATE

PAYEE-SEE INSTRUCTIONS ON REVERSE SIDE

ITEM NO.	QUANTITY	UNIT	DELIVERY IS <input type="checkbox"/> F.O.B. DESTINATION <input type="checkbox"/> F.O.B. SHIPPING POINT	DESCRIPTION	UNIT PRICE	AMOUNT
				Outstanding Balance Due on total bill in the matter of State v. Pedro Soto		\$12,285.10
TOTAL						\$12,285.10

Scotch® 7664 "Post-it" Routing-Request Pad

ROUTING-REQUEST

Please

READ

HANDLE

APPROVE

and

FORWARD

RETURN

KEEP OR DISCARD

REVIEW WITH ME

Date: 3/10/97

From: Pat Siskin

STATE GRAND JURY

To: Mary Kelly

Thank you again for all of your help in this matter.

CERTIFICATION BY RECEIVING AGENCY

I CERTIFY THAT THE ABOVE ARTICLES HAVE BEEN RECEIVED OR SERVICES RENDERED AS STATED HEREIN.

Pat M. Kelly
 SIGNATURE

CERTIFICATION BY APPROVAL OFFICER

I CERTIFY THAT THIS INVOICE IS CORRECT AND JUST, AND PAYMENT IS APPROVED.

AUTHORIZED SIGNATURE



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

March 5, 1997

Ms. Patricia A. Schwaiger
The Center for Forensic Economic Studies
1608 Walnut Street
Suite 1200
Philadelphia, Pennsylvania 19103

Re: State v. Pedro Soto

Dear Ms. Schwaiger:

As discussed in our telephone conversation of Wednesday, March 5, 1997, our office has reviewed the billing records forwarded in the above-captioned matter. It appears from these records that of the total outstanding balance of \$22,726.80, the State owes \$12,285.10. To facilitate payment, please complete the enclosed invoice indicating that it is being submitted as the outstanding balance on the total bill. Make sure all blocks marked with an "x" are completed and return the invoice to my attention.

I am pleased to hear that the county has now completed paying their portion of the bill.

Your patience and cooperation in this matter have been most appreciated.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosure



New Jersey Is An Equal Opportunity Employer

OAG 006620

SP 128090

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Peter Verniero
Attorney General

FROM: John M. Fahy
Senior Deputy Attorney General
Division of Criminal Justice



DATE: March 10, 1997

SUBJECT: State v. Pedro Soto
Appellate Brief

The above-captioned matter involves defendants' consolidated motion to suppress evidence in seventeen criminal cases on the basis that the State Police allegedly engaged in unconstitutional selective enforcement by disproportionately stopping blacks on the southern portion of the Turnpike. As you are aware, the trial court granted defendants' motion and our office moved for leave to appeal. The Appellate Division granted the State's motion for leave to appeal. Enclosed is the proposed merits brief to be filed by the State.

Executive Assistant Attorney General Alexander Waugh and supervisors within the Division of Criminal Justice have already reviewed the proposed brief. A copy has also been provided to AAG Mary Jacobsen, Appeals, DOL, for her review.

The last filing date is March 20, 1997. Our office is hopeful of filing the brief by March 13, 1997 due to prior commitments by one of our appellate attorneys.

J.M.F.

hw
Enclosure



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

February 6, 1997

Andrew N. Yurick, II
Gloucester County Prosecutor
P.O. Box 623
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.
Expert Expenses

Dear Prosecutor Yurick:

The above-captioned matter was a consolidated suppression motion brought by criminal defendants arrested in Gloucester County alleging that they were subjected to racial profiling by the State Police in making stops on the Turnpike. To defend against this motion a firm specializing in statistical analysis was hired by the State. At the outset of this litigation, the Gloucester County Prosecutor's Office and the State Police agreed to split the cost of expert services. The matter was heard by the Honorable Robert Francis, J.S.C., who after 75 hearing days over a six-month period ruled in defendants' favor. This matter is presently on appeal and the State Police and Attorney General's office are assuming responsibility for the appeal including costs.

The total bill for expert services incurred in defending this matter was \$124,213.62 with a balance of \$22,126.80 presently outstanding. A question arose, however, as to who was responsible for payment of the outstanding balance. Former Prosecutor Harris Cotton in a letter to me dated January 17, 1997, which is attached hereto, indicated that he believed the county owed \$9,832.69 of the remaining bill.

Our office contacted the Center for Forensic Economic Studies (the



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Prosecutor Yurick
February 6, 1997
Page Two

Center) to verify the payment status. Attached you will also find a letter with billing summary from Patricia A. Schwaiger on behalf of the Center which appears to resolve any confusion. Ms. Schwaiger explains that Prosecutor Cotton was basically correct in asserting that the county presently owes only \$9,832.69, the actual amount owed being \$9,841.69. The confusion arose from the fact that the county was charged separately for the first five invoices and paid these items in their entirety.

Since the agreement from the beginning of this litigation was that the State and county would split the cost of expert fees equally, I would appreciate your taking steps to have the county pay its outstanding balance of \$9,841.69, and I will likewise ensure that the State pays its remaining balance of \$12,285.10. Assistant Prosecutor Brent Hopkins participated in this litigation and is aware of this issue. You can also contact John M. Fahy, Senior Deputy Attorney General, at (609) 984-4461 with any questions you have regarding this matter.

Your assistance in resolving this matter is appreciated.

Very truly yours,


Terence P. Farley
Director

hw
Attachment
c: Thomas J. O'Reilly, Administrator, OAG
John M. Fahy, SDAG

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Dominick Caruso
Fiscal Control & Monitoring
Office of the Attorney General

FROM: SDAG John M. Fahy 
State Grand Jury
Division of Criminal Justice

DATE: March 13, 1997

SUBJECT: State v. Pedro Soto

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Also attached is the invoice submitted by the Center for Forensic Economic Studies for payment of the outstanding balance.

Your assistance in processing the invoice for payment is appreciated.

J.M.F.

hw
Attachments

(1) TRANSACTION CODE S/C	(2) BATCH NUMBER	(3) NEW/MATCH
0		

(4) FISCAL YEAR	(5) TRANSACTION DATE	(6) DOC TYP	(7) DOCUMENT NUMBER	(8) REJECT INDICATOR

STATE OF NEW JERSEY

INVOICE

(9) VENDOR STATUS

BLANK - NO CHANGE
1 - NEW VENDOR
2 - ADDRESS CHANGE
3 - LOCATION CODE
4 - NEW VENDOR AND LOCATION
5 - VENDOR NO. CORRECTION

(10) ACCOUNT NUMBER	(11)	(12)	(13)	(14) TOTAL AMOUNT	(15) AGENCY ORDER NO.	(16)	(17) OBLIGATION NUMBER
ORGANIZATION	FUND	PROGRAM	OBJECT	COST CENTER	PROJECT ACTIVITY	EXTENDED NUMBER	
				\$12,285	10		

(10) PAYEE NAME AND ADDRESS

(18) NAME (19) (20) STREET (21) CITY (22) STATE (23) ZIP CODE

X Center for Forensic Economic Studies
1608 Walnut Street, Ste 1200
Philadelphia, PA 19103

Bernard R. Siskin, Sr. Vice President

(9) PAYEE DECLARATION:

I certify that the within invoice is correct in all its particulars, that the described goods or services have been furnished or rendered, and that no bonus has been given or received on account of said invoice.

X

Pat Schwagerl
PAYEE SIGNATURE

Sr. Vice President
TITLE

(9) BILLING DATE		
MONTH	DAY	YEAR

(11) DEPARTMENT/AGENCY

(24) COMMODITY CODE	(25) 1099 INDICATOR	(26) PAYEE REFERENCE - (LIMIT 34 CHARACTERS)	(27) PAYEE IDENTIFICATION NUMBER	(28)	(29)	(30) CONTRACT NUMBER	(31)
			X 232644597				
(32) LAST INVOICE	(33) PROMPT PAYMENT START DATE	(34) CHECK	(35) ACCOUNTING USE ONLY	(36) TERMS	(37) PAYMENT DUE DATE		
	MONTH DAY YEAR	SERIES NUMBER	(36) ERROR SUSPENSE NUMBER (37) DEL. REPR.		MONTH DAY YEAR		

PAYEE-SEE INSTRUCTIONS ON REVERSE SIDE

ITEM NO.	QUANTITY	UNIT	DELIVERY IS <input type="checkbox"/> F.O.B. DESTINATION <input type="checkbox"/> F.O.B. SHIPPING POINT	DESCRIPTION	UNIT PRICE	AMOUNT
				X Outstanding Balance Due on total bill in the matter of State v. Pedro Soto		\$12,285.10
TOTAL						\$12,285.10

Scotch® 7664 "Post-It" Routing-Request Pad

ROUTING-REQUEST

Please

READ

HANDLE

APPROVE

and

FORWARD

RETURN

KEEP OR DISCARD

REVIEW WITH ME

Date 3/10/97 From Pat Schwagerl

MAR 12 1997

STATE GRAND JURY

Thank you again for all of your help in this matter.

CERTIFICATION BY RECEIVING AGENCY

I CERTIFY THAT THE ABOVE ARTICLES HAVE BEEN RECEIVED OR SERVICES RENDERED AS STATED HEREIN.

Pat M. Siskin
SIGNATURE

CERTIFICATION BY APPROVAL OFFICER

I CERTIFY THAT THIS INVOICE IS CORRECT AND JUST, AND PAYMENT IS APPROVED.

_____ AUTHORIZED SIGNATURE



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

March 5, 1997

Ms. Patricia A. Schwaiger
The Center for Forensic Economic Studies
1608 Walnut Street
Suite 1200
Philadelphia, Pennsylvania 19103

Re: State v. Pedro Soto

Dear Ms. Schwaiger:

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Your patience and cooperation in this matter have been most appreciated.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Enclosure




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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Peter Verniero
Attorney General

FROM: John M. Fahy
Senior Deputy Attorney General
Division of Criminal Justice 

DATE: March 10, 1997

SUBJECT: State v. Pedro Soto
Appellate Brief

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J.M.F.

hw
Enclosure



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

February 6, 1997

Andrew N. Yurick, II
Gloucester County Prosecutor
P.O. Box 623
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.
Expert Expenses

Dear Prosecutor Yurick:

The above-captioned matter was a consolidated suppression motion brought by criminal defendants arrested in Gloucester County alleging that they were subjected to racial profiling by the State Police in making stops on the Turnpike. To defend against this motion a firm specializing in statistical analysis was hired by the State. At the outset of this litigation, the Gloucester County Prosecutor's Office and the State Police agreed to split the cost of expert services. The matter was heard by the Honorable Robert Francis, J.S.C., who after 75 hearing days over a six-month period ruled in defendants' favor. This matter is presently on appeal and the State Police and Attorney General's office are assuming responsibility for the appeal including costs.

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Our office contacted the Center for Forensic Economic Studies (the



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OAG 006628

SP 128098

Prosecutor Yurick
February 6, 1997
Page Two

Center) to verify the payment status. Attached you will also find a letter with billing summary from Patricia A. Schwaiger on behalf of the Center which appears to resolve any confusion. Ms. Schwaiger explains that Prosecutor Cotton was basically correct in asserting that the county presently owes only \$9,832.69, the actual amount owed being \$9,841.69. The confusion arose from the fact that the county was charged separately for the first five invoices and paid these items in their entirety.

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Your assistance in resolving this matter is appreciated.

Very truly yours,

Terence P. Farley
Director

hw
Attachment
c: Thomas J. O'Reilly, Administrator, OAG
John M. Fahy, SDAG



DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

To: Director Terrence P. Farley

From: SDAG John M. Fahy *JM* Date: 2/6/97

RE: STATE V. PEDRO SOTO, ET AL.

For your review and signature.

-
- | | |
|--|---|
| 1. <input type="checkbox"/> See me. | 7. <input type="checkbox"/> For your information. |
| 2. <input type="checkbox"/> Phone me. | 8. <input type="checkbox"/> For your review and comment. |
| 3. <input type="checkbox"/> For appropriate action. | 9. <input type="checkbox"/> Per our conversation. |
| 4. <input type="checkbox"/> Investigate and report. | 10. <input type="checkbox"/> Per your request. |
| 5. <input type="checkbox"/> Reply directly, with copy to me. | 11. <input type="checkbox"/> Note and return (file). |
| 6. <input type="checkbox"/> Prepare reply for | 12. <input type="checkbox"/> Circulate and return (File). |
-

REMARKS:

hw

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Thomas J. O'Reilly
Administrator
Office of the Attorney General

FROM: Terrence P. Farley
Director
Division of Criminal Justice

DATE: February 6, 1997

SUBJECT: State v. Pedro Soto, et al.
Expert Fees

Prior to incurring expenses for expert fees in the above-captioned matter, the State Police and Gloucester County Prosecutor's Office agreed to divide the bill evenly. The State Police previously made payments totaling \$49,821.71, believing that this entailed their entire share of the bill. The State Police were under the impression that any outstanding balance was the responsibility of the county to pay. Unfortunately, due to the billing procedures employed by the Center for Forensic Economic Studies, the county was billed alone on the first five invoices, and made payment thereon. This resulted in the State being under a false impression as to liability for the remaining balance. Attached you will find a letter from Patricia Schwaiger from the Center with a billing summary.

It now appears that the State owes an additional \$12,285.10 of the outstanding balance of \$22,726.80 pursuant to the original understanding between the State and county. Former Gloucester County Prosecutor Harris Cotton who brought the discrepancy to my attention, agreed in writing that the county would pay its outstanding portion of the balance, which is \$9,841.69. This fact will be communicated to the new prosecutor.

I would appreciate your assistance in reviewing this matter and ensuring that the State meets its obligation. SDAG Fahy is available to provide you with assistance, including preparing any explanation required by the State Police.

T.P.F.

hw
Attachment



Gloucester County Prosecutor

HARRIS Y. COTTON
Prosecutor
NANCY K. LOTSTEIN
Deputy 1st Assistant Prosecutor

P.O. Box 623
Woodbury, New Jersey 08096
(609) 384-5500
FAX (609) 384-8624

RECEIVED

JAN 21 1997

STATE GRAND JURY

KEITH E. JOHNSON
Acting 1st Assistant Prosecutor
Chief of Trial Section

THOMAS T. WATSON, SR.
Chief of County Investigators

January 17, 1997

Terrence P. Farley, Director
Division of Criminal Justice
25 Market Street
CN 085
Trenton, NJ 08625

Re: Turnpike Expenses

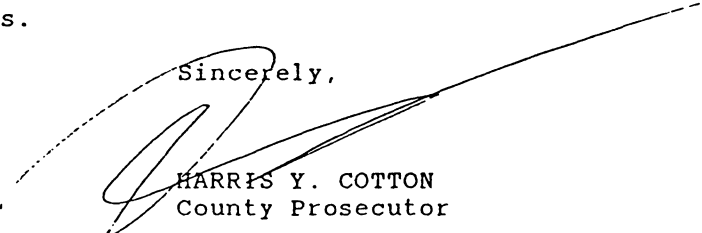
Dear Terry:

I enclose my letter of April 8, 1996, which shows the County owing \$7,626.33. We have since found an additional bill showing that the County owes \$9,832.69. The bill sent by Fahy, a copy of which is enclosed is incorrect. It fails to list the bills or payments from November 3, 1993 through March 2, 1994.

After you have had an opportunity to discuss this with DAG Fahy, please advise and we will make payment.

Kindest regards.

Sincerely,


HARRIS Y. COTTON
County Prosecutor

HYC/dt

cc: John M. Fahy
Sr. Deputy Attorney General

THE CENTER FOR
FORENSIC ECONOMIC STUDIES

1608 Walnut Street, Suite 1200 - Philadelphia, Pennsylvania 19103 - (215) 546-5600 Fax (215) 732-8158
Maryland Office: 4440 Oaktree Road - Rockville, Maryland 20853 - (301) 929-1965 Internet Address: foreco@helo.org

January 30, 1997

VIA FAX 609-292-8546

John M. Fahy
Senior Deputy Attorney General
State of New Jersey
25 Market Street
CN 085
Trenton, New Jersey 08625-008

RE: State v. Pedro Soto

Dear Mr. Fahy:

As per our telephone conversation, I have reviewed the correspondence from Harris Cotton regarding the billings in the above matter. My findings regarding his table of payments are as follows:

- 1) the County does not list several payments made by the State, invoices dated 9/2/94, 10/4/94, 12/2/94, 1/6/95, 2/3/95, 5/1/95 and 6/6/95 (please see the attached table);
- 2) the County omitted an invoice totally, dated 3/1/95 in the amount of \$1,474.49 of which the County paid \$737.24 and the State paid \$737.25 (see attached invoice);
- 3) the County transposed the 10/4/94 invoice amount from \$1,675.03 to \$1,657.03.

In addition to these items, I think the main problem regarding who owes what (County v. State) lies with the fact that in the beginning of the case, the Center was billing only the County for the services rendered. The Center was advised to split all bills between the County and the State in June, 1994 (see attached letter). So for invoices dated from 11/3/93 through 3/2/94, which totaled \$24,570.25, the State was never billed for their half which would have been \$12,285.13; therefore they never paid their half. The County paid these invoices in full. The remaining invoices, from April 6, 1994 through June 6, 1995, were billed half to the County and half to the State. When the inquiry was made regarding the \$22,126.80 outstanding balance, the Center stated that the \$22,126.80 was due entirely from the County. This was based on the fact that the Center had received all the payments from the State for which invoices were sent. The Center's table, sent originally to you on March 8, 1996, showed only the period from 4/6/94 through 6/6/95, the period when the Center was billing both the County and the State. It did not include the earlier invoices.

2

The total amount billed by the Center for this case was \$124,213.62. If this amount had been divided between the County and the State from the beginning, each party would have been responsible for \$62,106.81. We have received \$52,265.12 from the County and \$49,821.71 from the State, leaving a balance of \$22,126.80. According to the Center's outstanding invoices, the County owes the Center \$22,126.83, for their half of invoices dated 4/6/94, 4/4/95, 5/1/95, and 6/6/95. The State owes the County \$12,285.13 for their half of invoices dated 11/3/93, 10/1/93, 1/4/94, 2/2/94, and 3/2/94. I hope this will clear up a long confusing matter.

Should you need any additional information, please do not hesitate to call me at 215-546-5600. I am hearing impaired and I use the TTY (Text Telephone), so if you leave your name and number with our receptionist, I will call you back through the relay. This process usually takes approximately three minutes.

Sincerely,

Pat Schwaiger
Patricia A. Schwaiger

:pas
Enclosures

**STATE v. PEDRO SOTO
BILLING SUMMARY**

<u>Bill Date</u>	<u>Amount</u>	<u>County Paid</u>	<u>State Paid</u>	<u>Balance</u>
10/1/93	\$ 693.25	\$ 693.25	0.00	0.00
11/3/93	544.25	544.25	0.00	0.00
1/4/94	842.13	842.13	0.00	0.00
2/2/94	7,395.94	7,395.94	0.00	0.00
3/2/94	15,094.68	15,094.68	0.00	0.00
4/6/94	7,688.76	0.00	3,844.38	3,844.38
9/2/94	8,861.53	4,430.76	4,430.77	0.00
10/4/94	1,675.03	837.51	837.52	0.00
12/2/94	4,314.03	2,157.01	2,157.02	0.00
1/6/95	18,211.20	9,105.60	9,105.60	0.00
2/3/95	20,853.48	10,426.75	10,426.74	0.00
3/1/95	1,474.49	737.24	737.25	0.00
4/4/95	24,990.80	0.00	12,495.40	12,495.40
5/1/95	11,117.00	0.00	5,558.50	5,558.50
6/6/95	<u>457.05</u>	<u>0.00</u>	<u>228.53</u>	<u>228.52</u>
	\$124,213.62	\$52,265.12	\$49,821.71	\$22,126.80

THE CENTER FOR
FORENSIC ECONOMIC STUDIES

1608 Walnut Street, Suite 1200 • Philadelphia, Pennsylvania 19103 • (215) 546-5600 Fax (215) 732-8158
Maryland Office: 4440 Oaktree Road • Rockville, Maryland 20853 • (301) 929-1965 Internet Address: foreco@helo.org

January 30, 1997

VIA FAX 609-292-8546

John M. Fahy
Senior Deputy Attorney General
State of New Jersey
25 Market Street
CN 085
Trenton, New Jersey 08625-008

RE: State v. Pedro Soto

Dear Mr. Fahy:

As per our telephone conversation, I have reviewed the correspondence from Harris Cotton regarding the billings in the above matter. My findings regarding his table of payments are as follows:

- 1) the County does not list several payments made by the State, invoices dated 9/2/94, 10/4/94, 12/2/94, 1/6/95, 2/3/95, 5/1/95 and 6/6/95 (please see the attached table);
- 2) the County omitted an invoice totally, dated 3/1/95 in the amount of \$1,474.49 of which the County paid \$737.24 and the State paid \$737.25 (see attached invoice);
- 3) the County transposed the 10/4/94 invoice amount from \$1,675.03 to \$1,657.03.

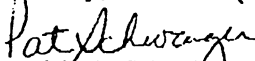
In addition to these items, I think the main problem regarding who owes what (County v. State) lies with the fact that in the beginning of the case, the Center was billing only the County for the services rendered. The Center was advised to split all bills between the County and the State in June, 1994 (see attached letter). So for invoices dated from 11/3/93 through 3/2/94, which totaled \$24,570.25, the State was never billed for their half which would have been \$12,285.13; therefore they never paid their half. The County paid these invoices in full. The remaining invoices, from April 6, 1994 through June 6, 1995, were billed half to the County and half to the State. When the inquiry was made regarding the \$22,126.80 outstanding balance, the Center stated that the \$22,126.80 was due entirely from the County. This was based on the fact that the Center had received all the payments from the State for which invoices were sent. The Center's table, sent originally to you on March 8, 1996, showed only the period from 4/6/94 through 6/6/95, the period when the Center was billing both the County and the State. It did not include the earlier invoices.

2

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Sincerely,


Patricia A. Schwaiger

:pas
Enclosures

**STATE v. PEDRO SOTO
BILLING SUMMARY**

<u>Bill Date</u>	<u>Amount</u>	<u>County Paid</u>	<u>State Paid</u>	<u>Balance</u>
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6/6/95	<u>457.05</u>	<u>0.00</u>	<u>228.53</u>	<u>228.52</u>
	\$124,213.62	\$52,265.12	\$49,821.71	\$22,126.80



Gloucester County Prosecutor

HARRIS Y. COTTON
Prosecutor
NANCY K. LOTSTEIN
Deputy 1st Assistant Prosecutor

P.O. Box 623
Woodbury, New Jersey 08096
(609) 384-5500
FAX (609) 384-8624

RECEIVED

JAN 21 1997

STATE GRAND JURY

KEITH E. JOHNSON
Acting 1st Assistant Prosecutor
Chief of Trial Section
THOMAS T. WATSON, SR.
Chief of County Investigators

January 17, 1997

Terrence P. Farley, Director
Division of Criminal Justice
25 Market Street
CN 085
Trenton, NJ 08625

Re: Turnpike Expenses

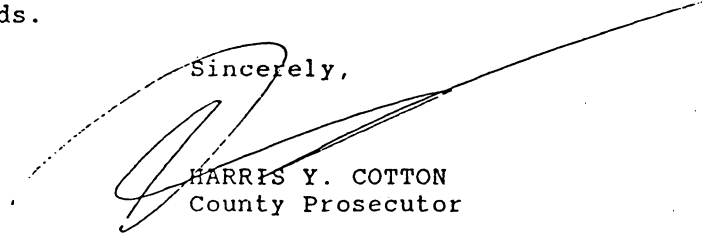
Dear Terry:

I enclose my letter of April 8, 1996, which shows the County owing \$7,626.33. We have since found an additional bill showing that the County owes \$9,832.69. The bill sent by Fahy, a copy of which is enclosed is incorrect. It fails to list the bills or payments from November 3, 1993 through March 2, 1994.

After you have had an opportunity to discuss this with DAG Fahy, please advise and we will make payment.

Kindest regards.

Sincerely,


HARRIS Y. COTTON
County Prosecutor

HYC/dt

cc: John M. Fahy
Sr. Deputy Attorney General



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

February 6, 1997

Andrew N. Yurick, II
Gloucester County Prosecutor
P.O. Box 623
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al.
Expert Expenses

Dear Prosecutor Yurick:

The above-captioned matter was a consolidated suppression motion brought by criminal defendants arrested in Gloucester County alleging that they were subjected to racial profiling by the State Police in making stops on the Turnpike. To defend against this motion a firm specializing in statistical analysis was hired by the State. At the outset of this litigation, the Gloucester County Prosecutor's Office and the State Police agreed to split the cost of expert services. The matter was heard by the Honorable Robert Francis, J.S.C., who after 75 hearing days over a six-month period ruled in defendants' favor. This matter is presently on appeal and the State Police and Attorney General's office are assuming responsibility for the appeal including costs.

The total bill for expert services incurred in defending this matter was \$124,213.62 with a balance of \$22,126.80 presently outstanding. A question arose, however, as to who was responsible for payment of the outstanding balance. Former Prosecutor Harris Cotton in a letter to me dated January 17, 1997, which is attached hereto, indicated that he believed the county owed \$9,832.69 of the remaining bill.

Our office contacted the Center for Forensic Economic Studies (the



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OAG 006640

SP 128110

c

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION - GLOUCESTER COUNTY
DOCKET NO. I 492-7-88

STATE OF NEW JERSEY)
)
 Plaintiff,)
)
 v.)
)
 PEDRO SOTO, ET AL)
)
 Defendants.)

BRIEF AND APPENDIX IN OPPOSITION TO DEFENDANTS' MOTION
TO SUPPRESS

HARRIS Y. COTTON
GLOUCESTER COUNTY PROSECUTOR
P.O. Box 623
Woodbury, New Jersey 08096
(609) 384-5500

JOHN M. FAHY
SENIOR DEPUTY ATTORNEY GENERAL

JENNIFER MEYER-MAHONEY
DEPUTY ATTORNEY GENERAL

BRENT HOPKINS
ASSISTANT PROSECUTOR

On the Brief

11/27/95 18:46

☎292 3508

NJ ATTY GEN 8TH

☑001

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	7256
CONNECTION TEL	919088064618
CONNECTION ID	
START TIME	11/27 18:45
USAGE TIME	00'59
PAGES	3
RESULT	OK



Department of Law & Public Safety

Office of the Attorney General

8th Floor, West Wing
Hughes Justice Complex
25 Market Street, CN 080
Trenton, New Jersey 08625

FAX COVER SHEET

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To:

Fax Number: ⁹⁰⁸⁻

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Subject:

Number of pages (including cover sheet):

MESSAGE

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Chen

DEBORAH T. PORITZ
ATTORNEY GENERAL

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

August 22, 1995

Dr. Leonard Cupingood
The Center for Forensic Economic Studies
Suite 1200
1608 Walnut Street
Philadelphia, Pennsylvania 19103

Re: State of New Jersey v. Pedro Soto, et al

Dear Dr. Cupingood:

Enclosed is a copy of the State's brief in the above-captioned matter.
Call after you read it. Enjoy!

Sincerely,

John M. Fahy
Senior Deputy Attorney General

JMF:lg

Enc.



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OAG 006644

SP 128213



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

May 11, 1995

Via Fax (609) 853-3982 and Regular Mail

P. Jeffrey Wintner
Deputy Public Defender
Office of the Public Defender
65 Newton Avenue
Woodbury, New Jersey 08096

Re: State v. Pedro Soto, et al

Dear Mr. Wintner:

I am writing in response to your recent request for additional discovery concerning the Report entitled "New Jersey State Police Arrests, an analysis by Region, Race and Crime." Please be advised that an unredacted copy of the Report will be available for in camera inspection on Monday. As the information provided to you previously indicates, Lt. Joseph R., Brennan located the report and confirmed that it was the one referred to by Colonel Pagano.

The Report is available for your use in questioning Colonel Pagano. This report was prepared solely for the use of Colonel Pagano was not distributed generally to members of the State Police. The report also was not a training aid. Therefore, your other discovery requests are denied.

Finally, I have advised the Court that Dr. Sherman will not be available to begin testimony on Monday until 11:00 a.m. due to travel arrangements.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

JMF:rma



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OAG 006645

SP 128214

05/12/95 15:10

☎292 3508

NJ ATTY GEN 8TH

☑001

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	0779
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CONNECTION ID	
START TIME	05/12 15:09
USAGE TIME	01'02
PAGES	2
RESULT	OK



Department of Law & Public Safety

Office of the Attorney General

8th Floor, West Wing
Hughes Justice Complex
25 S. Market Street, CN 080
Trenton, New Jersey 08625

FAX COVER SHEET

Date:

To:

Fax Number:

From:

Subject:

Number of pages (including cover sheet):

MESSAGE

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Fax: (609) 292-3508



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

May 10, 1995

Colonel Clinton L. Pagano, Sr.
Executive Vice President, Director
Capital Gaming
104 Carnegie Center
Suite 201
Princeton, New Jersey 08540

Re: State v. Pedro Soto

Dear Colonel Pagano:

Thank you for taking the time to meet with me on Monday, May 8, 1995 to prepare for your upcoming testimony in the above-captioned matter. Following our meeting I requested that the Planning Bureau provide me with copies of former S.O.P.'s which might be utilized with regard to your testimony. Specifically, I requested a copy of former S.O.P. B3-5 which indicates that you established the Internal Affairs Bureau effective January 31, 1977. I also requested a copy of SOP B3-2 which dealt with the former Inspection Bureau. From my review of materials, although there was a procedure for Internal Affairs investigations and an Inspection Bureau prior to the implementation of SOP B3-5, you were responsible for creating a Bureau which would ensure the professional handling of all Internal Affairs complaints. I anticipate marking these S.O.P.'s as exhibits during the course of your testimony. I also requested a copy of S.O.P. F-31 dealing with consensual searches. As you will observe as far back as 1982 the Division utilized consent to search forms. Copies of all the referenced S.O.P.'s are included for your review.

Also enclosed is the expert report of Dr. Fyfe. I will contact you when



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OAG 006648

SP 128217

May 10, 1995
Page 2

you return from your trip and keep you apprised of the status of your testimony. I also anticipate forwarding you an outline to assist you in preparing for your direct testimony.

As always, your cooperation is most appreciated.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

JMF:rma
Enclosures

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

BY: John M. Fahy
Deputy Attorney General
R.J. Hughes Justice Complex
CN 081
Trenton, New Jersey 08625
(609) 984-6996

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL SECTION
GLOUCESTER COUNTY
DOCKET NO. I 492-7-88

STATE OF NEW JERSEY

v.

Criminal Action

PEDRO SOTO

STATE OF NEW JERSEY

v.

INDICTMENT NO. 379,80,81-6-89B

KAREN BROWN
TERRY MONROE
DARRELL STANLEY

STATE OF NEW JERSEY

v.

INDICTMENT NO. 814,15-11-89B

CHAUNCEY DAVIDSON
RODERICK FITZGERALD

STATE OF NEW JERSEY

v.

INDICTMENT NO. 930,31-12-89A

LARNIE BODDY
PAUL DACOSTA

STATE OF NEW JERSEY

v.

INDICTMENT NO. 90-1-149

DONALD CREWS
ALFRED POOLE

STATE OF NEW JERSEY

v.

INDICTMENT NO. 90-2-231

RONNIE LOCKHART
OCIE NORMAN

STATE OF NEW JERSEY

v.

INDICTMENT NO. 90-2-237

DELMAS BRASWELL
KIM HARRIS
FRED ROBINSON

STATE OF NEW JERSEY

v.

INDICTMENT NO. A90-3-298

CHARLESW GRAYER
KEVIN JACKSON
MILTON LUMPKIN
KEITH PERRY

STATE OF NEW JERSEY

v.

INDICTMENT NO. B90-8-688

WILLIAMS BONDS
DIANE HUGHES
BARBIE STANFIELD

STATE OF NEW JERSEY

v.

INDICTMENT NO. 90-8-702

ANTOINE PETER

STATE OF NEW JERSEY

v.

INDICTMENT NO. 91-9-64

SAM GANT
ALTON WILLIAMS
THEOTIS WILLIAMS

STATE OF NEW JERSEY :

COUNTY OF GLOUCESTER :

: SS

I, BRENT HOPKINS, being duly sworn upon my oath deposes and say:

1. I am an attorney at law in the State of New Jersey.

2. I am currently employed by the Gloucester County Prosecutor's Office as an Assistant Prosecutor.

3. I am an attorney of record in the above listed cases and am familiar with its procedural history since my assignment in April 1993.

4. Attachment 1 is a true copy of a letter I received from Fred B. Last, Esq. in early October of 1993 requesting Consent to Search Forms and Information relating to the Drug Interdiction Training Unit (DITU).

5. Attachment 2 is a true copy of a letter addressed to the Honorable Joseph F. Lisa, a copy of which I received by fax on or about October 20, 1993.

6. Attachment 3 is a true copy of a letter which I sent to Fred B. Last, Esq., on or about October 22, 1993 denying his request for Consent to Search Forms and information relating to the DITU on the grounds of relevance.

7. To the best of my knowledge the letter attached as attachment 1 is the first request made by defendants for consent to search forms or materials relating to the (DITU). Defendants did not file a motion to compel discovery of these materials in response to my denial of their request.

8. Although a general motion to compel the production of unnamed materials used to train troopers in carrying out their function was filed in September of 1994, no specific request for the consent to search forms or the DITU materials was made at

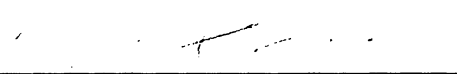
that time.

9. A subsequent motion to compel the production of the DITU materials was filed on November 7, 1994.

10. Both of the above motions were resolved by consent order entered on November 28, 1994, the week the plenary hearing began, and almost four years after the original motion to suppress was filed.

11. Attachment 4 is a true copy of the consent order entered on November 28, 1994 before Judge Francis.

12. The foregoing statements made by me are true to the best of my knowledge. I understand that if any of the foregoing statements are willfully false, I am subject to punishment.



Brent Hopkins

Sworn before me
this 20th day
of July 1995.



Jennifer Meyer-Mahoney
Attorney at Law

OFFICE OF THE PUBLIC DEFENDER
EASTWOOD PROFESSIONAL BUILDING
65 Newton Avenue
Woodbury, New Jersey 08096
(609) 853-4188

September 30, 1993

Brent Hopkins, Assistant Prosecutor
Prosecutor's Office
Justice Complex
Hunter & Euclid Streets
Woodbury, New Jersey 08096

Re: Turnpike Cases

Dear Brent:

I am writing you to request further additional discovery in the above matter. To my knowledge neither co-counsel nor I was aware of their existence until the middle of this month.

The New Jersey state police have for some time disseminated and completed a consent to search data form which includes, among other things, the following information for consent searches carried out by New Jersey State Police personnel: time, date and place of the contact, race and state of residence of the consentor and others physically present, whether consent was ever withdrawn and the reason for the initial contact and the seeking of consent. These forms were to be completed whether or not any contraband was found and were to be reviewed by troopers other than those conducting the search. The data on these forms would support the defense position that consents to search were disproportionately solicited from members of the African American race. Please forward me copies of all consent to search data forms for the period covered by the turnpike challenge and completed by Troop D. Please further forward me copies of all consent to search data forms completed by Troop D for activities on the New Jersey Turnpike from that time to the present. This will allow us to determine whether there has been a change in the behavior of the state police and further to relate back to and characterize the previously existing activity.

We have also determined that the New Jersey State Police has for many years operated but not publicized or disclosed the operation of the Drug Interdiction Training Unit. As I understand it, experienced troopers would teach less experienced troopers techniques for interdicting and identifying drug traffickers and

they would conduct this training on a one on one basis while operating patrol shifts along their assigned highways. For the two shifts of patrol logs for drug interdiction training that I have become aware of, it has appeared that all of the stops made by the trainer and trainee were of vehicles which would fit a drug carrier profile. It is for this reason that we wish to identify people who participated in drug interdiction training units either as trainers or trainees and the specific shifts upon which such training was conducted. There-fore, please provide me for Troop D for the period from the beginning of the turnpike study to date the following information as to Drug Interdiction Training Unit:

1. The names of all personnel who have acted as Drug Interdiction Training Unit officers and the periods they have served as such;
2. The shifts upon which each of these officers conducted drug interdiction training including the names of the troopers who were trained by these troopers;
3. Please provide the patrol activity logs and all reports rendered for each shift where drug interdiction training was carried out.

Unless I hear from you to the contrary I shall assume that you will request this material forthwith. Should you not or should you require an Order an application will be forthcoming.

Thank you.

Very truly yours,

Fred B. Last

FBL:ct

c: William H. Buckman, Esquire
Justin Loughry, Esquire

2 _____

OFFICE OF THE PUBLIC DEFENDER
65 Newton Avenue
Woodbury, New Jersey 08096
(609) 853-4188

October 20, 1993

The Honorable Joseph F. Lisa
Justice Complex
Woodbury, New Jersey 08096

Re: Turnpike Cases

Your Honor:

I am writing Your Honor to advise the Court of Ms. Dingle and my positions with regard to the above matters, which are scheduled for a scheduling conference on October 22, 1993, because we will be unavailable on that date.

The Office of the Public Defender has not received any requests from the prosecutor for any discovery beyond that provided during July. Any requests for additional discovery will be responded to when, as and if, received. The Office of the Public Defender is aware that the prosecutor desires access to the database created by the Tomar law firm, but that the prosecutor has not negotiated to pay a fair portion of the cost of its creation. We take no position on access to the database, as it is beyond our control, and no request has been made of my office for its production.

The Office of the Public Defender has requested additional discovery from the prosecutor both informally and by letter of September 30, 1993. (A copy of this letter is enclosed.) The very existence of the species of materials requested was not known to us until September. This was the case for Consent to Search Data Forms, because they had not been included in discovery packages provided our office, and one was noted as a curiosity when it was included in a discovery package. The Drug Interdiction Training Unit and the materials that it generates were discovered in another matter, but the attorneys and their expert felt barred from discussing it with us as the result of a restrictive order entered by the trial judge. To our knowledge Mr. Hopkins has taken our recent request under advisement.

I am requesting by copy of this letter that Mr. Hopkins either commit his office to obtaining and forwarding this material in a timely manner or deny the same. Should he decline to agree, a motion to compel will be filed next week.

SP 128225

OAG 006656

The Honorable Joseph F. Lisa--October 20, 1993
Page 2

I am advising all counsel of our position by copy of this letter.

Thank you.

Respectfully,

Fred B. Last

c: Cesar Alvarez-Moreno
William H. Buckman, hand delivery
Samuel H. Bullock, FAX 589-7653
Carrie D. Dingle
Brent Hopkins, FAX 384-8624
Justin Loughry, FAX 429-8164
Wayne E. Natale
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Gloucester County Prosecutor

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HARRIS Y. COTTON
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Chief of Trial Section

RICHARD C. HENRY
Chief of County Investigators

October 22, 1993

Fred B. Last, Esq.
Office of the Public Defender
Eastwood Professional Building
65 Newton Avenue
Woodbury, N.J. 08096

Re: Turnpike Cases

Dear Fred:

In response to your letter of September 30, 1993, requesting additional discovery, please be advised that at this point in time, I must object to your request and will not be providing you with the materials you seek.

I fail to see the relevance of the materials that you have requested, and also feel that the retrieval and production of such materials would truly be overburdensome to the State, as well as unduly time consuming.

Please feel free to contact me at your convenience to discuss this further.

Very truly yours,

HARRIS Y. COTTON
GLOUCESTER COUNTY PROSECUTOR

By: Brent Hopkins
BRENT HOPKINS
Assistant Prosecutor

BH/ss

cc: Wm. Buckman, Esq.
Justin Loughery, Esq.

2 1994

TURNPIKE CASES
OFFICE OF THE PUBLIC DEFENDER
Attorney for Various Defendants
65 Newton Avenue
Woodbury, New Jersey 08096
(609) 853-4188

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL SECTION
GLOUCESTER COUNTY
INDICTMENT NO. I 492-7-88

SUPPLEMENTAL ORDER FOR DISCOVERY

STATE OF NEW JERSEY

v.

Criminal Action

PEDRO SOTO

STATE OF NEW JERSEY

INDICTMENT NO. 379,80,81-6-89B

v.

KAREN BROWN
TERRY MONROE
DARRELL STANLEY

STATE OF NEW JERSEY

INDICTMENT NO. 814,15-11-89B

v.

CHAUNCEY DAVIDSON
RODERICK FITZGERALD

STATE OF NEW JERSEY

INDICTMENT NO. 930,31-12-89A

v.

LARNIE BODDY
PAUL DACOSTA

STATE OF NEW JERSEY

INDICTMENT NO. 90-1-149

v.

DONALD CREWS
ALFRED POOLE

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-231

Page 1

V.

RONNIE LOCKHART
OCIE NORMAN

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-237

V.

DELMAS BRASWELL
KIM HARRIS
FRED ROBINSON

STATE OF NEW JERSEY

INDICTMENT NO. A90-3-298

V.

CHARLESW GRAYER
KEVIN JACKSON
MILTON LUMPKIN
KEITH PERRY

STATE OF NEW JERSEY

INDICTMENT NO. B90-8-688

V.

WILLIAM BONDS
DIANE HUGHES
BARBJE STANFIELD

STATE OF NEW JERSEY

INDICTMENT NO. 90-8-702

V.

ANTOINE PETER

STATE OF NEW JERSEY

INDICTMENT NO. 91-9-64

V.

SAM GANT
AINTON WILLIAMS
THEOTIS WILLIAMS

Defendants' motion for supplemental discovery coming on
for a conference at and under the supervision of the Court, in
the presence of Deputy Public Defender P. Jeffrey Wintner on

behalf of defendants and Assistant Prosecutor Brent Hopkins and Deputy Attorney General John Fahy on behalf of the state, the parties having consented to the same, and good cause appearing;

It is on this ^{28th} day of November 1994 ordered that the state shall provide the defense with the following items of

RET ^{if it is determined they exist} discovery with an intended delivery date of November ²¹ 28, 1994 ^{with the exception of #1 below which will be produced as soon as practical:}

1. The second and subsequent pages of the arrest reports, attached to the first pages thereof for identification purposes, of all arrest reports for which the first page has been delivered to the defense prepared by all troopers whom the state will call to testify at the plenary hearing, ~~or who have been listed to testify.~~

RET 2. The memorandum to New Jersey State Police Superintendent Clinton Pagano to respond to inquiries from the media described in the moving papers and any other reports or memoranda prepared by or for the state police having to do allegations of racially disparate police practices on the New Jersey Turnpike. If no such memoranda or reports exist, the state shall advise the defense in writing. The state may admit the existence of such items and make a simultaneous application not to disclose them if it has a good faith belief that they are privileged and have not previously been disclosed. Such application will be heard prior to the commencement of the plenary hearing.

3. The personnel files of defense witnesses Kenneth Huff and Kenneth Wilson provided that the defense first provides the state with releases executed by these witnesses.

4. Any writings not previously provided or provided by the terms of this order that the state intends to use at the plenary hearing or upon which its witnesses will rely concerning the making of roadside stops and interrogation and searches thereat.

5. The New Jersey State Police Training Manual, or similar writing(s) or a statement that no such writing(s) exist.

6. All agenda, syllabuses, instructor's notes, handouts and related materials for the New Jersey State Police training course "Social Problems for Law Enforcement Officers" given September 2, 1986-January 15, 1987 and for similar courses, whether so titled or otherwise, from then to the present.

7. All agenda, syllabuses, instructor's notes, handouts and related materials for New Jersey State Police training of troopers for the conduct of patrols on limited access highways having to do with effectuating stops, conducting field interrogations and conducting searches. The Attorney General will contact the appropriate personnel in the New Jersey State Police training function to determine if such training was given and if such materials exist. The Attorney General will advise the defense of any negative findings.

8. All manuals, guides and writings of any kind or nature whatsoever having to do with the patrol of limited access highways, making motor vehicle stops, field interrogation and the conduct of searches.

9. Copies of the predecessors to Standard Operating Procedures F31 and F55.



Robert E. Francis, J.S.C.



Ch

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAHT.PORITZ
ATTORNEY GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

January 22, 1995

Honorable Robert E. Francis, P.J.S.C.
Superior Court of New Jersey
Gloucester County Court House
Woodbury, New Jersey 08096

Re: State v. Pedro Soto
Letter Brief in Support of State's Motions in Limine, Motion for a
Stay and Motion for an Evidentiary Hearing

Dear Judge Francis:

Please accept this letter brief in support of the State's Motions in Limine, Motion for a Stay and Motion for an Evidentiary Hearing pursuant to N.J.R.E. 104(a). These motions are prompted by the attempt by the defense to cross-examine Trooper Don Nemeth regarding an alleged practice of discounting the actual speed of white motorists issued speeding tickets than for similarly situated black motorists, and/or discounting the actual speed for whites more frequently than blacks.



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SP 128233

STATEMENT OF ISSUES

For the past seven weeks Your Honor has been hearing a motion which involves the defendants' contention that the State Police assigned to the Moorestown Station between the years 1988 and 1991 engaged in a pattern and practice of racial selectivity in making stops of black motorists and thereafter searching their vehicles and arresting them for criminal offenses. In support of this position, the defense and their experts studied State Police records initially agreed to by the State and their experts which would constitute a sufficient data base for expert statistical analysis. The data base was studied and opinions were offered in reports prepared for the parties to this litigation. The reports were exchanged and each side prepared to litigate the issue of whether the State Police assigned to the Moorestown Station for the time period and location in question targeted black motorists for stops in violation of their constitutional rights.

While one defense expert report did contain arrest information pertaining to individual troopers, this court excluded the introduction of such evidence as not being relevant to the issues before this court. This court indicated in this consolidated motion concerning the actions of troopers assigned to the Moorestown Station as a whole, that it would not embark on an inquiry into the arrest statistics of the individual officers. Of course, the State agreed with such a ruling for numerous reasons. The primary focus and critical legal issue in this case

deals with unconstitutional stopping practices of an entire station. No statistical analysis was completed or discussed in expert reports concerning stopping data applicable to any particular trooper. Indeed, the defense never made any motion to establish even a "colorable basis" showing that any particular trooper individually engaged in a pattern and practice of racially selective stops or arrests. Understandably, therefore, experts were not consulted by the State to develop a data base adequate for analysis of individual trooper statistics. As the court can ascertain from the evidence presented in this proceeding to date, troopers are frequently transferred and the data base compiled for the station as a whole might prove woefully inadequate as a basis for analyzing the activity of any particular trooper.

Despite the foregoing, and the prior ruling by this court concerning the admission of arrest data for individual troopers, the defense is now seeking to cross-examine Trooper Nemeth based upon a series of tickets he wrote without even providing this court with an adequate basis for determining whether the evidence sought to be utilized is grounded in sufficient scientific reliability for any inferences to be drawn by the court from the use of such evidence. Furthermore, issues of basic fairness to the witness are also implicated. Why should a witness be forced to defend himself from the serious charge that he personally acted in a racially discriminatory manner when the defense has failed to even disclose the basis for such an allegation, let alone the fundamental reliability of the evidence

Honorable Robert E. Francis, P.J.S.C.
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being utilized for such a purpose. The State, nor the witness, was ever put on notice that such action was contemplated by the defense. No evidence was introduced during the defense case hinting that Trooper Nemeth individually engaged in any pattern of racial profiling. His name was not even mentioned in these proceedings until he took the stand as part of the State's case after the defense had rested. He was called by the State primarily to explain how radar was employed by State Troopers in making stops for speeding violations. Now without being prepared for such an attack, he will be forced to defend himself against an allegation proffered by the defense that he "discounted" the actual speed for white violators by a greater amount than for blacks, and/or "discounted" the actual speed for whites more frequently than for blacks." Does the defense have an expert report detailing an analysis of speeding tickets issued by Trooper Nemeth to support such an inference? Has this issue ever been the subject of any expert analysis? At this late stage of the proceedings, it appears clear that both of these questions must be answered in the negative.

What the defense is trying to do in the guise of cross-examination is offer additional data to the court which has not been established to be scientifically reliable to allow for its consideration. Obviously, if the defense intends merely to offer it to effect the credibility of the officer serious evidentiary obstacles established under the New Jersey Rules of Evidence prevent its admission. A careful analysis must be made by this court of the interplay between N.J.R.E. 608, 404(b) and 403.

While making such an analysis, however, the Court must continue to be cognizant that fairness to the State, this witness and the interests of justice require that the evidence offered is sufficiently grounded in reliability to even prove the premise asserted by the defense for its use.

POINT I

**The Evidence Offered By The Defense For
Purposes Of Cross-Examination Is Not
Relevant To A Material Issue In This Case And
Fails to Meet The Test For Admissibility Of
"Other Acts" Evidence Under N.J.R.E. 404(b)**

The defense has proffered that it intends to cross-examine Trooper Nemeth to establish that he discounted the actual speed for whites by a greater amount than for blacks and discounted the actual speed for whites more frequently than for blacks. The question then becomes for what purpose is the defense seeking to offer this evidence. Presumably the defense is not seeking to offer the evidence to attack the credibility of the witness relating to the traits of "truthfulness" or "untruthfulness" under N.J.R.E. 608. Whether good, bad or neutral, specific instances of conduct may not be introduced to prove a trait of character. Courts have repeatedly held that no specific incident of conduct not the subject of a criminal conviction may be admitted for the purpose of affecting the credibility of the witness. See State v. Marshall, 123 N.J. 1, 186-188 (1991); State v. Hutchins,

241 N.J. Super. 353, 361 (App. Div. 1990); State v. Johnson, 216 N.J. Super. 588, 607b(App. Div. 1987); State v. Mondrasel, 108 N.J. Super. 1 (App. Div. 1969), certif. den. 55 N.J. (1970). Presumably, therefore, the defense is seeking to use this evidence in the guise of cross-examination to substantially prove the issue before this court that troopers at the Moorestown Barracks engaged in racially selected stopping of motorists.

Under N.J.R.E. 404(b) "evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person to show that he acted in conformity therewith." Evidence that the troopers assigned to the Moorestown Barracks as a whole "cut breaks" for white motorists more often than for black motorists would therefore not be admissible to prove that they acted in conformity when stopping motorists. N.J.R.E. 404(b) even excludes arguably relevant evidence where such evidence is offered only to show general disposition for such conduct as a basis for drawing an inference of similar conduct at the particular time in issue. The Supreme Court in State v. Marshall, 123 N.J. 1 (1991) aptly observed that the real ploy behind the defense tactic of trying to establish that an assistant prosecutor had on a previous occasion similarly withheld exculpatory evidence as was the allegation in the matter before the court, was not for the proffered Rule 55 (currently N.J.R.E. 404) purposes, but rather, was intended to establish the propensity of the assistant prosecutor to engage in the alleged wrongful conduct. In

Marshall the court cited with emphasis to a particular finding of the trial judge as follows:

As to Rule 55, it is obvious to me looking at the situation that all that is really happening is that it is an attempt to prove that this witness has a propensity to commit this type of act. He did it before, allegedly something similar, and therefore I should infer he did it again. Basically it is that simple. So I conclude it is expressly prohibited under the Rules of Court, the Rules cited. I will sustain the objection. (Emphasis added)

Id. 123 N.J. at 188. A similar but much more attenuated ploy is being attempted by the defense in this case through the cross-examination of Trooper Nemeth.

If such evidence is to be admitted, the defense must articulate another basis to establish that it is otherwise relevant to a material issue in dispute in this litigation and thus admissible under N.J.R.E. 404(b). The State contends that the question of whether Trooper Nemeth "cut breaks" for white motorists more frequently than for black motorists has no tendency to prove whether troopers from the Moorestown Station engaged in selective stopping of blacks. It does not even prove that Trooper Nemeth engaged in selective stopping of blacks. The mere fact that some whites were cut breaks by having lesser speed violations charged is of no consequence. Such action would also not establish a constitutional violation. First, there is a presumption that the law enforcement action being undertaken in initiating the charge was done in good faith. See United States v. Bennett, 539 F.2d 45, 54 (10th Cir. 1976) cert. den. 429 U.S. 925 (1976). Second, even the conscious

exercise of some selectivity of enforcement on the part of the charging office is not a per se constitutional violation. Oyler v. Boles, 368 U.S. 448, 456 (1962). Further, as the United States Supreme Court noted in McClesky v. Kemp, the mere fact that a decisionmaker afforded discretionary mercy or leniency to some offenders and not others does not make the action taken arbitrary and capricious. 481 U.S. 279, 307 (1987). Some discretion in "cutting breaks" for some whites is not direct evidence of discrimination. Nor does it constitute relevant circumstantial evidence regarding a similar practice by the station as a whole since this information does not justify any inference regarding unconstitutional activity by the State Police as a whole in making initial stops. As explained by the Appellate Division in State v. Allison:

Relevancy is composed of two parts: materiality and probative value. McCormick on Evidence, § 185 at 541 (3rd ed. 1984). "Materiality looks to the relation between the propositions for which the evidence is offered and the issues in the case." Ibid. "Probative value" is "the tendency of evidence to establish the proposition that it is offered to prove." Ibid. Direct evidence "offered to help establish a provable fact can never be irrelevant" but circumstantial evidence may be "so unrevealing as to be irrelevant." Id. at 543-544. "[T]o say that evidence is irrelevant in the sense that it lacks probative value is to say that knowing the circumstantial evidence does not justify any reasonable inference as to the fact in question." Id. at 544.

The issue attempted to be introduced by the defense regarding Trooper Nemeth's charging practice is so unrevealing as to be irrelevant to the central issue in this case. As discussed in Point II, the evidence sought to be introduced is also so

Honorable Robert E. Francis, P.J.S.C.

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unreliable that it does not even rise to the level of circumstantial evidence but rather is wholly speculative. In summary, even if a statistical study did establish that Trooper Nemeth "cut breaks" for white violators after they were stopped offers no proof that the troop as a whole made unconstitutional stops in the first place.

With regard to "other acts" evidence the New Jersey Supreme Court in State v. Cofield, established a four point test to prevent overuse. Specifically, the following four tests must be met before admissibility is determined:

1. The evidence of the other crime must be admissible as relevant to a material issue;
2. It must be similar in kind and reasonably close in time to the offense charged;
3. The evidence of the other crime must be clear and convincing; and
4. The probative value of the evidence must not be outweighed by its apparent prejudice.

State v. Cofield, 127 N.J. 328, 338 (1992).

Further, the Supreme Court reminded trial courts to admit other bad acts evidence sparingly, by stating:

An excellent discussion of the use of Evidence Rule 55 evidence in drug cases is set forth in Harris v. State, 324 Md. 490, 597 A.2d 956 (1991). In the Harris court's view, by stating the rule in exclusionary terms--evidence of other crime or wrongs is generally not admissible--its framers intended that the focus be on exclusion, not inclusion. "Accordingly, it will be the exceptional, and not the usual, case where the evidence of other bad acts is substantially relevant for reasons other

than proof of criminal character." *Id.* at 500, 597 A.2d at 961. Thus, Maryland courts ask whether the other offenses "show such relation to the main charge, as to make connection obvious" on an issue other than propensity. *Id.* at 503, 597 A.2d at 963 (quoting *Bryant v. State*, 207 Md. 565, 115 A.2d 502, 511 (1955)).

In the present case the State asserts that the defense has not established that the evidence sought to be introduced is sufficiently similar in kind, is clear and convincing and its probative value is outweighed by undue privilege. This becomes even more apparent when the nature of the unreliable evidence sought to be used is considered which is specifically discussed in Point II of this brief.

POINT II

Defendants Must Demonstrate That the Evidence They Seek To Utilize On Cross-Examination Is Scientifically Reliable

Before Trooper Nemeth, or any individual Trooper is questioned regarding individual tickets or stops, or a series of such activity, this court should ensure that the data utilized actually forms a basis for inferences to be drawn by the trier of fact. This point should be obvious to all participants in this litigation because the parties and their experts participated in an extensive process prior to the commencement of this litigation to ensure the development of an appropriate data base for analysis regarding the activities of the Moorestown Station as a

whole. In support of the motions presently before this court, the State has submitted an affidavit by Dr. Leonard A. Cupingood, one of the State's statistical experts in this litigation, which raises serious concerns regarding the data the defense is attempting to use in cross-examination of Trooper Nemeth. It is the opinion of Dr. Cupingood that initially "one must determine whether or not sufficient data exists to conduct a valid statistical analysis." Cupingood Affidavit, ¶ 5. Since the attorneys and court are not trained in the field of statistics "whether such an analysis has any bearing or validity requires testimony from an expert witness in statistical analysis." Cupingood Affidavit, ¶6. To attempt to utilize only selected tickets without the benefit of expert analysis "would provide no basis for any valid inference." In such a case it would, therefore, have "no tendency to prove or disprove any fact of consequence to the determination of the action." N.J.E.R. 401. More fundamentally, it would also be extremely unfair to attempt to tarnish the reputation of a witness for being a racist without the existence of a proper basis to justify such an unsavory tactic. Clearly, expending the court's and parties' time in the introduction of irrelevant and unreliable evidence would constitute undue prejudice to the State, confuse the issues in an already complex matter, unduly delay these proceedings and constitute a waste of time and public monies. The State to protect its interests and those of the witness would be forced to introduce an appropriate data base and expert testimony to rectify the damage done by the defense's use of such unreliable evidence. To engage in such a course which is

separate and distinct from the basic issue in this litigation only after the defense has rested and the parties begin the eighth week of this hearing is monumentally unfair. Merely because the prejudice in this matter accrues to the State, does not diminish its seriousness. In criminal matters, courts may even exclude relevant evidence when applying N.J.R.E. 403 to the State's objection as well as to the defense. The State's "rights and those of the people it represents" are entitled to the same protection as that which a defendant receives against unfair prejudice. State v. Wilbely, 122 N.J. Super. 463 (App. Div.), Rev'd. on the grds. 63 N.J. 420 (1973).

Particularly where statistical data is used to have a trier of fact draw inferences, great care should be exercised to ensure the reliability of the evidence offered. Use of statistical evidence obviously requires expert analysis. Even where expert statistical analysis is offered care must be taken to ensure its reliability. In commenting on the admissibility of statistical evidence in an asbestos products case, the New Jersey Supreme Court offered the following:

For our purposes, we need not describe in detail how to structure an epidemiological study, analyze the data, draw conclusions about the study population, and, if possible, extrapolate from statistical results inferences about specific individual subjects. It suffices to state that at a Rule 8 hearing epidemiologists, like experts generally, must be able to identify the factual basis for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are scientifically reliable. That explanation will enable the trial court to determine whether the expert's opinion "will assist the trier of fact to understand the evidence or determine a fact in issue," Evid. R. 56(2),

or whether the opinion, is, in current parlance, "junk science."

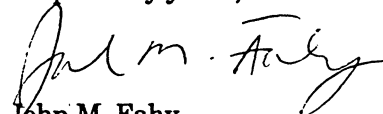
Landrigan v. Celotex Corp., 127 N.J. 404.

The State contends that what the defense is offering at the present time is nothing more than junk science and should be excluded. At a minimum, this Court should require the defense to establish the scientific reliability of the offered evidence.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court sustain the State's objection of use of the evidence, and in the alternative offer the State appropriate relief to challenge the reliability of the evidence offered.

Respectfully yours,



John M. Fahy
Senior Deputy Attorney General

JMF:lg

c: Justin T. Loughry, Esq.
P. Jeffrey Wintner, Esq.
William H. Buckman, Esq.
Carrie D. Dingle, Esq.
Wayne E. Natale, Esq..

COLONEL'S COMMENTS

On Thursday, February 15, 1990, I was sworn in as the tenth Superintendent of the New Jersey State Police. Needless to say, I was honored and appreciative to Governor James J. Florio for the opportunity. Most importantly, I am especially honored to be your Colonel. The New Jersey State Police are the finest and will continue to be the finest State Police organization in the country.

My previous 33 years with the State Police were very gratifying and rewarding. To have been associated with the many fine men and women who are the State Police, and to review those relationships is surely a pleasure.

Ever since I graduated from the State Police Academy, I have always been proud to be a Trooper. Moreover, I have enjoyed our fine reputation. I pledge to do my best, to continue this tradition, and to promote this Division.

In that regard, I believe it is necessary for a law enforcement agent like ours to adapt to the changing times and the needs of the public. The State Police must also remain on the cutting edge of law enforcement. In so doing we will continue to expand. At the same time it may be necessary in some areas to go back to basics. In order to maintain the respect of the State Police, I will need the support of all enlisted and civilian personnel. This is so particularly in these hard economic times.

One of my main objectives and perhaps the most important is to reduce the number of internals by at least 50%. In order to accomplish this, two events must occur. First; reduce the number of internals and written reprimands that relate to minor infractions. This unnecessary bureaucratic approach to internal violations can often lead to a loss of morale and productivity. Second; aggressively investigate serious acts of misconduct and where they occur hold not only the perpetrator responsible, but superiors who may have failed to oversee their command or take responsible action to prevent problems from occurring. In my view, proper management could have avoided some of the problems our young troopers are presently experiences in the Turnpike case.

You have my reassurance that all internal investigations will be conducted in a fair and impartial manner. Furthermore, that if and when disciplinary action is warranted, then it will be fair and impartial with no favoritism or vindictiveness towards anyone. Justice must be even handed if it is to be justice at all. In that regard, I will keep an open ear to any of you who feel that this is not occurring.

Another principal goal and initiative is to make a significant effort to wage and win the narcotics war in New Jersey. This of course is a complex problem requiring not only law enforcement's efforts, but the participation of other institutions and agencies. I believe that the State Police have

the resources to take the lead in this area. Such action on our part and on behalf of the Attorney General's Office will truly benefit the public. We will pursue this objective by utilizing new strategies such as:

- (a) Allowing additional resources to target major drug operations.
- (b) Developing intelligence by interacting with other agencies throughout the country with perhaps toward intercepting large shipments of narcotics and arresting major conspirators.
- (c) Emphasizing inner-city drug efforts. We will do this by increasing State Police presence in such areas with the cooperation of local law enforcement, and consent and invitation of local community groups.
- (d) Place more emphasis on the D.A.R.E. program, which I believe is an excellent preventive approach.
- (e) Consistent with emphasizing the above, we will de-emphasize the buy and bust concept of narcotic enforcement as a goal except in an effort to develop the larger case or in inner-city enforcement. Through this de-emphasis, we will work with county and local police in the areas of buy bust operations.

- (f) We expect our Troopers to obtain intelligence data in questioning suspects so as to intercept the perpetrators transporting drugs from the west coast to the east.
- (g) We will continue interdicting narcotics including the use of legal consent searches on our highways. I never want to see one of our Troopers indicted for criminal violations or violating the individual's constitutional rights. There is no investigation worth any of our Troopers jeopardizing their careers and possible imprisonment.

My main concern is for the safety of the Road Troopers. Danger is always present. Don't take unnecessary risks. Prior to conducting a lawful search, call for backup. Your safety is a paramount concern for both of us. Please use caution in exercising your duties.

Some months ago before accepting this position, I had the occasion to travel the Turnpike. It was during the midst of our current crisis. The day was rainy and overcast. I observed a young trooper on the roadside changing a flat tire for a young black woman with her children. The thought crossed my mind that this kind of care and effort is something the public at large never comes to know. There is no question in my mind that our troopers have this character and concern. It is extremely important to reinforce this. In that regard I intend to make sure sensitivity training is a priority for all.

The State Police Banquet has been cancelled in Atlantic City. A search for a new location in Central Jersey is underway. The sale of memorabilia at the log cabin to subsidize the banquet has been discontinued. I believe that subsidizing with the sale of items for the banquet or entertainment events for our personnel is improper or possibly unethical. However, should proper approval via the Attorney General's Office be obtained, the sale of the items will be allowed and profits will be donated to the Museum Memorial.

Also, the Golf Tournament scheduled on June 4th, has been cancelled. The Colonel's Club has been dissolved. Solicitation of funds from people who are subject to regulation, if not unethical, gives the appearance of impropriety in the State Police. I don't believe that the State Police should be involved in fund raising or sales by soliciting the public or corporations, nor do I believe in a special club for individuals who pay higher amounts of money.

On a fiscal note, the Division is facing severe budget constraints. We will have to manage our resources more efficiently, so that essential services are not reduced to the public and our priority initiative can be continued.

I look forward to working with you in utilizing an innovative and proactive approach to law enforcement in a number of different areas that will develop over the next year.

Finally, I want to congratulate all the men and women of this organization who continue to do an outstanding job. I need your help, together we will keep this agency on the cutting edge of law enforcement while at the same time protect the rights and privileges of our citizenry.

JUSTIN J. DINTINO, SUPERINTENDENT DESIGNATE

1. There have been numerous media accounts of poor relations between the Division of Criminal Justice and the State Police. What are your views on this situation and what, if anything, do you believe should be done to improve cooperation and coordination between the two agencies? What relationship should exist between deputies attorney general and investigators in the Division of Criminal Justice and State Police detectives?
2. Former Attorneys General Edwards and Perretti have issued directives to the State Police regarding procedures for joint handling of organized crime and narcotics investigations between State Police and the Division of Criminal Justice. What is your opinion of these directives and how do you believe they can be implemented?
3. Governor Florio and Attorney General Del Tufo recently appointed an environmental prosecutor. What role can the State Police, and particularly the Marine Police Bureau, play in environmental law enforcement?
4. There have been many complaints and allegations of racism in the State Police. Do you think these allegations have any merit and what would you do to address them?
5. Do you believe that the State Police employ racial profiles in making motor vehicle stops? What is your view of the appropriateness of such a practice?
6. There have been many calls for the establishment of a civilian review board to oversee the handling of citizen complaints against the State Police. Do you think that the establishment of such a board is necessary or wise?
7. The State Police budget has increased dramatically in recent years. Do you believe it is possible to operate the State Police efficiently at less expense to the taxpayers?
8. What role should the State Police play in the investigation of corruption and organized crime involvement in Atlantic City?
9. What are your views on the availability of handguns and assault weapons in New Jersey? What should be done to stop the proliferation of those weapons?
10. New Jersey law enforcement agencies consistently lead the nation in the use of electronic surveillance. Do you have any explanation for this? Do you believe that there is law enforcement abuse in the area of electronic surveillance?

11. You are familiar with most of the higher ranking officers and the various functions in the State Police. Do you plan any significant changes in personnel or the way the State Police presently operate?
12. Several years ago you were personally involved in the controversy over physical fitness standards and mandatory retirement from the State Police. What are your present views on this subject and do you plan to bring about any changes in present State Police policies?
13. The State Police have a large number of ^{all of} vehicles and helicopters. Do you believe that these vehicles and helicopters are necessary and are being properly utilized. Do you think there are any abuses in this regard that can be curtailed?
14. It has been reported that there is substantial duplication of effort between the Division of Criminal Justice and State Police. Do you believe this is true? If so, what should be done to avoid it?

15. Would it be possible to reduce State Police expenditures by employing more civilian personnel in non enforcement assignments

16. Should the State Police continue to handle Gaming Enforcement and ABC matters

RECEIVED

F. 6



NOV 5 1993

JAMES F. MULVIHILL
DIRECTOR

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
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FRED DeVESA
ATTORNEY GENERAL

November 4, 1993

C. Gregory Stewart, Director
Division on Civil Rights
383 West State Street
CN 089
Trenton, New Jersey 08625-0089

Re: Routing of Civil Rights Complaints
Against Police Officers and Bias Complaints

Dear Director Stewart: ^{Greg}

This letter is to memorialize the results of the meeting held on October 6, 1993, with Division of Criminal Justice Director James F. Mulvihill, Dr. Wayne S. Fisher, Deputy Director of Law Enforcement Services, Deputy Director of Operations Debra L. Stone and Paul G. Goldenberg, Chief, Office of Bias Crime and Community Relations. After considering the routing process discussed at the meeting, I have determined that a slight modification is appropriate.

The Division on Civil Rights will refer to First Assistant Attorney General Michael Bozza, Deputy Director Division of Criminal Justice, all bias and other civil rights complaints filed against members of the Division of State Police. At the time of referral, the Division on Civil Rights will simultaneously provide a copy of the complaint to Legal Affairs Director Mary Cupo-Cruz. Criminal Justice will determine whether to retain the complaint or refer the matter to the State Police Internal Affairs Bureau. Legal Affairs Director Cupo-Cruz will be copied on all referrals to State Police.

Where the complaints involve county and municipal police officers, the Division on Civil Rights will refer such complaints to the appropriate county prosecutor's office, with a copy to Dr. Fisher. If the complaint concerns bias crime when organized hate groups are involved, the Division on Civil Rights should forward the complaint to Captain Elwood Billups, State Police Central Security Unit, with a copy to Chief Paul Goldenberg.



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OAG 006685

SP 128254

C. Gregory Stewart, Director
Division on Civil Rights
November 4, 1993
Page 2

I know that you are also concerned with ensuring that complainants are advised of the status or disposition of their complaints. If the Division on Civil Rights needs to determine the status of a referral, please contact Director Cupo-Cruz if State Police is involved, or Dr. Fisher if a municipal or county police department is involved. They will make the appropriate inquiries.

I believe that this procedure will help the Department to respond to these types of complaints in an efficient and timely fashion. Thank you for your cooperation.

Very truly yours,



Alexander P. Waugh, Jr.
Executive Assistant Attorney General

APW/lw

c: Michael J. Bozza, First Assistant Attorney General
Mary L. Cupo-Cruz, Director of Legal Affairs
James F. Mulvihill, Director
Wayne S. Fisher, Ph.D., Deputy Director, Law Enforcement Services
Debra L. Stone, Deputy Director, Operations
Captain Elwood Billups, Central Security Unit, State Police
Paul G. Goldenberg, Office of Bias Crime & Community Relations

DEPARTMENT OF LAW AND PUBLIC SAFETY
OF THE ATTORNEY GENERAL

OFFICE MEMORANDUM

*file
- Crime
- Law*

RECEIVED

SEP 23 1994

TERRENCE P. FARLEY
DIRECTOR

, Jr. [Signature]
Attorney General

MEETING WITH NEW Jersey Advisory Committee

The purpose of this memorandum is to outline some areas discussed at today's meeting which could be considered for follow-up. Most of these are within the purview of the Division of Criminal Justice.

There was considerable discussion of the issue of screening standards for the hiring of local police. It was agreed that this is an issue beyond the authority of the Attorney General. The issue could be addressed in one or more of the following ways: (1) the issuance of non-binding standards by the Division of Criminal Justice, (2) a cooperative effort with the Department of Personnel to the extent it has such authority or (3) a legislative initiative to either establish such standards or give the Attorney General, or the Police Training Commission, the authority to act in this field.

*Local
level*

As discussed at the meeting, the State Police has engaged in extensive minority recruitment. The Advisory Committee was also quite concerned about recruitment at the local level. Perhaps State Police and/or DCJ could offer training in minority recruitment techniques. The Attorney General could also take some public action to encourage such recruitment. The suggestion was also made that the Attorney General and the leadership of the State Police should participate in recruitment whenever possible. Thought could be given to whether an informational or welcoming video could be prepared and used at recruitment sessions, if this is not already done.

Logic

The issue of publishing meaningful data concerning complaints against police officers was the subject of extensive discussion. You and Director Farley agreed to discuss the topic further. There was also discussion of notifying the public about how to make complaints. While a "hotline" approach may not be desirable or feasible at present, thought could be given to some publicity on how and where to file complaints.

*Yes
no
enough
already
done*

Both the Report and today's discussion touched on the issue of language training for police who work in areas with a large foreign language population. If it has not been, the Police Training Commission could consider this issue. Or, perhaps, DCJ could look into developing or facilitating language training programs.

*check
BOD
course*

Director Farley mentioned an on-going survey of the county human relations commissions. The Advisory Committee asked to receive the results of that survey.

*TRF
review*

There was a discussion of publicity related to what the State is doing in the areas being discussed. Although I believe there has been more publicity than Mr. Darden, who lives in Washington, realizes, this is an area where there will be opportunities in the future.

Finally, I suggest that DCJ review the Report and advise you on whether there are any positions taken or commitments made by former Attorney General Del Tufo, as reflected in the Report, which should be reconsidered and on whether any of the other recommendations made by the Advisory Committee should be pursued.

*TRF
review*

- c. First AAG Ciancia
- Director Farley
- Director Stewart
- Colonel Williams
- Director Taylor

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Deborah T. Poritz
Attorney General

From: Alexander P. Waugh, Jr. *APW*
Executive Assistant Attorney General

Date: September 21, 1994

Re: **Briefing** - Meeting With New Jersey Advisory Committee

On Thursday, September 22, 1994, at 11:00 a.m., you will be meeting representatives of the New Jersey Advisory Committee to the United States Commission on Civil Rights. The purpose of the meeting is to discuss the Advisory Committee's July 6, 1994 Report, a copy of which is attached.

The following people will be in attendance from the Advisory Committee: Advisory Committee Chair Dr. Irene Smith Hall; members **Zulima Farber**, Seymour Samet, Dr. Adam Scrupski, **Sue Pai Yang**, Roland Alum and Armando Rodriguez; and Civil Rights Analyst Ed Darden from the US Commission. Members Farber, Samet and Scrupski submitted individual reports appended to the main Report. The following people will be in attendance from the Department: DCJ Director Farley, DCR Director Stewart, Colonel Williams, Communications Director Taylor, Special Assistant Young and EAAG Waugh.

Although issued in July of 1994, the Report is based largely on hearings which were held in April of 1991 and "monitoring" through June of 1992. It is not clear why it took so long to issue the Report, although the various addenda to the Report suggest that it took them a long time to agree on its text.

Former Attorney General Del Tufo testified at one of the hearings. At page 13 of the Report, he is quoted as saying that he does not believe that "law enforcement policies [are] adequate in dealing with the community", but that they have produced better police-community relations. He also outlined some initiatives, which are set forth at pages 13 through 15 of the Report. They were: (1) hate crimes statutes, (2) enhanced use of force training at police academies throughout the state with an emphasis on minimizing the use of force and containing situations before they escalate to require extensive use of force, (3) cultural awareness training at the State Police Academy, (4) orientation courses for new prosecutors and police chiefs,

(5) an intention to enhance protocols for internal civilian complaint investigation¹ and (6) a joint effort by DCR and DCJ Bias Crimes Unit to diffuse community tensions. Former Attorney General Del Tufo also announced the formation of the Use Of Force Task Force, which has subsequently issued a report.

The Advisory Committee's Report contains conclusions and recommendations on pages 15 and 16. The conclusions were generally as follows:

(1) Acts of brutality and other forms of misconduct are linked to weak management, poor supervision and ineffective training. Training addressed to police officer interaction with individual citizens and the community can improve relations and decrease bias incidents.

(2) Bodies such as the Bias Incident Review Committee in Middlesex County can alleviate civil rights problems in law enforcement by improving complaint handling and establishing confidence in the process.

(3) Ineffective, unresponsive law enforcement remains a significant problem in minority communities.

(4) All police actions involving death or serious bodily injury should be submitted to a grand jury.

(5) A majority of police contacts with the public are routine and without incident. Most community residents enjoy the protection and attention to duty they receive from police officers. Police have increasingly taken on duties involving human services that call for skills better assigned to other agencies.

The Report then makes eight recommendations, which I will discuss separately. Most of them call for action by the State Attorney General.

The first recommendation calls for the Attorney General to improve the policies for screening police candidates. In addition, they suggest that local police chiefs or policy makers should provide either additional specialized training for police officers who show patterns of misconduct, or terminate them from the force. As to the State Police, there is a very detailed screening process, both in terms of background checks and psychological screening. The college education requirement is intended, in part, to address this issue, but is controversial with civil rights groups to the extent it is perceived as having a disparate impact. The NAACP has called for enhanced educational requirements, but does not advocate a full college requirement. The NAACP has challenged the State Police educational requirement in the EEOC. State Police has in the past refused re-enlistment to troopers with a

alternate route!

1. The Report notes that former Attorney General Del Tufo stopped short of endorsing civilian complaint review boards. This is one of their primary recommendations and can be expected to be a major topic at the meeting.

pattern of violent incidents, but I do not know whether Colonel Williams intends to continue that practice, which was unpopular with the STFA. State Police has basic and inservice training on bias and related issues, but I do not think that it is used in response to individual need assessments, but rather is given across the board.

As to local police, DCJ advocates careful background checks and psychological screening. However, both it and the Police Training Commission do not have direct authority in that area because most of the hiring is done through the Department of Personnel in terms of standards. Local forces do their own screening. The Office of Bias Crimes in DCJ is, I understand, developing a program for training local police on bias issues, but I do not believe the proposal is directed to remedial training as much as across the board training as envisioned in the next recommendation.

The second recommendation calls for the Attorney General to provide for enhanced training, both basic and inservice. Emphasis should be placed on intercultural and intergroup communication and awareness. As to the State Police, there are such training units at the Academy and there has been inservice multicultural training. As to local police, the Police Training Commission sets the standards for police academy training, including required training in the area. The proposed Office of Bias Crimes program will also address this need of cultural diversity on an inservice basis.

The third recommendation calls for the evaluation of local law enforcement personnel to include evaluation and assessment of an officer's sensitivity to cultural awareness and diversity.

The fourth recommendation calls for local police departments to create "feedback loops", such as questionnaires on summonses, to establish the level of public satisfaction with the quality of service and level of professionalism. The results would be used to improve service and address problems with individual officers. I know of no such program. State Police does not do this. However, both State Police and local departments are required to accept complaints at all times and to investigate them.

*Commitment
to receive
rather
than only
adverse
contacts*

The fifth recommendation calls for legislation to require county-level bias incident review committees to investigate and screen complaints against police officers. The Report calls for the Middlesex County BIRC to be an example. I understand that this body was used by former Prosecutor Rockoff to screen complaints coming out of Perth Amboy, and that the body found that most of them were without merit. I do not know whether they actually investigated the complaints. However this proposal would be structured, it would be perceived as either being, or being the precursor, of a civilian complaint review board, which is not a concept that the Department has ever endorsed as far as I know. It is a "hot" issue.

Good for review all criminal conduct

DCJ has issued a statewide policy which requires internal affairs investigations of allegations of misconduct by police officers. The policy requires that every department have a trained internal affairs officer. Reports of police misconduct must be accepted 24 hours a day. They must be fully investigated, with

the complainant informed of the outcome. The prosecutor must be notified immediately if there is any possible criminal activity on the part of the officer. The prosecutor can then choose to investigate such matters directly. The DCJ policy does not call for civilian involvement in the disposition of complaints. DCJ has trained over 800 internal affairs officers from approximately 350 jurisdictions.

The sixth recommendation calls for the Attorney General to require the reporting of all bias and other misconduct complaints against police officers to the State Police, which should then issue an annual report, including disposition information. It is my understanding that local police are required to make such reports to the county prosecutors, who then include the information in the annual report to DCJ. However, it is not published.

they would take reporting info

The seventh recommendation calls for law enforcement agencies to do more minority recruiting. The State Police does this extensively.

very tough

The eighth and last recommendation is that the Attorney General should require that all police actions involving death or serious bodily injury should be investigated and reported to a grand jury. This is done to the extent that all such incidents are to be reported to DCJ and, presumptively, go before a grand jury, especially if there are any factual disputes. There is a directive on this issue.

I have alerted each of the division directors attending the meeting to be prepared to address the issues raised in the Report as they involve their divisions.

I suggest that you state generally that you and the Department are committed to the principle of fair, bias-free law enforcement, including ongoing efforts to assure carefully screening and training of police officers, standards for the use of force in order to keep it to a minimum, cultural diversity and anti-bias training, and careful investigation of complaints against police officers and remediation where necessary. We do something in each of these areas. You should also talk about any pending community policing initiatives. Depending upon what sort of expectations you want to raise, you could state that you will ask for a further evaluation **some or all** of the recommendations with respect to (1) requiring evaluations of police officers to include multicultural sensitivity issues, (2) "feedback loops", (3) county-level bias incident review committees, (4) public reporting on bias and other misconduct complaints and dispositions, and (5) minority recruiting by local police. It is, of course, quite possible that one or more members of this group will speak to the press and state that the Attorney General agreed to study x, y, z issue.

Ho
NO
NO
NO

A.P.W.

APW:pat
c. Director Taylor

politically correct >
we'd get crucified

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

DRAFT
To Wayne Fisher
Please let me
know if you think
I missed anything
I will work you
recent minutes
into top
next draft
W. Fisher
9/21/94

To: Deborah T. Poritz
Attorney General

From: Alexander P. Waugh, Jr.
Executive Assistant Attorney General

Date: September 21, 1994

Re: Meeting With New Jersey Advisory Committee

On Thursday, September 22, 1994, at 11:00 a.m., you will be meeting representatives of the New Jersey Advisory Committee to the United States Commission on Civil Rights. The purpose of the meeting is to discuss the Advisory Committee's July 6, 1994 Report, a copy of which is attached.

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Although issued in July of 1994, the Report is based largely on hearings which were held in April of 1991 and "monitoring" through June of 1992. It is not clear why it took so long to issue the Report, although the various addenda to the Report suggest that it took them a long time to agree on its text.

Former Attorney General Del Tufo testified at one of the hearings. At page 13 of the Report, he is quoted as saying that he does not believe that "law enforcement policies [are] adequate in dealing with the community", but that they have produced better police-community relations. He also outlined some initiatives, which are set forth at pages 13 through 15 of the Report. They were: (1) hate crimes statutes, (2) enhanced firearms training at the State Police Academy, (3) cultural awareness training at the State Police Academy, (4) orientation courses for new prosecutors and police chiefs, (5) an intention to enhance protocols for internal

(2) mean state's police academies -
not firearms but use of F curriculum
i.e. emphasis on orienting & memorizing

civilian complaint investigation¹ and (6) a joint effort by DCR and DCJ Bias Crimes Unit to diffuse community tensions. Former Attorney General Del Tufo also announced the formation of the Use Of Force Task Force, which has subsequently issued a report.

The Advisory Committee's Report contains conclusions and recommendations on pages 15 and 16. The conclusions were as follows:

(1) Acts of brutality and other forms of misconduct are linked to weak management, poor supervision and ineffective training. Training addressed to police officer interaction with individual citizens and the community can improve relations and decrease bias incidents.

(2) Bodies such as the Bias Incident Review Committee in Middlesex County can alleviate civil rights problems in law enforcement by improving complaint handling and establishing confidence.

(3) Ineffective, unresponsive law enforcement remains a significant problem in minority communities.

(4) Policies, like that in Essex County, whereby all police actions involving death or serious bodily injury are important.

(5) A majority of police contacts with the public are routine and without incident. Most community residents enjoy the protection and attention to duty they receive from police officers. Police have increasing taken on duties involving human services that call for skills better assigned to other agencies.

The Report then makes eight recommendations, which I will discuss separately. Most of them call for action by the State Attorney General.

The first recommendations calls for the Attorney General to improve the policies for screening police candidates. In addition, they suggest that local police chiefs or policy makers should provide either additional specialized training for police officers who show patterns of misconduct or termination from the force. As to the State Police, there is a very detailed screening process, both in terms of background checks and psychological screening. The college education requirement is intended, in part, to address this issue, but is controversial with civil rights groups to the extent it is perceived as having a disparate impact. The NAACP has

1. The Report notes that former Attorney General Del Tufo stopped short of endorsing civilian complaint review boards. This is one of their primary recommendations and can be expected to be a major topic at the meeting.

called for enhanced educational requirements, but does not advocate a full college requirement and has challenged ours. State Police has in the past not renewed the appointment of troopers with a pattern of violent incidents, but I do not know whether Colonel Williams intends to continue that practice, which was unpopular with the STFA. State Police has basic and inservice training on these issues, but I do not think that it is used in response to individual assessments, but is given across the board.

*Consider
with
of
of*

As to local police, it is my understanding that DCJ advocates careful screening, but that both it and the Police Training Commission do not have direct authority in that area because most of the hiring is done through the Department of Personnel in terms of standards. Local forces do their own screening. The Office of Bias Crimes in DCJ is, I understanding, developing a program for training local police on bias issues.

The second recommendation calls for the Attorney General to provide for enhanced training, both basic and inservice. Emphasis should be placed on intercultural and intergroup communication and awareness. As to the State Police, there are such training units at the Academy and there has been inservice multicultural training. As to local police, the Police Training Commission sets the standards for police academy training, including required training in the area. The proposed Office of Bias Crimes program will also address this need of cultural diversity on an inservice basis.

The third recommendation calls for the evaluation of local law enforcement personnel to include evaluation and assessment of an officer's sensitivity to cultural awareness and diversity.

The fourth recommendation calls for local police departments to create "feedback loops", such as questionnaires on summonses, to establish the level of public satisfaction with the quality of service and level of professionalism. The results should be used to improve service and address problems with individual officers. I know of no such program. State Police does not do this.

The fifth recommendation calls for legislation to require county-level bias incident review committees to investigate and screen complaints against police officers. They should also distribute information within the community with respect to their procedures. They call for the Middlesex County BIRC to be an example. I understand that this body was used by former Prosecutor Rockoff to screen complaints coming out of Perth Amboy, and the the body found that most of them were without merit. However this would be structured, it would be perceived as either being, or being the precursor of a civilian complaint review board, which is a concept that the Department has never endorsed, as far as I know.

DCJ has issued ^{a detailed policy} guidelines which require internal affairs investigations of allegations of misconduct by police officers. This includes notification to the county prosecutor of certain types of incidents, which the prosecutor can then choose to investigate directly. The DCJ guidelines do not call for civilian

*require that
every dept have a trained IA officer
reports of police misconduct be accepted within a
investigated fully
immediately when preliminary
... ..*

in the disposition complaints
involvement. DCJ has trained over 800 internal affairs officers from approximately 350 jurisdictions.

The sixth recommendation calls for the Attorney General to require the reporting of all bias and misconduct complaints against police officers to the State Police, which should then issue an annual report, including disposition information. It is my understanding that local police are required to make such reports to the county prosecutor, who then includes it in the annual report to DCJ. However, it is not published.

reports of all misconduct.

The seventh recommendation calls for law enforcement agencies to do more minority recruiting. The State Police does this extensively.

The eighth and last recommendation is that the Attorney General should require that all police actions involving death or serious bodily injury should be investigated and reported to a grand jury. This is done to the extent that all such incidents are to be reported to DCJ and, presumptively, go before a grand jury, especially if there are any factual disputes. There is a directive on this issue.

I have alerted each of the division directors attending the meeting to be prepared to address the issues raised in the Report as they involve their divisions.

c. Director Taylor

The Use and Abuse of Police Powers: Law Enforcement Practices and the Minority Community in New Jersey

Advance Copy—Embargo
Release date, July 6, 1994,
11:30 a.m.

**New Jersey Advisory Committee to the
U.S. Commission on Civil Rights**

July 1994

This report of the New Jersey Advisory Committee to the U.S. Commission on Civil Rights was prepared for the information and consideration of the Commission. Statement and viewpoints in the report should not be attributed to the Commission, but only to the individual participants in the factfinding meeting where the information was gathered, to the other sources cited, or to the Advisory Committee.

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Letter of Transmittal

New Jersey Advisory Committee to the
U.S. Commission on Civil Rights

Members of the Commission
Mary Frances Berry, *Chairperson*
Cruz Reynoso, *Vice Chairperson*
Carl A. Anderson
Arthur A. Fletcher
Robert P. George
Constance Horner
Russell G. Redenbaugh
Charles Pei Wang

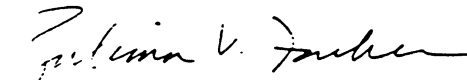
Mary K. Mathews, *Staff Director*

The public is often angered by allegations that police officers use excessive or fatal force and are not held accountable for their actions. This report by the New Jersey Advisory Committee was prompted by one such case in Teaneck, New Jersey, involving a white police officer and a black youth, who was killed while fleeing arrest. The incident precipitated a civil disturbance and a string of local protest demonstrations against police abuse, lasting more than a year. The Committee learned that minority communities leaders were very concerned about law enforcement practices as they affected minority groups across the State.

Based on a 1991 forum and monitoring through June 1992, this report profiles law enforcement policies and procedures related to police brutality in New Jersey. Its conclusions and recommendations stem from the Committee's view that volatile incidents will be better handled and community tensions lessened when complaints of police bias are reviewed by civilian boards. The Committee also points to the need for mandatory police officer training to improve the quality of law enforcement services.

We adopted the following report for your consideration by a vote of 13 to 1.

Sincerely,


Zulima V. Farber, Esq., *Chairperson*
New Jersey Advisory Committee

New Jersey Advisory Committee to the U.S. Commission on Civil Rights

Irene Hill-Smith, Ph.D., *Chairperson*
Wenonah

Rabbi Steven Kushner
Bloomfield

Roland A. Alum, Jr.
West New York

Jesus Armando Rodriquez
Marlton

Stephen H. Balch, Ph.D.
Princeton

Sabarah Sabin
Maplewood

Marie T. Campbell
Trenton

Seymour Samet
Fort Lee

Ved Chaudhary, Ph.D.
Morganville

Adam F. Scrupski, Ph.D.
Highstown

Zulima V. Farber, Esq.*
North Bergen

Ruth W. Waddington
New Vernon

Charles W. Kadlec
Summit

Sue Pai Yang, Esq.
Bridgewater

*Zulima V. Farber was Chairperson of the Committee at the time the factfinding meeting took place.

Acknowledgments

The New Jersey Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Office for its help in the preparation of this report. The factfinding meeting and report were the principal assignment of Edward Darden with support from Linda Raufu and Michèle D. Morgan. Editorial assistance and preparation of the report for publication were provided by Gloria Hong Izumi. The project was carried out under the overall supervision of John I. Binkley, Director, Eastern Regional Office.

Background

Aware of the New Jersey Advisory Committee's earlier interest in police-community relations, a local affiliate of the National Association for the Advancement of Colored People (NAACP) brought its concerns to the Committee's attention following a killing by a Teaneck police patrolman who shot a black, Teaneck teenager, who was fleeing arrest. The incident and associated protest demonstrations were widely covered in the news media. Speaking for the NAACP in Teaneck, Paterson, and other nearby communities, a local representative of the NAACP complained to the Committee that a pattern of police brutality and bias against minorities existed and requested an inquiry into police practices.

In preparing its factfinding project, the Committee sought to learn more about law enforcement agencies and minority group communities and the causes of problems between them. The Committee reviewed law enforcement policies and procedures in the past decade, asking how these policies and procedures were applied to minority groups. To do so it selected six communities to represent the State. Questions were avoided that may have been perceived as interfering with or having influence on grand jury proceedings, criminal prosecutions, or civil actions then underway in Teaneck and elsewhere.

The Committee's inquiry took place, coincidentally, a month after national news broadcasts aired a videotape of a black motorist, Rodney King, being beaten severely during an arrest by police officers in Los Angeles, California, on March 3, 1991. With its graphic documentation, the Los Angeles incident shocked the Nation and caused civil rights leaders to charge that police misconduct toward minorities continued to be as prevalent as described in *The Kerner Report*.¹ In a na-

tional context, the Teaneck incident became another example that critics used to show the prevalence of police brutality against African Americans and other minority groups who were assaulted or killed during encounters with police officers.

Objective of the Factfinding Meeting

The general objectives of the factfinding meeting were to gather information on (1) allegations of police mistreatment of minorities from the perspectives of minority community representatives, law enforcement officials, and experts; and, (2) issues pertaining to police responsiveness to community law enforcement needs. The main goals of the project were to identify problems, collect viewpoints from both sides of the issue, and advise the Commission.

The specific purposes of the project were:

- (a) to identify issues of community tensions created by law enforcement officials,
- (b) to collect information useful to State and local law enforcement agencies that will help improve their policies and practices,
- (c) to provide an opportunity for law enforcement officials and community representatives to exchange views on ways to improve police-community relations, and to provide an ameliorating influence on the problems that were to be discussed, and
- (d) for the Committee to forward recommendations for solutions to the Commission.

Participants at the Meeting

A total of 22 participants appeared before the New Jersey Advisory Committee during its 2-day factfinding meeting in Trenton, New Jersey, on April 8 and 9, 1991. To gain a closer view of local police practices, the Committee selected six communities and respective counties with varying racial makeup. The sets are shown in table 1.

¹ U.S. National Advisory Commission on Civil Disorders, *The Kerner Report* (Washington, D.C.: Government Printing Office, 1968).

Table 1

City	County	Geography	Demography
Newark	Essex County	Northern	Urban
Teaneck	Bergen County	Northern	Suburban
Perth Amboy	Middlesex County	Central	Urban
Freehold	Monmouth County	Central	Suburban
Camden	Camden County	Southern	Urban
Vineland	Cumberland County	Southern	Suburban

Presentations were divided into four panels: (1) racial minority groups, (2) researchers, (3) local law enforcement officials, and (4) State law enforcement officials.

The Forum

Minority Group Perspectives

Racial minorities are 17.2 percent of New Jersey's population, including persons counted as other race in the 1990 Census. Among the groups, Asian and Pacific Islanders experienced rapid growth over the past decade. Hispanics of any race were 9.6 percent of population. See table 2.

For its minority group perspectives, the Committee invited the New Jersey Conference of Branches of the National Association for the Advancement of Colored People (NAACP), the Asian American Association of New Jersey, and the Asian American Lawyers Association of New Jersey. The communities that these groups represent were of particular interest because each had reported strained police-community relations.

Presentation by Keith Jones, President, New Jersey Conference of Branches, NAACP

Keith Jones, president of the New Jersey Conference of Branches of the NAACP, viewed

the controversy over police practices in New Jersey as clearly problematic and caused by elements within law enforcement.² Concerning specific complainants, Jones asserted that some 40 local NAACP offices around the State logged hundreds of complaints against police officers for brutality and other misconduct in the past few years. He did not list these incidents. For statistics on complaints the Advisory Committee turned to a publication by Dr. Wayne Fisher, presented by the New Jersey

Table 2
Racial and Ethnic Population in New Jersey

	Number (Percent)
White	6,130,465 (79.3)
Black	1,036,825 (13.4)
American Indian, Eskimo, or Aleut	14,970 (0.2)
Asian or Pacific Islander	272,521 (3.5)
Other race	275,407 (3.6)
Total	7,730,188
Hispanic Origin (Any race)	739,861 (9.6)

Source: *Selected Population and Housing Characteristics for New Jersey: 1990*, Statistical Information Office, Population Division, Bureau of the Census, Washington, DC, May 1993.

² This statement is taken from the transcript of the Apr. 8-9, 1991, forum held in Trenton. Unless otherwise noted, all quotes and statements in this report are from the transcript, which is on file in the Commission's Eastern Regional Office in Washington, D.C. Statements and viewpoints in this report should not be attributed to the Commission or to the Advisory Committee, but only to the participants in the forum or to the other individuals or sources cited in the footnotes.

State attorney general as part of his written statement at the forum. Fisher showed that complaints against police officers were increasing.

Dr. Wayne Fisher, deputy director, New Jersey Police Bureau within the Division of Criminal Justice when published, co-authored "Civil Liability of New Jersey Police Officers: An Overview," *Criminal Journal Quarterly*, Fall 1989, the most recent study of the subject. The other authors were Ms. Stacy Kutner, research specialist, and Ms. Judy Wheat, administrative analyst, both within the Bureau. The writers found that New Jersey law enforcement agencies have been respondents in civilian complaints at a rate roughly typical of the Nation. New Jersey was part of a nationally increasing trend involving reported complaints against police officers beginning about 1980. In the analysis, Fisher pointed out that the number of civil rights cases filed in Federal courts increased by 56 percent between 1980 and 1986, from 11,485 to 17,872. Moreover, a study of 1,709 lawsuits litigated in Federal district courts between 1977 and 1983 found that approximately 15 percent alleged police misconduct. Of the 621 lawsuits filed by private individuals, police misconduct suits were second only to suits alleging due process violations.

Civil actions for negligence or intentional police misconduct increased over the 5-year period 1980-1985. In 1980, filings in State and local courts in New Jersey totaled 1,992 cases. By 1985 this number increased by 57 percent to 3,122 cases.

Fisher identified assault and battery as the most common causes of action among 576 suits filed against police 1985 and 1986.³ Discrimination was a cause of action only in the category, civil liability suits filed against supervising entities, that is, municipality,

county or State government bodies responsible for police or police departments. Allegations that racial discrimination motivated the actions of police officers or supervising entities were seldom filed, claimed in only 8 percent of all cases. See table 3.

Table 3
Suits Involving Allegations of
Discrimination by Race or Ethnic Group

Group	Total	Suits
Black	28	64%
Hispanic	9	20%
White	4	9%
Other	3	7%
Total	44	100%

Source: Fisher, et al. "Civil Liability of New Jersey Police Officers: An Overview," *The Criminal Justice Quarterly*, vol. 10, no. 1, F. 1989, p.75.

Jones believed racial attitude was frequently a cause of police officer misconduct. He gave anecdotal examples of the police victimizing minorities. In a recent case, 12 Franklin Township police officers battered a black motorist in Franklin Township, who suffered severe injuries to his skull, face, and 21 teeth. Indictments and court proceedings against police officers involved in the beating followed the man's charges of police brutality.

Jones also believed that abuse of police powers by police officers, regardless of their racial attitudes, caused incidents of police brutality against minorities. Of the two influences on police misconduct against racial minorities, he continued to underscore racial

³ Police Civil Liability Suits Filed in 1985 and 1986 by Cause of Action: (1) Assault and Battery—245, 43 percent; (2) False Arrest—226, 39 percent; (3) False Imprisonment—188, 33%; (4) Malicious Prosecution—119, 21 percent; (5) Negligence Involving Traffic Accidents—106, 18 percent; (6) Unlawful Search and Seizure—63, 11 percent; (7) Failure to Act—66, 10 percent; (8) Improper Medical Attention—61, 9 percent; (9) Abuse of Process—30, 5 percent; (10) Misuse of Weapon—8, 1 percent; and (11) Other—69, 10 percent. Note: More than one cause of action could be alleged in a suit. Percentages are based on the number of suits filed in the 2-year period, 1985-1986: Total suits, 576.

bias as the predominant one that explained police officers' brutality in New Jersey.

He added that mistreatment of minorities by white police officers does not diminish when top leadership in a community comes from a minority group person. He gave the Newark Police Department as an example. Although Newark's mayor is African American, and the city's population is 58 percent African American, 65 to 68 percent of the police force is white. Jones said:

Being in the majority does not make white police officers innately evil. It does say that the police department is not fully reflective of the community's racial diversity. I am not saying that all white police officers serving in an urban community should be reassigned. If you bring in all black police officers, that does not necessarily resolve the problem. We must instead recognize the messages that such profiles send. We must look to how we train our personnel—how do we train our managers to execute their responsibilities?⁴

Jones said that 97 to 98 percent of the complaints received by the NAACP about police brutality or other misconduct involved a person of color making charges against a white police officer. This racial pattern suggests a need for human relations training of officers to improve police-community relations. Warning against misplacing training priorities, he suggested that basic law enforcement training is as needed as cultural and sensitivity training to correct current police-community relations problems.

"The issue is not their understanding... (of diverse class, ethnic and racial groups). The issue is how they execute their responsibilities, and whether or not they are fair-minded, and whether or not they obey the law. They are responsible for enforcement of the law,

yes; for protecting and serving, yes. And they are also responsible for obeying the law themselves."

**Presentation by Mono R. Sen,
Representative, Asian-American
Association of New Jersey**

Mono R. Sen described the general victimization of Asian Americans by racism in New Jersey. Speculating on the causes of hate against Asian Americans, he identified seven incidents involving Asian American citizens, mostly Asian Indians. The victims complained that their reports of racial incidents and discrimination were not investigated fully by police officers. Sen said:

Sensitivity training was essential. Without sensitivity training, the police allow maltreatment of the severest kind against new immigrants coming from Asia, China, Korea, Vietnam, India, Pakistan. . . . But let it be unequivocally understood by the police officer that this is our country as much as any American.⁵

Continuing his comments on racial tensions, Sen said that recession in the national economy and the financial strains that fall on the disadvantaged sometimes obscure the potential for better intergroup relations between Hispanics, Asian Americans, and African Americans in New Jersey. White business owners and others appear to prefer hiring recent immigrants, who are a source of cheap labor and compliant workers. There is a mistaken perception among larger, traditional minority communities that Asian American immigrants have taken jobs away from them.

Anti-Asian American sentiments were also strong in the majority community. He recalled a horrendous period of hate violence that traumatized the Asian Indian community in 1987. Groups of young people in Jersey City

⁴ The comments of Keith Jones appear in the transcript of Apr. 8, 1991, pp. 12-62, 96-97.

⁵ The comments of Mono Sen appear in the transcript of Apr. 8, 1991, pp. 62-94.

attacked Asian Indians at random and in one instance a victim was killed.⁶ The perpetrators called themselves "Dot Busters." The so-called "dot" is a cultural sign of marriage status that Asian Indian women wear on the forehead. He said that such resentment against Asian Indians has its roots in the community's commercial and social successes.⁷

Indians have grown from 3,000 to 20,000 in Jersey City. And their success is phenomenal. They are not on welfare. They do not go on unemployment. They have brought Jersey City back to life, economic revitalization. Every corner of the street has been revitalized by the Indians working 16 hours, 7 days, running the stores.

Sen believed that Asian Americans are often victims of racism but are seldom seen by the majority culture as victims. He suggested that popular stereotypes of Asian Americans achieving success without problems are simply myths and do not describe most Asian Americans. He believed a more accurate picture showed that racial and religious bigotry were as much a problem for Asian Americans as for other minority groups.

He said that most Asian Indians avoided contact with police officers because they treat all Asian Americans with suspicion.

Presentation of Sue Pai Yang, President, Asian American Lawyers Association of New Jersey

Sue Pai Yang was also the founder and past presiding officer of the Pacific Asian Coalition. With respect to police-community relations, she said that her experiences over 20 years were the background for her views on Asian American civil rights issues. In that time, she believed that Asian Americans made very few complaints about their interaction with police officers.

She directed the Committee's attention to the employment area, pointing out that to her knowledge there were no Asian Americans employed as police officers in any of the police departments in the State. A lack of police officers of Asian American descent contributed to the Asian American communities' apparent reluctance to interact with police. Improving racial diversity by hiring Asian Americans to positions on local and State law enforcement agencies would also improve police-Asian American community relations.

Yang also pointed to such affirmative employment efforts as a way to create role models for Asian American youth. Many of the youth see their career potentials in terms of scientific and technical fields because these areas are already open to Asian Americans. She said, "[I]f they want to become police officers or be part of the law enforcement segment of society, they should have that opportunity."⁸

6 "The 'Dotbuster Case' resulted in the conviction of James Kerwin, who pleaded guilty to entering the apartment of Bharat Kanu-Bhakt Patel and beating him with a metal rod. A second man, Peter Jester, avoided jail but was placed on one-year probation, fined and sentenced to community service. The two were part of an organization that targeted Asian Americans and named themselves after the dot or tikka, which some Indian women wear on their foreheads. . . . An attack on Mr. Sukhinder Singh of Jersey City on July 29, 1991, awakened fears in the Asian Indian community about a resurgence of racially motivated crimes. Mono R. Sen and leaders of the Asian Indian community met with Jersey City Deputy Mayor Dominick Pugliese to discuss the problem in August 1991." Stan H. Eason, "Attack stirs up fears among Asian Indians," *The Jersey Journal*, Aug. 8, 1991, p. 6.

7 "Asian Americans are creating companies at a faster rate than any other minority group. . . (R)oughly 6% of Asian-Americans own businesses of some kind, compared with 1.5% of blacks, 2% of Hispanics and 1% of Native Americans. The level of Asian-American entrepreneurship reflects to a great extent the efforts of recent immigrants from India and especially South Korea." Timothy Noah, "Asian-Americans Take Lead in Starting U.S. Businesses," *The Wall Street Journal*, Sept. 9, 1991, p. 4.

8 The comments of Sue Pai Yang appear in the transcript of Apr. 9, 1991, pp. 156-76.

Yang concluded by endorsing the joint efforts of the New Jersey State attorney general and the Anti-Defamation League of the B'nai B'rith. She commended their community outreach effort for bringing information about rights and responsibilities under law to the Asian American community.

A Research Perspective

Presentation by David Weisburd, Ph.D.,
Director, Center for Crime Prevention
Studies, Rutgers University School of
Criminal Justice

Professor Weisburd presented a statement that summarized current research on the forum's topic. He emphasized that the matter of race and police conduct is more complex than it appears. As a result, much of the research conducted in the period since 1980 pursues policing problems that do not correspond to the questions emerging today, such as the effect of race. A current major concern is whether racism explains most police abuses against minority group individuals.

He reiterated a point made by NAACP president Keith Jones that abuse of police powers regardless of racial attitude also causes police-minority group problems. Weisburd said that the literature was inconclusive as to whether racial bias was the predominant factor in police abuses, but he believes that police are not more racist than the same population from which they are drawn.

Weisburd said that most major studies did not find race bias in police processing when they controlled for other factors such as the defendant's offense or demeanor. One researcher, Al Reiss, studied major metropolitan areas in the 1960s and found that race did not affect police treatment of minorities, but the civilian's demeanor mattered in cases where police expected violence or used force.⁹

Reiss' study also found that many white officers held negative racial stereotypes of minorities. These apparently conflicting findings raise a question about the behavior of police officers. Are police officers able to carry negative stereotypes about minorities but control the influence of such views to the extent that race is irrelevant in their contact with the public? Weisburd said:

What I am saying, in part, is that the empirical evidence to develop an understanding of the problems with some degree of certainty is not yet in. I think it is very common to detail solutions before we have a good sense of what the problems are.¹⁰

A popular idea found by Weisburd among urban mayors and community leaders is that the thrust of policing should follow more closely the morals and values of the communities they serve. Often termed community policing, the idea looks to the communities for their sense of what is important. In return, the police define and carry out policies along those values, bringing police and communities closer to agreement on ways to solve problems.

Weisburd characterized communities as frustrated by law enforcement's seeming inability to curtail problems with illegal drugs, domestic violence, and other alarming crimes. This frustration and anger can present a problem for police because it erodes public confidence. The level of anxiety deepens if crime becomes a political issue in a community. A sense of community vulnerability, however, may build independently of actual crime rates. Current studies suggest that community beliefs about the prevalence of crime may not always correspond with reality.

As an example of divergence, Weisburd cited his work with the Jersey City Police Department.¹¹ Fear of drug-related crime in their community among inner-city residents,

⁹ Albert J. Reiss, Jr., *Police and The Public*, (New Haven, CT: Yale Univ. Press, 1971).

¹⁰ The comments of David Weisburd appear in the transcript of Apr. 9, 1991, pp. 181-224.

¹¹ Citizens had complained that illegal drug sales and use were rampant and called for special assignments of officers to certain areas. Weisburd surveyed whether the community's information and views were accurate about the prev-

surveyed by Dennis Rosenbaum at the University of Illinois, was strong enough that a majority was willing to give up some civil liberties to combat drug dealing around them.¹² Persons with less education and lower income were more likely to favor granting greater police powers even if police tactics violated civil and constitutional rights. Most favored allowing police officers to assault or harass persons suspected of drug involvement even without evidence. Rosenbaum's analysis is that poor minority group residents, whose civil liberties may already be at risk, increase that risk by tolerating greater police license to ignore individual rights and legal protection.¹³

Weisburd suggested that law enforcement officers face a difficult problem. On one hand citizens frustrated by unabated crime rates demand more aggressive police actions. On the other, law enforcement officers must respect legal constraints that limit their behavior to protect the public from abuses of police powers. He said, "There is a kind of balance here because what happens is that it is very hard to maximize crime control and police control at the same time because sometimes the most effective strategies -- intimidation, threat, etc. -- sometimes those are pushing at the boundaries (of legal tactics)."

Weisburd concluded his statement by recommending the views of Herman Goldstein of the University of Wisconsin. Goldstein advances an alternative called "problem-oriented policing" that does not focus police attention on making arrests or sending

individuals to jails. Rather, officers give their attention primarily to *solving* the problem. This approach acknowledges the reality of problems like the illegal drug trade, which seems prepared to nullify even massive arrests with new recruits. Police officers became free of the influence of arrest rates as a measure of effectiveness. A new measure of policing became the norm: Did their actions solve the problem?

Local Law Enforcement Perspectives by County Prosecutors and Chiefs of Police

The seven counties the Committee looked at include the six counties in the State with a population over 500,000 persons. The exception in the sample is Cumberland County, with one of the smallest populations in the State. Hudson County is particularly significant for its Hispanic group concentration. At over one-third the county population, this ratio is three times greater than the Hispanic population in other counties.

A population profile of the counties, compared by race and ethnicity with the State population, shows that Camden County is roughly proportional among the group with large populations. The white population in Camden County constituted 75 percent and racial minorities totaled 19 percent. Bergen County's whites constituted 87 percent of population and racial minorities totaled 12 percent. Essex County has the smallest population difference between whites and racial

absence of drug-related activity. Only about 4 percent of the citizens who were interviewed could identify drug activity on their block, showing that most perceptions of rampant drug activity were inaccurate. The survey showed that drug activity clustered in small, very specific areas. The data further showed that the greatest pressure for stepped up police activity came from respondents who lived farthest from actual drug areas. David Weisburd, Ph.D., director, Center for Crime Prevention Studies, Rutgers University School of Criminal Justice, "The Jersey City Community Survey—1992 Analysis" (unpublished).

12 Dennis P. Rosenbaum, Ph.D., "Drugs and The Community" in *Civil Liberties and Aggressive Enforcement: Balancing the Rights of Individuals and Society in the Drug War*, eds. R.C. Davis, A.J. Lurigio, and D.P. Rosenbaum (Springfield, IL: Charles C. Thomas Publishers, forthcoming, 1993).

13 Dennis P. Rosenbaum, Ph.D., director, Center for Research In Law and Justice, Univ. of Illinois at Chicago, Chicago, IL, telephone interview, Aug. 18, 1992.

minority groups. The white population constituted 51 percent and racial minorities totaled 43 percent. Cumberland County's white population constituted 73 percent and minorities constituted 12 percent.

Presentations by James F. Mulvihill, Assistant Attorney General, Cumberland County Prosecutor's Office, and Captain Mario R. Brunetta, Acting Chief of Police, Vineland Police Department

Angry demonstrations followed a killing of a black youth by a white police officer in Vineland in 1989. Black leaders charged police brutality, saying that white racism was a factor in the case and generally in the black community.

Chief Mario Brunetta explained that the matter was still in litigation and declined specific comment.¹⁴ He acknowledged that, after the incident, the police department realized the operational problems it was facing at the time. One of these was permitting a sense of separation to develop that allowed the police to lose contact with the community as a whole and the minority community leadership particularly.

James Mulvihill reported that a number of reforms were underway.¹⁵ He described the county's current system of complaint reporting and investigation that placed general responsibility with the prosecutor. Police must inform the prosecutor immediately when an officer discharges a weapon outside a firing range. Any civilian complaint alleging police misconduct must undergo review by the grand jury chief in the prosecutor's office. The review process continues with the first assistant prosecutor, and finally by the prosecutor. The prosecutor then informs the respective police chief of the complaint and whether it was substantiated.

In an effort to improve relations with the communities, Mulvihill initiated outreach to the NAACP, forming a small planning committee. In a jointly sponsored resolution, the committee proposed that the county freeholders¹⁶ establish a county human relations commission.

Brunetta said that the department's employment profile diverges significantly from the general population. He planned to change this to reflect community composition more closely. Minority participation is low currently, in part, because the employment profile does not reflect earlier hiring of minority officers. A large demand for experienced minority officers makes trained officers in Vineland strong candidates for better positions with county or State police departments. As a result, Vineland's retention of minority officers is low. He said that currently 60 to 70 percent of new hires are minority officers.

In an effort to build liaison with the minority community, Brunetta and other officers embarked on a program of public speaking and citizen information lectures to clubs, churches, and neighborhood centers. He also initiated a mandatory in-service training program. The curriculum reinforces the department's priority on communication with the community and covers basic instructions in police technique.

Brunetta tripled the number of officers assigned to the schools, emphasizing that positive impressions of police are important to instill early in youthful lives. Expending resources on youth programs prepares the way for successful police-community relations in coming years.

¹⁴ The comments of Mario Brunetta appear in the transcript of Apr. 9, 1991, pp. 15-19.

¹⁵ The comments of James Mulvihill appear in the transcript of Apr. 9, 1991, pp. 11-14, 82-134.

¹⁶ An elected public officer in New Jersey, serving on a board that has charge of the property, finances, and affairs of the county.

**Presentations by James M. Conley,
Assistant County Prosecutor, Camden
County, and Chief George D. Pugh,
Camden City Police Department**

James Conley explained that the Camden County prosecutor's office has jurisdiction over an array of law enforcement agencies.¹⁷ Each of the county's 37 municipalities has a police department.

Assistant Attorney General Mulvihill had temporary charge of the Camden County prosecutor's office over several months during 1989, Conley said. During that period, Mulvihill began several initiatives during his administration that the county was continuing. At his instigation, the freeholders instituted the Camden County Human Relations Commission. Under his direction, the county prosecutor's office required all chiefs of police to submit lists of persons from a cross-section of their communities. The names were to represent those whom the chief would contact in case of a disturbance. Completing the lists oriented the chiefs toward cooperating with community leaders. The lists also provided a valuable resource for the county prosecutor and freeholders as they considered appointments to the Camden County Human Relations Commission.

Another initiative brought the county's 37 jurisdictions into a mutual assistance plan. Provisions of the plan enabled law enforcement to share resources and respond quickly when emergencies arose in any of the communities. The prosecutor also organized a civil disorder response team made up of assistant prosecutors who acted as monitors during disturbances.

Mulvihill assigned two assistant prosecutors and six investigators to handle allegations of police misconduct. They placed a special emphasis on cases that involved guns. The cases received immediate attention from the

county prosecutor, whether a police officer was the shooter or victim.

County policy also required that the prosecutor's homicide unit investigate all shootings for evidence of homicide. The move helped to increase the public confidence in police because the homicide investigators were an elite unit and involving them in the investigations signalled that the police department placed a high priority on responding to the incidents.

As with most jurisdictions in the State, Camden County's policy with respect to bias incidents conforms to the State attorney general's policy guidelines and investigation standards. The police departments referred reports of bias crimes to the county prosecutor's major crimes unit that reviewed them for further action.

Chief Pugh is an African American, a 30-year Camden police department veteran, who has been chief for 3 years. Pugh said that since becoming chief that he has worked toward a community-oriented policing philosophy.¹⁸ He supported extending the role for law enforcement beyond a narrow interpretation of policing. For example, he preferred that uniformed police officers patrol the streets on foot instead of driving patrol cars. He believed that patrolling in automobiles placed a barrier between police officers and the public. On foot, he expected, that the officers would have a greater opportunity for informal contact with residents and participation in community life. However, he found that significant numbers of other veteran officers in the department disagreed with the approach. Many preferred more limited, arrest-oriented, traditional roles. Their disapproval of new policing approaches, especially among supervisors, created problems that slowed the pace of change. He contrasted the prerogatives of government and law enforcement executives on the State and county levels with his own.

¹⁷ The comments of James Conley appear in the transcript of Apr. 9, 1991, pp. 19-23, 82-134.

¹⁸ The comments of George Pugh appear in the transcript of Apr. 9, 1991, pp. 24-30, 82-134.

County personnel rules on staff assistants apparently barred local level chiefs of police from making appointments of staff under their immediate supervision. As a result, he was obliged by seniority rules to use personnel who were cool to changes.

Chief Pugh's staff also lacked special skills needed for effective communication with Hispanic and other groups. He wanted to appoint a bilingual lieutenant to take responsibility for direct communication with the Latino community but was blocked. He believed that if he could select his assistants without regard to seniority, as other executives do in local government, he could be more effective in establishing a community policing approach in the police department.

Language barriers also proved a problem for policing a small but increasing Asian American community. He acknowledged that these residents probably believe that they do not receive the level of police service that they deserve. He said that this problem results from a lack of money and personnel resources for language training and interpreter services for police officers. As a result, the officers had very little communication with Asian immigrant groups, except in English.

**Presentations by Robert A. Honeker, Jr.,
Second Assistant Prosecutor, Monmouth
County Prosecutor's Office, and
Chief John Willis, Freehold Township
Police Department**

Freehold Township police chief John Willis emphasized that the police department, received very few complaints.¹⁹ He added that the police department has very few contacts with minorities as a whole. Robert Honeker, who serves as legal advisor to the prosecutor's office bias crime unit, stated that to prepare the department for complaints as they arise, the prosecutor developed a program to train law enforcement officers in the county.²⁰ All senior officers from chief through sergeant,

approximately 250 officers, have been trained in annual sessions over 3 years. The community outreach program has included invitations to the local NAACP and ADL to speak before officer assemblies. The U.S. Department of Justice Community Relations Service conducted sensitivity and conciliation training for local police departments.

Honeker said that the county prosecutor, in coordination with the National Conference of Christians and Jews (NCCJ), encouraged establishment of the Monmouth County Human Relations Commission (MCHRC), appointed in April 1990. The commission has 55 members. During its first year, the MCHRC determined that some individuals were reluctant to complain to the county prosecutor or police departments about police brutality. Many feared the prosecutor would collaborate with police to eliminate or cover up reports. In response to this perception about the investigations of police misconduct, the prosecutor asked the MCHRC to establish an MCHRC Bias Hot Line.

**Presentation by Alan A. Rockoff,
Middlesex County Prosecutor**

In 1988, the city of Perth Amboy was torn by two nights of rioting, following a shooting in which a Mexican American man died and his brother received serious injuries in an incident with police. The crisis prompted new measures to enlarge the scope of local law enforcement's already active interest in dealing with hate crime. Alan Rockoff created the Bias Incident Reporting Committee (BIRC), a network of religious, ethnic, racial, law enforcement, and government leaders. Its involvement in the complaint process has resulted in a decrease in the overall number of complaints, perhaps because BIRC helped screen frivolous allegations, and public confidence increased. Also BIRC's credibility with law enforcement agencies meant that complaints referred through BIRC were likely to

¹⁹ The comments of John Willis appear in the transcript of Apr. 9, 1991, pp. 38-39.

²⁰ The comments of Robert Honeker appear in the transcript of Apr. 9, 1991, pp. 31-37, 118-19.

receive more serious handling by prosecutors. Rockoff predicted a growing movement in the State toward establishing bias incident reporting commissions, like the BIRC.

Rockoff created a checklist and circulated it to chiefs of police around the county. It incorporated into a simple format a comprehensive set of steps that law enforcement should take to anticipate and handle civil disturbances. The checklist has been put into use throughout the State. Rockoff noted that some of the ameliorating measures are costly. Increasing fiscal restraints in many localities prohibit even small efforts. In these circumstances, communities and police departments may produce memorandums of understanding to represent their commitment to resolving issues and mutual support.

Presentations by John J. Fahy, Bergen County Prosecutor, and Captain Donald Giannone, Teaneck Police Department

According to Bergen County Prosecutor John Fahy, Teaneck was the site of some 34 marches within a year of the demonstration that ended in riot after a widely reported killing of a black youth in 1990. The protestors viewed the teenager's killing by a Teaneck police officer as part of a national problem of police brutality. Fahy said:

The mood in Teaneck right now is that of a divided community. There are problems with the police in this community. Strained police-community relations worsened because police officers believe they have lost the faith and backing of the residents.

Fahy said that during the period of the protests in Teaneck he and the police commanders met monthly with community groups to keep abreast of conditions. An assistant prosecutor went to Teaneck one day each week for monitoring and consultations. In the community, the prosecutor's office and the NAACP sponsored a youth leadership program in which streetwise high school students, selected by school principals and community leaders, learned about law enforcement, government, and the value of education. Organizers intended this glimpse

of adult life to help the youngsters avoid irresponsible, delinquent behavior.

Two local police departments in Bergen County initiated a cultural exchange to promote interracial understanding. White officers from Ridgefield, a predominantly white, middle-class township, and black officers from Englewood, a predominantly black, urban center, switched places for one week. The visiting groups worked with local counterparts as biracial teams.

Captain Giannone said the police department in Teaneck mistakenly believed its efforts to enhance racial sensitivity were doing well. He recalled that the famed athlete Jackie Robinson and the National Conference of Christians and Jews (NCCJ) conducted police-community forums in 1967 and 1968. Police continued to conduct community meetings on the topic every 3 or 4 years. NCCJ led a police retreat, focused on police-community relations with minority groups for 40 officers in 1985.

Following the riot and ensuing protests, the department recognized that it needed to do more. It asked the New Jersey division on civil rights for assistance and recommendations for improving police-community relations which it did by convening a forum. He said that the police heard minority group juveniles and community group leaders voice their grievances, but the sessions paved few inroads for police into the community.

Presentation by Herbert H. Tate, Jr., Essex County Prosecutor

Essex County Prosecutor Herbert Tate stated that Essex County processes 30,000 criminal complaints a year, which accounts for 23 percent of all arrests in New Jersey and 33 percent of those for violent crime. The city of Newark and its environs, East Orange, Orange, and Irvington, together produce 80 percent of the caseload for county prosecutions.

Tate pointed to the arrest statistics as indications that police officers in Essex County are fulfilling their responsibility to apprehend criminals. He added that the public's perception of the police may differ because the volume of criminal activity continues to overwhelm the capacity of law enforcement to

contain it. He described Essex County investigations of police killings as unique among the counties because Essex requires grand jury review. The county prosecutor investigates every shooting incident in which a police officer causes a death. The county prosecutor hands the results over to a county grand jury for deliberation. This process is independent of a police department internal investigation that may proceed simultaneously.

Tate reported that in the 3 years previous to the forum that there were 10 incidents in which a police officer fired a weapon and killed a civilian in Essex County. None of these 10 incidents was followed by significant community protest or allegation charging a coverup. He attributed this result to a mandatory grand jury review of cases involving a death. An investigation by a grand jury in Essex County helps avoid the frustration other communities suffer that do not have a mandatory process. Prosecutors and police departments invite criticism when they call for grand jury action case by case. Upset factions in the community may question the bases for decisions. An ensuing controversy may develop, suggesting that investigations of police misconduct are unfairly in favor of law enforcement.

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Tate summarized the benefit in gaining community confidence after police shootings and other sensitive incidents. He mentioned among the ways to achieve it: independent investigations of police shootings or incidents causing serious injury by county prosecutors or special prosecutors, as appropriate; includ-

ing the grand jury in the process; and sharing substantive information with key community leaders. These are policy measures that signal to the public that accountability is important in the view of law enforcement.

He said:

Influences along the chain of command in law enforcement are what really make a difference in what happens in police departments. Policy makers and supervisors, those who establish rules and administer discipline, set in motion the first steps that bring about change. It is important that all of us realize that.²²

Presentation by Paul M. DePascale, Hudson County Prosecutor

Rounding out the panel of local officials, Paul DePascale endorsed the themes of those who called for greater law enforcement sensitivity and accountability to the community. He did not wish to lose sight of this in the accounts from the other counties that described programs for bias crime reporting. Like the others, Hudson County had implemented State guidelines on this and other standard law enforcement programs.

He passed quickly to an area that he believed needed more attention and suggested reasons why officers sometimes show aberrant behavior or seriously jeopardize their careers by misconduct. Noting that most of the discussion by other police chiefs did not focus on what motivates police abuse, he presented a view that psychological stress associated with police work leads some officers to behave in ways that generate citizen complaints. The

21 Newark Police Department spokesperson Detective Derrick Glenn confirmed news reports that six Newark police officers were suspended without pay after admitting that they lied about not being at a shooting in which Howard Ceasar, 17, an unarmed car theft suspect, was critically wounded on June 7, 1992. Three of the suspended officers were required to surrender their weapons until a determination was made regarding their dismissal. Newark Mayor Sharpe James and Police Director William Celester said they were not satisfied with the officers' statements. "It is clear that all were involved in a coverup," James said to news reporters. Telephone interview with Det. Derrick Glenn, Newark Police Department, Newark, N. J., June 10, 1992. He credited two elements as factors in keeping order following the shootings. As already mentioned, a timely, consistent involvement of a grand jury helped deflect suspicions and mistrust of internal police investigations. Another important element was the influence of community leaders who had been part of an informal central communications committee over several years. Essex County Prosecutor, Herbert H. Tate, Jr., was no longer in office at the time of the incident.

22 *Transcript*, Apr. 9, 1991, pp. 70-71.

sources of stress sometimes seem insignificant but are nonetheless significant influences on police officer morale and efficiency.

DePascale said that mediocre administration often contributed to the stress that officers may feel. Under such stress, some officers may act uncharacteristically and abuse individuals they encounter. This is one underlying factor that may explain many incidents of abusive police actions.

The mistakes of police supervisors may contribute also to more serious abuses that involve numbers of officers. A superior must avoid sending signals that officers may use insulting language with civilians without a reprimand. Those who overlook such behavior as insignificant establish a sense of tolerance that may encourage the abuse as well. These supervisory lapses gradually escalate until certain kinds of abusive behavior become characteristic of a police department.

DePascale reiterated that appropriate training for supervisors and other officers offers an opportunity to avoid these problems. In Hudson County and elsewhere, officers were introduced to these issues through a number of training courses that are available in the police training academy and in service. Although many officers took advantage of the opportunity for training, the availability of training was only a part of the solution. Executive level law enforcement officials also needed to implement ways to evaluate the effectiveness of training and results in the community.

State's Law Enforcement Perspective

Presentation by Robert J. Del Tufo, Jr.,
New Jersey State Attorney General

New Jersey Attorney General Robert J. Del Tufo spoke about current and planned State responses and recommendations for further action by the State and citizen groups. Del Tufo said:

There are two questions before us today. The first, are law enforcement policies adequate in dealing positively with the community? The other, have these produced better police-community relations? I answer, no, to the first question because we can and must and shall do more, and better. Frankly, any deviation from a norm of propriety is unacceptable to me, and to law enforcement, and to those involved in the administration of criminal justice in this State.

I answer, yes, to the other question, but I would also add a caution... [that law enforcement efforts have not reached] the full extent that is required.²³

Del Tufo made clear that the Committee's factfinding on problem law enforcement practices in the State should begin with understanding that a vast majority of law enforcement contacts with the public are very high quality. Focusing on problematic behavior, however carefully, sometimes misses the larger context of law enforcement matters.

Recognizing that more needs to be done, Del Tufo underscored that satisfying community concern was a paramount goal of State policy. He said:

²³ The comments of Robert Del Tufo appear in the transcript of Apr. 8, 1991, pp. 99-176. (Accompanying the State attorney general but not speaking were assistant attorneys general Wayne Fisher and Fred DeVesa; Richard E. Hickey III, president, County Prosecutors Association of New Jersey; and Chief Clifford J. Maurer, president, Chiefs of Police Association of New Jersey.)

Confidence and trust are the underpinning of our justice system. Citizens must have confidence in a police officer's ability to do what has to be done. At the same time, citizens must believe that the actions of police officers will be just and fair.

Del Tufo outlined six current State initiatives. He first pointed to a continuous 10-year effort to combat bigotry and hate crime.²⁴

New Jersey ADL Executive Director Jeffrey Maas provided a copy of the video and screened it for the New Jersey State Advisory Committee during a break between its factfinding sessions. The program lasts 17 minutes and features a narrator who steps in and out of dramatized situations that police officers would likely encounter when dealing with victims, neighbors, and perpetrators of hate crimes, as well as other officers. The narrator's message is that hate crime is deeply violative of victims and communities at large. As such, sensitive and significant police responses are necessary.

Former Governor Brendan Byrne signed legislation making New Jersey one of the first States to have specific hate crime statutes in 1981. Current Governor James Florio signed legislation in 1991 extending the statutes to include hate crimes against all racial minorities and people of different sexual orientation and increasing punishment for those crimes. This also makes New Jersey one of the first States to cover hate crimes on sexual orientation.²⁵ During that period, he and six previous State attorneys general have used the office to impress local law enforcement that handling hate crime is a priority throughout the State.

In a second, related area, Del Tufo renewed a long-standing initiative on firearms training in the State's police academy. He required that academy instructors use a new curriculum to

develop cadet sensitivity and perspective on appropriate uses of firearms and other weapons. Simulations illustrated circumstances that warrant force and factors that govern appropriateness.

A third, newer initiative involved cultural awareness training for all State police officers. The State police recognized a need to expose troopers to cultural diversity, following complaints that charged troopers with selective enforcement against African American males operating late model expensive vehicles.

A fourth initiative established orientation courses for new county prosecutors and new police chiefs. He noted that the Chiefs of Police Association played a major role in developing the orientation for new chiefs.

A fifth initiative was also underway to improve police department protocols for internal investigations of police officers and police department handling of citizen complaints against officers. He stopped short of endorsing civilian complaint review boards throughout the State.

Del Tufo described the sixth initiative, dealing with police-community relations, as a joint effort between the two State divisions on civil rights and criminal justice. He said that the two divisions worked together to monitor community tensions. More staff will be assigned to assist in this effort as part of a general objective to increase the exchange between community groups and police officers. The aim is to increase understanding, trust, and respect between police officers and community residents.

Concluding his presentation, Del Tufo said:

I believe that New Jersey is ahead. I believe that we are fortunate in having right-thinking people in

24 Attorney General Del Tufo described the State's work with the New Jersey Anti-Defamation League of the B'nai B'rith (ADL). In a coordinated effort with ADL, the attorney general's office began publishing annual reports of reported hate crimes and bias incidents. The State Attorney General also produced a half-hour sensitivity training video in cooperation with the ADL as part of their collaborative effort. The video, "Hate Crime: A Police Training Video for Police Officers," aims to improve police handling of hate crimes by acting swiftly and taking pains to reassure victims that police take the matter seriously.

25 See N.J. Stat. Ann. § 2C:12-1e).

law enforcement and in the community, jointly trying to pursue the objectives that I have mentioned. I think we have to try to appreciate the circumstances of each other, and develop the respect and caring that will make for a very healthy society.

State Task Force on Law Enforcement Announced

State Attorney General Del Tufo used this meeting to announce his appointment of a blue ribbon committee to assist with police-community conflict resolution.²⁶ He appointed Executive Assistant Attorney General Frederick DeVesa to chair the task force, which he asked to provide answers to a variety of questions: What is the extent of the use of force in policing in New Jersey? Why do problematic incidents occur in the course of policing? Are civilian allegations of use of excessive force effectively investigated? Are the procedures for the investigation adequate and systematic? Are the procedures adequate for screening and training law enforcement officers? Do law enforcement officers, accused of improper use of force, enjoy the same level of constitutional protection as other classes of citizens? Are the laws relating to use of force appropriate? And are guidelines for officers adequate?

Four months after the forum, Del Tufo formally released model rules for investigating complaints of police misconduct.²⁷ The model rules were intended to provide uniformity and help build public confidence in the complaints process. Reiterating many current guidelines and common practices, the model rules spell out what actions should be taken by a police department when a citizen lodges a complaint of police misconduct. The announcement emphasized that many of the guidelines, including a call for all police shootings to be reported to the New Jersey division of criminal justice,

have been routinely practiced by many local police departments around the State for years. The model rules serve to codify complaint practices that have been unwritten and often differ in depth from one municipality to another.

Looking toward resolving police-community conflict, Del Tufo urged the public to consider the position of police officers. He urged conflict resolution through police-community talks and better understanding about police practices.

The responsibility of police officers is demanding and dangerous. As he spoke of the essential role of police officers in our lives, he praised them as a whole, calling the police officers a thin blue line between chaos and an ordered society.

Conclusions and Recommendations

The Committee draws five basic and significant conclusions from its factgathering:

(1) Acts of brutality and other forms of police officer misconduct are linked to weak management, poor supervision, and ineffective training. Specifically designed training to improve police officer interactions with individual citizens and the community is an important innovation in improving police-community relations and reducing incidents of police misconduct.

(2) Bodies like the Bias Incident Review Committee (BIRC) in Middlesex County will help alleviate civil rights problems in law enforcement in New Jersey, improve complaint handling in cases of alleged misconduct by police officers, and establish confidence that such cases will be resolved.

(3) Ineffective, unresponsive law enforcement remains a significant problem in minority communities.

²⁶ "Attorney General Robert Del Tufo, acknowledging that neither the public nor police trust the current system for investigating allegations of police brutality, is convening a task force to improve it from top to bottom. . . . Del Tufo is expected to outline [the task force] tomorrow before the state advisory committee to the U.S. Commission on Civil Rights." *Sunday Star-Ledger*, Newark, N.J., Apr. 7, 1991, p. A1.

²⁷ Patricia Sullivan, "Law Officials Welcome Citizens' 'Bill of Rights'—Model rules govern misconduct charges." *The Star-Ledger*, Newark, N.J., Aug. 27, 1991, p. A1.

(4) Like the policy established by Prosecutor Tate in Essex County, presentation to a grand jury of all cases where police action results in death or serious bodily injury is an important policy.

(5) A majority of police contact with the public is routine and without problems. Indeed, most community residents enjoy the protection and attention to duty they receive from police officers. Moreover, police officers increasingly must take on additional tasks involving human services that call for skills better assigned to other agencies.

To address these concerns, the New Jersey Advisory Committee presents the following recommendations:

(1) The New Jersey State attorney general should undertake to improve the policies for screening candidates for law enforcement careers. In addition, if patterns of misconduct become evident after employment, local policy makers or chiefs of police should take immediate action in the form of either additional specialized training or termination from the police force.

(2) The New Jersey State attorney general should devise standardized training to upgrade the quality of police services in the State and establish a mandatory curriculum of in-service training courses for all officers. Linked to this general need for training is a special concern for instruction in intercultural and intergroup communication and awareness.

(3) Performance evaluations of local law enforcement personnel should include evaluation and assessment of the officer's sensitivity to intercultural awareness and diversity.

(4) Local police departments should create "feedback loops" to measure the quality of

service and professional conduct of their police officers. For example, attached to any traffic citation could be a simple questionnaire asking the recipient questions regarding the conduct, courtesy, and demeanor of the police officer. To the extent that patterns of less than professional conduct become apparent, appropriate administrative actions would be taken. This feedback information should be used to improve the quality of police work and assessment of police officer performance.

(5) Legislation should be enacted to mandate county level formation of bias incident review committees (BIRC) to investigate and screen complaints, including complaints of omission, unresponsiveness, etc., against police officers. A county level BIRC should educate the community by disseminating materials explaining civilian complaint procedures, including materials for language minorities. In this regard, the committee and materials from Middlesex County make a useful model.

(6) The New Jersey State attorney general should require law enforcement agencies to record all complaints of bias and misconduct against police officers and to file monthly reports with the New Jersey State police. The New Jersey State attorney general should issue an annual report. The reports should include information on the disposition of the complaint.

(7) Law enforcement agencies should improve their efforts to recruit candidates from all major ethnic groups in the community that they serve.

(8) The New Jersey State attorney general should require that all police actions resulting in death or serious bodily injury should be investigated by a grand jury.

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Appendix A

Statement of Zulima V. Farber, Chairperson New Jersey Advisory Committee

Because the Advisory Committee decided to append to its final report the concurring or dissenting statement of any member who chose to write one, I, as Chairperson, find it necessary to provide the reader with background information on the process the Committee used to reach consensus on the final report, so that the following appended statements by Committee members Balch, Samet, and Scrupski can be read in a proper context. Each has particular concerns, although Balch and Samet supported the Committee's decision to adopt the report.

After the Commission had approved the first version of this report for publication, and because the Committee members felt they had had insufficient input in the drafting of that version, the Committee took the unprecedented step of recalling the document for further deliberation and revision. Thereafter, each member reviewed again the transcript of the forum, and prepared to participate in the review of the report. Upon its return, the report underwent a line-by-line, painstaking review at an eight-hour meeting, and a final private review of the final draft before adoption by a ballot vote. The views of each and every committee member, including specifically those aired in the appended statements, were discussed during our deliberations. The vote was 13 to 1 in favor of adopting this report as revised by the Committee. In doing so, the Committee specifically declined suggestions for further changes to the text while extending to the members an opportunity to append statements that reflected personal views.

Although we respect the opinions of our colleagues and do not question their intentions in insisting that their separate statements be included with the committee report, I believe it necessary for balance to comment on at least parts of Professor Scrupski's statement. Specifically, the criticism that the report "elides" the comments made by the NAACP state director, Keith Jones, should be read in light of the following information, presented to assist the reader and help lessen confusion on this point.

At the forum, Jones did say that he did not care whether police officers were racists if their racism did not affect their professional conduct. However, the notion that he therefore discounted race as a factor in the actions and attitudes of police officers is not supported by a fair reading of this passage in its entirety. Towards the end of this exchange, Mr. Jones expressed his strong view regarding racist attitudes among police officers, saying "You would hope that they would not [be racist]." (A complete transcript is available in the Eastern Regional Office, see p. 21.)

The transcript shows that the preponderance of Jones' statements refer to race as a factor in police brutality complaints. In specific examples of police brutality that Mr. Jones presented, most involved perceptions by the complainant that race was a factor in the police misconduct.

Jones began his statement commenting on the fact that many African Americans and Hispanics perceive racial attitude as a major factor in their encounters with white police officers. His overall description of police brutality cases included examples that varied widely, leaving the racial difference of a civilian and police officer as the link between and among the examples. He described a racial pattern in which 95-99 percent of hundreds of incidents reported to NAACP local branches in the state involved persons of color alleging misconduct by white police officers. He underscored race as a factor, saying:

"I remind you that part of what law enforcement always says is that it (police brutality) is not racially motivated. However, the perception of the African American and Hispanic community is that it is motivated by race." (p. 15)

At four other points in his presentation Jones alluded to disparate treatment by police officers as racially motivated. The specific references follow:

"The question of citizen confidence is a very serious one. And that is that minority citizens, whether they be Hispanic, Latino, or African American, have no faith that the system as currently established can appropriately investigate and adjudicate their claim. They believe that their claim falls on deaf ears." (p. 13)

(T)his agency (New Jersey State Police) has admitted that there is a problem that they need to do something about. What has that problem been in New Jersey? That problem in New Jersey has been major thoroughfares, whether it be the New Jersey Turnpike, Garden State Parkway, Route 78, 287, whatever the major thoroughfares are, if you are Black or Hispanic in a relatively new foreign or domestic motor vehicle, you (blacks and Hispanics) are stopped solely because you fit a given profile. What is that profile? That profile is that because it is believed that you (blacks and Hispanics) might be involved in drug trafficking, not because you have violated some law while driving on that roadway, but because you fit a profile that they (police officers) believe exists, you (blacks and Hispanics) are then stopped." (p. 16-17)

"There is a concern . . . will (county prosecutors) do an appropriate investigation (of civilian complaints of police brutality complaints)? Why? Because citizens, whether they be black or white—and certainly the recent polls indicate, regardless of race— there is no confidence in police to respect the rights of peoples of color, not only in this state, but across the nation." (pp. 18-19)

And so we see this very serious problem. It is state-wide. It is in every city, every township, regardless of whether it is an urban, suburban, or rural township or community, there is a problem. And there is not a doubt in our mind that it is motivated by race." (p. 22)

I trust that these observations and the procedural information herein contained will aid the reader in understanding and using this report.

Note—The text of this statement has been reproduced from an original copy on file in the Eastern Regional Office.

Appendix B

Statement of Stephen H. Balch, member,
New Jersey Advisory Committee

National Association of Scholars

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August 6, 1993

Mr. Edward Darden, Civil Rights Analyst
United States Commission on Civil Rights
Eastern Regional Office
624 Ninth Street, N. W.
Washington, D. C. 20425

Dear Ed:

I've voted to approve the report. For the record, however, I would like to note that I disagree with the third recommendation. "Sensitivity ... to diversity" often connotes refraining from the use of common standards in judging other cultures.

Sincerely,

Steve Balch
President

SB:mrc
Enclosure

"For Reasoned Scholarship in a Free Society"

Appendix C

Statement of Seymour Samet, member, New Jersey Advisory Committee

March 12, 1993

The following is a statement by Seymour Samet, a member of the New Jersey State Advisory Committee to the United States Commission on Civil Rights, for inclusion in its 1993 report, **THE USE AND ABUSE OF POLICE POWERS: LAW ENFORCEMENT POLICIES AND PRACTICES AND THE MINORITY COMMUNITY IN NEW JERSEY.**

The following are additional recommendations which I believe should be considered by law enforcement officials in New Jersey:

1. In assigning officers to serve in high tension areas special efforts should be made to select those who have demonstrated capability in successfully policing such neighborhoods. Bonus pay should be offered for such service.

2. Officers serving in ethnic neighborhoods where foreign languages are commonly spoken should be skilled in or given at least basic language training in order to permit more effective communication in their police work.

3. Police departments should not be the only municipal arms of government with bias grievance mechanisms. Other officials in departments such as health, social services and education should be empowered to receive and act upon allegations of discrimination. As with the criminal justice system, bilingual services should be provided.

4. Specific and clearly stated procedures for making bias complaints should be carefully spelled out and made easily available to all concerned. The disposition of all complaints, hearings and other official responses to complaints should be made known quickly to all complainants.

5. Bias Incident Review Committees, or other instruments of government with different titles but having similar responsibilities, are potentially, but not necessarily, valuable. They do give the message that government is opposed to bigotry and its expressions by citizens in and out of government. However, the message also implies to many that such committees, composed of community leaders, have statutory status, are equipped with senior level professional personnel, investigative authority and budgets to carry out their mandates. Where these are missing and these entities are seen to be without the resources to alleviate or prevent intergroup tensions, then their existence will likely be looked upon as "window dressing" with the purpose of separating aggrieved individuals and groups from meaningful access to remedial resources.

The most difficult and usually least effective time to bring about minority group support for government efforts to improve intergroup relations is during or immediately after crises. The recommendations listed above and others being considered by officials should be acted upon on an ongoing basis rather than as a belated response to crises. Public relations efforts should be made to inform citizens of these actions and to assure them that government cares and is taking meaningful action to protect the rights of everyone at all times.

Note—The text of this statement has been reproduced from an original copy on file in the Eastern Regional Office.

Appendix D

Statement of Adam F. Scrupski, member, New Jersey Advisory Committee

Ms. Zulima Farber, Chairperson
New Jersey Advisory Committee to the
U.S. Commission on Civil Rights

August 16, 1993

Dear Zulima:

I find our report requires further revision. Following are my suggestions, the first dealing with the summary of Keith Jones's testimony.

To say, as the summary of Jones's remarks does, (page 3, bottom of left hand column) that, "Of the two influences (racism and abuse of police powers) on police misconduct against racial minorities, he [Jones] continued to underscore racial bias as the predominant one that explained police officers' brutality in New Jersey," is to elide the intent of Jones' presentation. Throughout his testimony Jones continually emphasized the importance of training, command, and control in inhibiting police mistreatment of minorities. He said explicitly that he did not care what the private racial beliefs of police officers were or what they taught their children, but that it was the internalization of a responsible, fair-minded, law-abiding perspective that would insure universalistic police treatment of minority group members. He did not say, as the summary statement on page 4 (top left) implies he said, that cultural and sensitivity training was needed as much as law enforcement training. That statement is contradicted by the report's very next paragraph, a quote from Jones's testimony. "The issue is not their understanding. . . [of diverse class, ethnic, and racial groups]. The issue is how they execute their responsibilities. . ."

My reservations additionally concern one conclusion (3) and two or three of the recommendations. I will take them up in order.

Conclusion (3) says "Ineffective unresponsive law enforcement remains a significant problem in minority communities." We heard very little evidence that would support such a strong conclusion. What I heard from our witnesses was that communities liked the police protection they got but wanted more of it. I heard almost no allegations of outright "unresponsiveness" on the part of law enforcement personnel (certainly no data concerning unresponsiveness) and I heard no allegations that the law enforcement that did take place was ineffective. I would suggest that we delete the word "unresponsive." I would grudgingly allow "Ineffective" to remain but I would prefer the substitution of the word "Insufficient" which would be a better summary of the testimony we heard and would support a request for more police resources as well as for modes of deployment such as community policing and problem-solving police work.

Recommendation (2) is important. I think the first sentence should be revised to include mention of supervisory and management training to insure a tight command structure. Both Mr. Jones and Prosecutor Tate, among others, emphasized the importance of supervision and command in controlling the behavior of police officers. We might want to add the adjective "rigorous" to precede "in-service training" and append, "particularly supervisory personnel" to the end of the sentence (following . . . "all officers.")

I think we should delete the last sentence of (2), that dealing with "intercultural and intergroup communication awareness." We heard very little testimony about intercultural awareness and its beneficial effects. When Mr. Jones was asked (twice) specifically if there were any data demonstrating the superior behavior toward people of color on the part of police officers

who were more familiar with people of color he could not cite such data. And he explicitly negated the importance of intercultural understanding in the quotation cited above, in which he said "The issue is not their understanding [of diverse class, ethnic and racial groups]."

I would, however, add to (2) a sentence recommending language training and greater interpreter resources in service to the Hispanic community and perhaps the Asian American community as well. We did hear testimony that included such a recommendation. The recommendation might read, "Language training and interpreter resources needs to be provided to police officers who serve non-English fluent communities."

I would delete (3) dealing with "evaluation and assessment of police officers' sensitivity to intercultural awareness and diversity." We heard very little evidence of the importance or effectiveness of such sensitivity, Mr. Jones, in his prepared remarks, more than once (as cited above) negated the importance of intercultural awareness. While two or three prosecutors may have noted that such training was provided to police officers in their counties, they did not address issues of its effectiveness. Attorney General Del Tufo said that intercultural awareness training was provided for state police after it was found that they were routinely stopping African American males driving late model cars, but neither he nor any other contributor cited the general effectiveness of such training or its importance.

With respect to recommendation (4), our fact-finding sessions included no evidence about feedback loops, particularly those taking the form of questionnaires attached to traffic citations. I would be willing to consider such an artifact if I heard evidence demonstrating its effectiveness, but I heard none on April 8-9, 1991. I think (4) should be deleted, but if it is close to the hearts of other committee members I suppose it could remain.

I think we should add a recommendation favoring "problem" or "community policing." Professor Weisburd reported favorable consequences of such policing and Chief Pugh thought it was significantly in order in Camden, though he was having difficulty getting it past his senior officers. The recommendation would follow from conclusion (3) (in the revised form that I suggested). It might read as follows:

Order must be established in all of our communities. In urban areas community policing has proved successful and it should be adopted and expanded. Resources should be provided to support such deployment of police personnel.

I hope I don't appear to be too "picky" but I think my suggestions are supported by original testimony and make the report stronger.

Very truly yours,

Adam F. Scrupski

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Appendix A

Statement of Zulima V. Farber, Chairperson New Jersey Advisory Committee

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"The question of citizen confidence is a very serious one. And that is that minority citizens, whether they be Hispanic, Latino, or African American, have no faith that the system as currently established can appropriately investigate and adjudicate their claim. They believe that their claim falls on deaf ears." (p. 13)

[T]his agency (New Jersey State Police) has admitted that there is a problem that they need to do something about. What has that problem been in New Jersey? That problem in New Jersey has been major thoroughfares, whether it be the New Jersey Turnpike, Garden State Parkway, Route 78, 287, whatever the major thoroughfares are, if you are Black or Hispanic in a relatively new foreign or domestic motor vehicle, you (blacks and Hispanics) are stopped solely because you fit a given profile. What is that profile? That profile is that because it is believed that you (blacks and Hispanics) might be involved in drug trafficking, not because you have violated some law while driving on that roadway, but because you fit a profile that they (police officers) believe exists, you (blacks and Hispanics) are then stopped." (p. 16-17)

"There is a concern . . . will (county prosecutors) do an appropriate investigation (of civilian complaints of police brutality complaints)? Why? Because citizens, whether they be black or white—and certainly the recent polls indicate, regardless of race— there is no confidence in police to respect the rights of peoples of color, not only in this state, but across the nation." (pp. 18-19)

And so we see this very serious problem. It is state-wide. It is in every city, every township, regardless of whether it is an urban, suburban, or rural township or community, there is a problem. And there is not a doubt in our mind that it is motivated by race." (p. 22)

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Appendix B

Statement of Stephen H. Balch, member, New Jersey Advisory Committee

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August 6, 1993

Mr. Edward Darden, Civil Rights Analyst
United States Commission on Civil Rights
Eastern Regional Office
624 Ninth Street, N. W.
Washington, D. C. 20425

Dear Ed:

I've voted to approve the report. For the record, however, I would like to note that I disagree with the third recommendation. "Sensitivity ... to diversity" often connotes refraining from the use of common standards in judging other cultures.

Sincerely,



Steve Balch
President

SB:mrc
Enclosure

"For Enhanced Scholarship in a Free Society"

Appendix C

Statement of Seymour Samet, member, New Jersey Advisory Committee

March 12, 1993

The following is a statement by Seymour Samet, a member of the New Jersey State Advisory Committee to the United States Commission on Civil Rights, for inclusion in its 1993 report, **THE USE AND ABUSE OF POLICE POWERS: LAW ENFORCEMENT POLICIES AND PRACTICES AND THE MINORITY COMMUNITY IN NEW JERSEY.**

The following are additional recommendations which I believe should be considered by law enforcement officials in New Jersey:

1. In assigning officers to serve in high tension areas special efforts should be made to select those who have demonstrated capability in successfully policing such neighborhoods. Bonus pay should be offered for such service.

2. Officers serving in ethnic neighborhoods where foreign languages are commonly spoken should be skilled in or given at least basic language training in order to permit more effective communication in their police work.

3. Police departments should not be the only municipal arms of government with bias grievance mechanisms. Other officials in departments such as health, social services and education should be empowered to receive and act upon allegations of discrimination. As with the criminal justice system, bilingual services should be provided.

4. Specific and clearly stated procedures for making bias complaints should be carefully spelled out and made easily available to all concerned. The disposition of all complaints, hearings and other official responses to complaints should be made known quickly to all complainants.

5. Bias Incident Review Committees, or other instruments of government with different titles but having similar responsibilities, are potentially, but not necessarily, valuable. They do give the message that government is opposed to bigotry and its expressions by citizens in and out of government. However, the message also implies to many that such committees, composed of community leaders, have statutory status, are equipped with senior level professional personnel, investigative authority and budgets to carry out their mandates. Where these are missing and these entities are seen to be without the resources to alleviate or prevent intergroup tensions, then their existence will likely be looked upon as "window dressing" with the purpose of separating aggrieved individuals and groups from meaningful access to remedial resources.

The most difficult and usually least effective time to bring about minority group support for government efforts to improve intergroup relations is during or immediately after crises. The recommendations listed above and others being considered by officials should be acted upon on an ongoing basis rather than as a belated response to crises. Public relations efforts should be made to inform citizens of these actions and to assure them that government cares and is taking meaningful action to protect the rights of everyone at all times.

Note—The text of this statement has been reproduced from an original copy on file in the Eastern Regional Office.

Appendix D

Statement of Adam F. Scrupski, member, New Jersey Advisory Committee

Ms. Zulima Farber, Chairperson
New Jersey Advisory Committee to the
U.S. Commission on Civil Rights

August 16, 1993

Dear Zulima:

I find our report requires further revision. Following are my suggestions, the first dealing with the summary of Keith Jones's testimony.

To say, as the summary of Jones's remarks does, (page 3, bottom of left hand column) that, "Of the two influences (racism and abuse of police powers) on police misconduct against racial minorities, he [Jones] continued to underscore racial bias as the predominant one that explained police officers' brutality in New Jersey," is to elide the intent of Jones' presentation. Throughout his testimony Jones continually emphasized the importance of training, command, and control in inhibiting police mistreatment of minorities. He said explicitly that he did not care what the private racial beliefs of police officers were or what they taught their children, but that it was the internalization of a responsible, fair-minded, law-abiding perspective that would insure universalistic police treatment of minority group members. He did not say, as the summary statement on page 4 (top left) implies he said, that cultural and sensitivity training was needed as much as law enforcement training. That statement is contradicted by the report's very next paragraph, a quote from Jones's testimony. "The issue is not their understanding. . . [of diverse class, ethnic, and racial groups]. The issue is how they execute their responsibilities. . ."

My reservations additionally concern one conclusion (3) and two or three of the recommendations. I will take them up in order.

Conclusion (3) says "Ineffective unresponsive law enforcement remains a significant problem in minority communities." We heard very little evidence that would support such a strong conclusion. What I heard from our witnesses was that communities liked the police protection they got but wanted more of it. I heard almost no allegations of outright "unresponsiveness" on the part of law enforcement personnel (certainly no data concerning unresponsiveness) and I heard no allegations that the law enforcement that did take place was ineffective. I would suggest that we delete the word "unresponsive." I would grudgingly allow "Ineffective" to remain but I would prefer the substitution of the word "Insufficient" which would be a better summary of the testimony we heard and would support a request for more police resources as well as for modes of deployment such as community policing and problem-solving police work.

Recommendation (2) is important. I think the first sentence should be revised to include mention of supervisory and management training to insure a tight command structure. Both Mr. Jones and Prosecutor Tate, among others, emphasized the importance of supervision and command in controlling the behavior of police officers. We might want to add the adjective "rigorous" to precede "in-service training" and append, "particularly supervisory personnel" to the end of the sentence (following . . . "all officers.")

I think we should delete the last sentence of (2), that dealing with "intercultural and intergroup communication awareness." We heard very little testimony about intercultural awareness and its beneficial effects. When Mr. Jones was asked (twice) specifically if there were any data demonstrating the superior behavior toward people of color on the part of police officers

who were more familiar with people of color he could not cite such data. And he explicitly negated the importance of intercultural understanding in the quotation cited above, in which he said "The issue is not their understanding [of diverse class, ethnic and racial groups]."

I would, however, add to (2) a sentence recommending language training and greater interpreter resources in service to the Hispanic community and perhaps the Asian American community as well. We did hear testimony that included such a recommendation. The recommendation might read, "Language training and interpreter resources needs to be provided to police officers who serve non-English fluent communities."

I would delete (3) dealing with "evaluation and assessment of police officers' sensitivity to intercultural awareness and diversity." We heard very little evidence of the importance or effectiveness of such sensitivity, Mr. Jones, in his prepared remarks, more than once (as cited above) negated the importance of intercultural awareness. While two or three prosecutors may have noted that such training was provided to police officers in their counties, they did not address issues of its effectiveness. Attorney General Del Tufo said that intercultural awareness training was provided for state police after it was found that they were routinely stopping African American males driving late model cars, but neither he nor any other contributor cited the general effectiveness of such training or its importance.

With respect to recommendation (4), our fact-finding sessions included no evidence about feedback loops, particularly those taking the form of questionnaires attached to traffic citations. I would be willing to consider such an artifact if I heard evidence demonstrating its effectiveness, but I heard none on April 8-9, 1991. I think (4) should be deleted, but if it is close to the hearts of other committee members I suppose it could remain.

I think we should add a recommendation favoring "problem" or "community policing." Professor Weisburd reported favorable consequences of such policing and Chief Pugh thought it was significantly in order in Camden, though he was having difficulty getting it past his senior officers. The recommendation would follow from conclusion (3) (in the revised form that I suggested). It might read as follows:

Order must be established in all of our communities. In urban areas community policing has proved successful and it should be adopted and expanded. Resources should be provided to support such deployment of police personnel.

I hope I don't appear to be too "picky" but I think my suggestions are supported by original testimony and make the report stronger.

Very truly yours,

Adam F. Scrupski

Note: The text of this statement has been reproduced from an original copy on file in the Eastern Regional Office.

Office of the Attorney General
Deborah T. Poritz, Attorney General

News

FOR IMMEDIATE RELEASE

July 6, 1994

FOR FURTHER INFORMATION CONTACT:
Tom Damm (609)292-4791

**STATEMENT BY ATTORNEY GENERAL DEBORAH T. PORITZ
ON THE REPORT OF THE NEW JERSEY ADVISORY COMMITTEE
TO THE U.S. COMMISSION ON CIVIL RIGHTS
JULY 6, 1994**

I appreciate and respect the efforts of the New Jersey Advisory Committee to the U.S. Commission on Civil Rights in developing this report and in focusing attention on this important issue.

I look forward to meeting with members of the advisory committee to review and discuss specific recommendations included in the report.

My office recognizes the difficult and demanding tasks faced by law enforcement officers. We also recognize that citizens have a right to expect that law enforcement officers will conduct themselves in a professional manner at all times. Our message is clear - acts of police brutality or bias against anyone will not be tolerated. Such actions violate the most basic civil rights and undermine the confidence the public must have in its police force.

In New Jersey, we have been in the forefront of efforts to promote understanding between the police and the community.

We continue to benefit from the work of the New Jersey Office of Bias Crime and Community Relations - the nation's first such office - and the county prosecutors offices. The cooperative efforts have produced effective strategies for dealing with all bias complaints, including those involving police officers.

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State of New Jersey
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
 ATTORNEY GENERAL

JAMES J. CIANCIA
 FIRST ASST. ATTORNEY GENERAL

MEMORANDUM

To: Terrence P. Farley
 Director
 Division of Criminal Justice

From: Alexander P. Waugh, Jr. *APW*
 Executive Assistant Attorney General

Date: November 22, 1994

Re: U.S. Commission On Civil Rights

*To Director Farley
 Did a response
 ever go out? If so,
 may I have a
 copy?
 APW
 12-7-95*

The Attorney General would like you to prepare a response to the letter from the Chair of the New Jersey Advisory Committee. As previously mentioned, the Advisory Committee will continue to look for a response with respect to their recommendation that the Attorney General adopt (1) standards for recruitment of minority police officers and (2) a uniform statewide reporting system for civilian complaints against police officers. Please run your proposed response by the Attorney General, with a copy to me.

- c. Attorney General Poritz
 First AAG Ciancia



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12-8-95

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or discussed it w/Wayne.

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Wayne
12/9/95

J. CIANCIA
TORNEY GENERA

Dircey
Did a response
ever go out? If so,
may I have a
copy?
ADW
12-7-95

General would like you to prepare a response to the letter
New Jersey Advisory Committee. As previously mentioned,
we will continue to look for a response with respect to their
request that the Attorney General adopt (1) standards for recruitment of
and (2) a uniform statewide reporting system for civilian
police officers. Please run your proposed response by the
Assistant Attorney General and send a copy to me.

Horitz

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ey
PUBLIC SAFETY
GENERAL

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

MEMORANDUM

Criminal Justice

P. Waugh, Jr. *PWV*
First Assistant Attorney General

December 22, 1994

J.S. Commission On Civil Rights

*To Director Farley
Did a response
ever go out? If so,
may I have a
copy?
PWV
12-7-94*

The Attorney General would like you to prepare a response to the letter from the Chair of the New Jersey Advisory Committee. As previously mentioned, the Advisory Committee will continue to look for a response with respect to their recommendation that the Attorney General adopt (1) standards for recruitment of police officers and (2) a uniform statewide reporting system for civilian complaints against police officers. Please run your proposed response by the Attorney General, with a copy to me.

Attorney General Poritz
First AAG Ciancia



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

OCT 11 1994
GENERAL ATTORNEY GENERAL

October 4, 1994

Hon. Deborah T. Poritz
Attorney General, State of New Jersey
Department of Law and Public Safety
Hughes Justice Complex-CN 080
Trenton, NJ 08625

Dear General:

I am pleased to have met with you and your staff on September 22, 1994, to discuss the Committee's recent report on relations between law enforcement and minority communities in New Jersey. I want you to know that we appreciate the dedication you have shown to this important issue, and your candor during our lengthy meeting.

I want to also let you know how the Committee plans to follow up our meeting with you. We are analyzing the information and comments that we received from your office and will contact you shortly with any questions. Thereafter the full Committee will receive a report from the subcommittee members who met with you and then decide on a course of action. It may include additional follow up with you and your staff on the feasibility of implementing the recommendations included in our report. I believe the Committee members will probably want to hear from you in the near future regarding our recommendations to implement and enforce (a) uniform, statewide requirements and guidelines to recruit, screen, select and train law enforcement officers, and (b) a uniform statewide system of reporting annually statistical data on the number of and the nature of civilian complaints of police misconduct, and their disposition of such complaints.

On behalf of our entire Committee, I want to thank you and your staff for the insights you gave us at our meeting last week and your personal attention to our report. We are grateful for your continuing cooperation and commitment to address our recommendations and secure civil rights in New Jersey.

Yours truly,

Dr. Irene Hill-Smith, Chairperson
New Jersey Advisory Committee to
The U.S. Commission on Civil Rights

cc. Committee members
John I. Binkley, Regional Director
Edward Darden, Civil Rights Analyst

10/11/94
cc Alex W



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DEC 18 1995

TERRENCE P. FARLEY
DIRECTOR

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
CN 080
TRENTON, NJ 08625-0080

CHRISTINE TODD WHITMAN
Governor

DEBORAH T. PORITZ
Attorney General

JAMES J. CIANCIA
First Asst. Attorney General

MEMORANDUM

To: Terrence P. Farley, Director
Division of Criminal Justice

Colonel Carl A. Williams
Superintendent of State Police

From: Alexander P. Waugh, Jr. *APW*
Executive Assistant Attorney General

Date: December 18, 1995

Re: United States Commission on Civil Rights
New Jersey Advisory Committee

In September of 1994, the New Jersey Advisory Committee of the United States Commission on Civil Rights met with Attorney General Poritz. You were both in attendance. I attach some background materials with respect to the issues discussed at that meetings. The New Jersey Advisory Committee is attempting to schedule a follow-up meeting with the Attorney General in early 1996. I would appreciate your letting me know at your earliest convenience what, if any, action has been taken with respect to the Advisory Committee's recommendations.

- c. Attorney General Poritz
First AAG Ciancia
Director Shatzkin

*Caroly -
Do we have any
notes on this?*



D-T
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

INTEROFFICE MEMORANDUM

To: Deborah T. Poritz
Attorney General

From: Alexander P. Waugh, Jr. *AWJ*
Executive Assistant Attorney General

Date: September 22, 1994

Re: Meeting With New Jersey Advisory Committee

The purpose of this memorandum is to outline some areas discussed at today's meeting which could be considered for follow-up. Most of these are within the purview of the Division of Criminal Justice.

There was considerable discussion of the issue of screening standards for the hiring of local police. It was agreed that this is an issue beyond the authority of the Attorney General. The issue could be addressed in one or more of the following ways: (1) the issuance of non-binding standards by the Division of Criminal Justice, (2) a cooperative effort with the Department of Personnel to the extent it has such authority or (3) a legislative initiative to either establish such standards or give the Attorney General, or the Police Training Commission, the authority to act in this field.

As discussed at the meeting, the State Police has engaged in extensive minority recruitment. The Advisory Committee was also quite concerned about recruitment at the local level. Perhaps State Police and/or DCJ could offer training in minority recruitment techniques. The Attorney General could also take some public action to encourage such recruitment. The suggestion was also made that the Attorney General and the leadership of the State Police should participate in recruitment whenever possible. Thought could be given to whether an informational or welcoming video could be prepared and used at recruitment sessions, if this is not already done.

The issue of publishing meaningful data concerning complaints against police officers was the subject of extensive discussion. You and Director Farley agreed to discuss the topic further. There was also discussion of notifying the public about how to make complaints. While a "hotline" approach may not be desirable or feasible at present, thought could be given to some publicity on how and where to file complaints.

Both the Report and today's discussion touched on the issue of language training for police who work in areas with a large foreign language population. If it has not been, the Police Training Commission could consider this issue. Or, perhaps, DCJ could look into developing or facilitating language training programs.

Director Farley mentioned an on-going survey of the county human relations commissions. The Advisory Committee asked to receive the results of that survey.

There was a discussion of publicity related to what the State is doing in the areas being discussed. Although I believe there has been more publicity than Mr. Darden, who lives in Washington, realizes, this is an area where there will be opportunities in the future.

Finally, I suggest that DCJ review the Report and advise you on whether there are any positions taken or commitments made by former Attorney General Del Tufo, as reflected in the Report, which should be reconsidered and on whether any of the other recommendations made by the Advisory Committee should be pursued.

- c. First AAG Ciancia
- Director Farley
- Director Stewart
- Colonel Williams
- Director Taylor



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

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OCT 13 1994

TERRENCE P. FARLEY
DIRECTOR

JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

MEMORANDUM

To: Terrence P. Farley
Director
Division of Criminal Justice

From: Alexander P. Waugh, Jr. *AWJ*
Executive Assistant Attorney General

Date: October 12, 1994

Re: U.S. Commission On Civil Rights

Attached is a letter from the Chair of the New Jersey Advisory Committee. I particularly draw your attention to the second paragraph, which refers to two issues about which the Advisory Committee will continue to look for a response. They are (1) standards for training and recruitment of police officers and (2) a uniform statewide reporting system for civilian complaints against police officers. It might be advisable to send them copies of whatever guidelines or regulations the PTC has adopted with respect to the training issue. As to recruitment and reporting, it was my understanding that you would be making recommendations to the Attorney General in the near future.

c. Attorney General Poritz
First AAG Ciancia



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UNITED STATES
COMMISSION ON
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624 Ninth Street, N.W.
Washington, D.C. 20425

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OCT 11 1994
OFFICE OF ATTORNEY GENERAL

October 4, 1994

Hon. Deborah T. Poritz
Attorney General, State of New Jersey
Department of Law and Public Safety
Hughes Justice Complex-CN 080
Trenton, NJ 08625

Dear General:

I am pleased to have met with you and your staff on September 22, 1994, to discuss the Committee's recent report on relations between law enforcement and minority communities in New Jersey. I want you to know that we appreciate the dedication you have shown to this important issue, and your candor during our lengthy meeting.

I want to also let you know how the Committee plans to follow up our meeting with you. We are analyzing the information and comments that we received from your office and will contact you shortly with any questions. Thereafter the full Committee will receive a report from the subcommittee members who met with you and then decide on a course of action. It may include additional follow up with you and your staff on the feasibility of implementing the recommendations included in our report. I believe the Committee members will probably want to hear from you in the near future regarding our recommendations to implement and enforce (a) uniform, statewide requirements and guidelines to recruit, screen, select and train law enforcement officers, and (b) a uniform statewide system of reporting annually statistical data on the number of and the nature of civilian complaints of police misconduct, and their disposition of such complaints.

On behalf of our entire Committee, I want to thank you and your staff for the insights you gave us at our meeting last week and your personal attention to our report. We are grateful for your continuing cooperation and commitment to address our recommendations and secure civil rights in New Jersey.

Yours truly,

Dr. Irene Hill-Smith, Chairperson
New Jersey Advisory Committee to
The U.S. Commission on Civil Rights

cc. Committee members
John I. Binkley, Regional Director
Edward Darden, Civil Rights Analyst

10/11/94
cc Alex W



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

MEMORANDUM

RECEIVED

MAR 12 1996

TERRENCE P. FARLEY
DIRECTOR

TO: Director Terrence P. Farley
Division of Criminal Justice

FROM: Alexander P. Waugh, Jr. *APW*
Executive Assistant Attorney General

DATE: March 12, 1996

SUBJECT: United States Commission on Civil Rights - New Jersey Advisory
Commission

At the briefing for the Attorney General on March 4, you undertook to prepare further briefing materials with respect to the status of the recommendations which the New Jersey Advisory Committee presented to the Attorney General in September 1994. These should include what action, if any, has been undertaken to implement recommendations or why we have chosen not to pursue them. To the extent implementation would require legislation, there should probably be an explanation of why such legislation was not deemed advisable.

The meeting with the delegation from the Advisory Committee is now scheduled for 10:00 a.m. on Monday, March 18, 1996. It is imperative that this briefing material be received in sufficient time for everyone to have the opportunity to review it prior to the meeting and that you be prepared to discuss the relevant issues at the meeting.

We have requested the Commission provide an agenda of topics for the meeting, which we hope will be forthcoming. However, we have been advised that they will want to talk about the Gloucester County Turnpike stop case, in which the opinion was issued last Friday.

A.P.W.

APW:pat
c. Attorney General Poritz
First Assistant Attorney General Ciancia
Director Shatzkin



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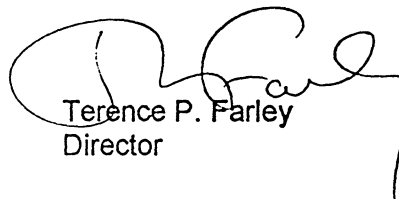
Prosecutor Yurick
February 6, 1997
Page Two

Center) to verify the payment status. Attached you will also find a letter with billing summary from Patricia A. Schwaiger on behalf of the Center which appears to resolve any confusion. Ms. Schwaiger explains that Prosecutor Cotton was basically correct in asserting that the county presently owes only \$9,832.69, the actual amount owed being \$9,841.69. The confusion arose from the fact that the county was charged separately for the first five invoices and paid these items in their entirety.

Since the agreement from the beginning of this litigation was that the State and county would split the cost of expert fees equally, I would appreciate your taking steps to have the county pay its outstanding balance of \$9,841.69, and I will likewise ensure that the State pays its remaining balance of \$12,285.10. Assistant Prosecutor Brent Hopkins participated in this litigation and is aware of this issue. You can also contact John M. Fahy, Senior Deputy Attorney General, at (609) 984-4461 with any questions you have regarding this matter.

Your assistance in resolving this matter is appreciated.

Very truly yours,



Terence P. Farley
Director

hw
Attachment
c: Thomas J. O'Reilly, Administrator, OAG
John M. Fahy, SDAG

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: Thomas J. O'Reilly
Administrator
Office of the Attorney General

FROM: Terrence P. Farley
Director
Division of Criminal Justice

DATE: February 6, 1997

SUBJECT: State v. Pedro Soto, et al.
Expert Fees

Prior to incurring expenses for expert fees in the above-captioned matter, the State Police and Gloucester County Prosecutor's Office agreed to divide the bill evenly. The State Police previously made payments totaling \$49,821.71, believing that this entailed their entire share of the bill. The State Police were under the impression that any outstanding balance was the responsibility of the county to pay. Unfortunately, due to the billing procedures employed by the Center for Forensic Economic Studies, the county was billed alone on the first five invoices, and made payment thereon. This resulted in the State being under a false impression as to liability for the remaining balance. Attached you will find a letter from Patricia Schwaiger from the Center with a billing summary.

It now appears that the State owes an additional \$12,285.10 of the outstanding balance of \$22,726.80 pursuant to the original understanding between the State and county. Former Gloucester County Prosecutor Harris Cotton who brought the discrepancy to my attention, agreed in writing that the county would pay its outstanding portion of the balance, which is \$9,841.69. This fact will be communicated to the new prosecutor.

I would appreciate your assistance in reviewing this matter and ensuring that the State meets its obligation. SDAG Fahy is available to provide you with assistance, including preparing any explanation required by the State Police.

hw
Attachment

T.P.F.
MP

THE CENTER FOR
FORENSIC ECONOMIC STUDIES

1608 Walnut Street, Suite 1200 • Philadelphia, Pennsylvania 19103 • (215) 546-5600 Fax (215) 732-8158
Maryland Office: 4440 Oaktree Road • Rockville, Maryland 20853 • (301) 929-1065 Internet Address: foreco@helo.org

January 30, 1997

VIA FAX 609-292-8546

John M. Fahy
Senior Deputy Attorney General
State of New Jersey
25 Market Street
CN 085
Trenton, New Jersey 08625-008

RE: State v. Pedro Soto

Dear Mr. Fahy:

As per our telephone conversation, I have reviewed the correspondence from Harris Cotton regarding the billings in the above matter. My findings regarding his table of payments are as follows:

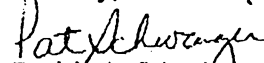
- 1) the County does not list several payments made by the State, invoices dated 9/2/94, 10/4/94, 12/2/94, 1/6/95, 2/3/95, 5/1/95 and 6/6/95 (please see the attached table);
- 2) the County omitted an invoice totally, dated 3/1/95 in the amount of \$1,474.49 of which the County paid \$737.24 and the State paid \$737.25 (see attached invoice);
- 3) the County transposed the 10/4/94 invoice amount from \$1,675.03 to \$1,657.03.

In addition to these items, I think the main problem regarding who owes what (County v. State) lies with the fact that in the beginning of the case, the Center was billing only the County for the services rendered. The Center was advised to split all bills between the County and the State in June, 1994 (see attached letter). So for invoices dated from 11/3/93 through 3/2/94, which totaled \$24,570.25, the State was never billed for their half which would have been \$12,285.13; therefore they never paid their half. The County paid these invoices in full. The remaining invoices, from April 6, 1994 through June 6, 1995, were billed half to the County and half to the State. When the inquiry was made regarding the \$22,126.80 outstanding balance, the Center stated that the \$22,126.80 was due entirely from the County. This was based on the fact that the Center had received all the payments from the State for which invoices were sent. The Center's table, sent originally to you on March 8, 1996, showed only the period from 4/6/94 through 6/6/95, the period when the Center was billing both the County and the State. It did not include the earlier invoices.

The total amount billed by the Center for this case was \$124,213.62. If this amount had been divided between the County and the State from the beginning, each party would have been responsible for \$62,106.81. We have received \$52,265.12 from the County and \$49,821.71 from the State, leaving a balance of \$22,126.80. According to the Center's outstanding invoices, the County owes the Center \$22,126.83, for their half of invoices dated 4/6/94, 4/4/95, 5/1/95, and 6/6/95. The State owes the County \$12,285.13 for their half of invoices dated 11/3/93, 10/1/93, 1/4/94, 2/2/94, and 3/2/94. I hope this will clear up a long confusing matter.

Should you need any additional information, please do not hesitate to call me at 215-546-5600. I am hearing impaired and I use the TTY (Text Telephone), so if you leave your name and number with our receptionist, I will call you back through the relay. This process usually takes approximately three minutes.

Sincerely,


Patricia A. Schwaiger

:pas
Enclosures

STATE v. PEDRO SOTO
BILLING SUMMARY

<u>Bill Date</u>	<u>Amount</u>	<u>County Paid</u>	<u>State Paid</u>	<u>Balance</u>
10/1/93	\$ 693.25	\$ 693.25	0.00	0.00
11/3/93	544.25	544.25	0.00	0.00
1/4/94	842.13	842.13	0.00	0.00
2/2/94	7,395.94	7,395.94	0.00	0.00
3/2/94	15,094.68	15,094.68	0.00	0.00
4/6/94	7,688.76	0.00	3,844.38	3,844.38
9/2/94	8,861.53	4,430.76	4,430.77	0.00
10/4/94	1,675.03	837.51	837.52	0.00
12/2/94	4,314.03	2,157.01	2,157.02	0.00
1/6/95	18,211.20	9,105.60	9,105.60	0.00
2/3/95	20,853.48	10,426.75	10,426.74	0.00
3/1/95	1,474.49	737.24	737.25	0.00
4/4/95	24,990.80	0.00	12,495.40	12,495.40
5/1/95	11,117.00	0.00	5,558.50	5,558.50
6/6/95	<u>457.05</u>	<u>0.00</u>	<u>228.53</u>	<u>228.52</u>
	\$124,213.62	\$52,265.12	\$49,821.71	\$22,126.80



Gloucester County Prosecutor

HARRIS Y. COTTON
Prosecutor
NANCY K. LOTSTEIN
Deputy 1st Assistant Prosecutor

P.O. Box 623
Woodbury, New Jersey 08096
(609) 384-5500
FAX (609) 384-8624

RECEIVED

JAN 21 1997

STATE GRAND JURY

KEITH E. JOHNSON
Acting 1st Assistant Prosecutor
Chief of Trial Section
THOMAS T. WATSON, SR.
Chief of County Investigators

January 17, 1997

Terrence P. Farley, Director
Division of Criminal Justice
25 Market Street
CN 085
Trenton, NJ 08625

Re: Turnpike Expenses

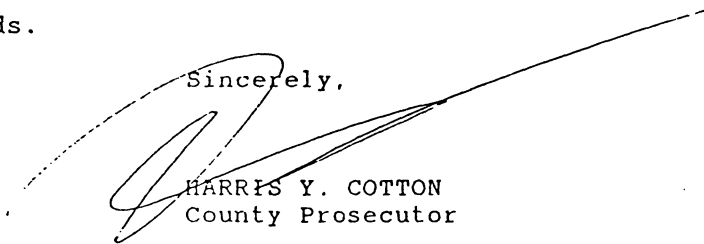
Dear Terry:

I enclose my letter of April 8, 1996, which shows the County owing \$7,626.33. We have since found an additional bill showing that the County owes \$9,832.69. The bill sent by Fahy, a copy of which is enclosed is incorrect. It fails to list the bills or payments from November 3, 1993 through March 2, 1994.

After you have had an opportunity to discuss this with DAG Fahy, please advise and we will make payment.

Kindest regards.

Sincerely,


HARRIS Y. COTTON
County Prosecutor

HYC/dt


cc: John M. Fahy
Sr. Deputy Attorney General

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

CONFIDENTIAL

TO: EAAG Alexander Waugh
Office of the Attorney General

FROM: John M. Fahy
Senior Deputy Attorney General 

DATE: January 9, 1997

SUBJECT: Profiling Issue

On Wednesday, January 8, 1997 representatives from this department met with Dr. Bernard Siskin and Dr. Leonard Cupingood from the Center for Forensic Economic Studies in Philadelphia to explore options for conducting a violator survey on the southern portion of the Turnpike. Bob Caccese, Director, OAG, Alvin Beveridge, Operations Audit, Det. Thomas Gilbert, N.J.S.P. and I attended on behalf of the State.

As a result of that meeting, a consensus was reached that a study could be conducted in stages, with an evaluation made after each stage as to whether further data is required. Initially, a photo radar survey could be conducted in which the rates of speed, and photographs of the vehicle including license plate and driver are documented. This will allow for analysis of the number and percentage of violators at various rates of speed by race.

If additional data is required, a further violator survey measuring other types of motor vehicle violations can be designed. Conducting such a survey utilizing radar guns and personal observations from a stationary mode appears workable. The primary costs would involve payment of observers (possibly college students) for data collection and fees associated with analysis of the data. The larger problem deals with capturing data when officers are working a mobile patrol. Det. Gilbert strongly believes that having observers ride with troopers would have a major impact on the reliability of the data because the work habits of the troopers would be effected. Other options can be considered if we progress to that point.

EEAG Alex Waugh
Page 2
January 9, 1997

I recommend that the limited speed survey utilizing photo radar be conducted. Director Caccese has contacted Highway Traffic Safety and determined that appropriate equipment could be rented at a cost of \$250 a week. Of course, before we progress any further Attorney General Verniero and Col. Williams must be briefed and their approval obtained. Perhaps we should have another meeting to discuss this particular issue and the status of the overall matter.

Please advise.

J.M.F.

hw

c: Administrator Thomas O'Reilly
Director Robert Caccese
Management Analyst Al Beveridge
Det. I Thomas Gilbert
DAG George Rover



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER VERNIERO
ATTORNEY GENERAL

TERRENCE P. FARLEY
DIRECTOR

January 22, 1997

Ms. Patricia A. Schwaiger
The Center for Forensic Economic Studies
1608 Walnut Street
Suite 1200
Philadelphia, Pennsylvania 19103

Re: State v. Pedro Soto

Dear Ms. Schwaiger:

Attached please find correspondence between me and the Gloucester County Prosecutor's Office. As you will observe, Gloucester County Prosecutor Harris Y. Cotton has agreed to pay the outstanding balance of the bill incurred for expert services in the above-captioned matter. There is, however, a question as to the amount presently owing.

Once you have had a chance to review your records, please contact me regarding your firm's position to the amount of the balance due.

Very truly yours,

John M. Fahy
Senior Deputy Attorney General

hw
Attachments
c: Dr. Leonard Cupingood



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OAG 006748

SP 128119

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: SDAG Pam Katten
Assistant Section Chief
Fedcor

FROM: SDAG John M. Fahy 
Division of Criminal Justice

DATE: January 18, 1997

SUBJECT: State Police Litigation

As per our prior telephone conversation attached please find a discovery request in a matter I am handling. Specifically, I need to know whether any attorneys in your section have handled any matter which resulted in an adverse decision that a State Police officer unconstitutionally used race or ethnic origin as a basis for taking law enforcement action.

Your assistance is appreciated.

J.M.F.

ca
Attachment

4. Litigation


a. Identify every state or federal court ruling since 1990 addressing a claim that a State Police officer improperly used the race or ethnic origin of a motorist in selecting a vehicle for a traffic stop or in conducting law enforcement activity pursuant to a traffic stop (issuing a warning ticket or citation for a traffic violation, or effectuating a search, seizure, or arrest). Provide the full citation and a copy of the ruling.

b. In any case in which a state or federal court found credible evidence that a State Police officer improperly used the race or ethnic origin of a motorist in selecting a vehicle for a traffic stop or in conducting law enforcement activity pursuant to a traffic stop (issuing a warning ticket or citation for a traffic violation, or effectuating a search, seizure, or arrest), provide a description of any action taken by the State in response to the ruling. If the State contends that the ruling is factually erroneous, provide a detailed explanation of the basis for the State's contention and include any relevant trial court exhibits, expert reports, testimony excerpts, and briefs.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

TO: File

FROM: John M. Fahy, SDAG
State Grand Jury 

DATE: September 6, 1996

SUBJECT: State v. Pedro Soto

On this date, I contacted EAAG Alex P. Waugh and advised him that DAG Gerry Sims and I believed that obtaining floppy discs of the record of proceedings for the 74 hearing dates in the above matter would assist us on appeal. In a conversation with Bonnie Donnelly, I ascertained that the cost of each disc would be \$10 and 2 sessions could be fit on each disc. The estimated total cost is approximately \$400. DAG Waugh approved this request. Transcripts costing approximately \$22,000 have already been ordered.

TURNPIKE CASES
OFFICE OF THE PUBLIC DEFENDER
Attorney for Various Defendants
65 Newton Avenue
Woodbury, New Jersey 08096

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL SECTION
GLOUCESTER COUNTY
INDICTMENT NO. I 492-7-88

STATE OF NEW JERSEY

V.

Criminal Action

PEDRO SOTO

STATE OF NEW JERSEY

INDICTMENT NO. 379,80,81-6-89B

V.

KAREN BROWN
TERRY MONROE
DARRELL STANLEY

STATE OF NEW JERSEY

INDICTMENT NO. 814,15-11-89B

V.

CHAUNCEY DAVIDSON
RODERICK FITZGERALD

STATE OF NEW JERSEY

INDICTMENT NO. 930,31-12-89A

V.

LARNIE BODDY
PAUL DACOSTA

STATE OF NEW JERSEY

INDICTMENT NO. 90-1-149

V.

DONALD CREWS
ALFRED POOLE

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-231

V.

RONNIE LOCKHART
OCIE NORMAN

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-237

V.

DELMAS BRASWELL
KIM HARRIS
FRED ROBINSON

STATE OF NEW JERSEY

INDICTMENT NO. A90-3-298

V.

CHARLES GRAYER
KEVIN JACKSON
MILTON LUMPKIN
KEITH PERRY

STATE OF NEW JERSEY

INDICTMENT NO. B90-8-688

V.

WILLIAM BONDS
DIANE HUGHES
BARBIE STANFIELD

STATE OF NEW JERSEY

INDICTMENT NO. 90-8-702

V.

ANTOINE PETERS

STATE OF NEW JERSEY

INDICTMENT NO. 91-9-64

V.

SAM GANT
ALTON WILLIAMS
THEOTIS WILLIAMS
A/K/A WALTER DAY

CERTIFICATION

P. JEFFREY WINTNER, hereby certifies as follows:

1. I am the Deputy Public Defender assigned to the Gloucester Region of the New Jersey Public Defender's Office.

2. In that capacity I have appeared as trial counsel during the Plenary Hearing of Defendants' Motion in the above in captioned matters.

3. I recently spoke with Assistant Deputy Public Defender Carol Skarpetowski, who is assigned to the Hunterdon County Region of the Public Defender's Office.

4. She provided me with a transcript of her cross examination of New Jersey State Trooper James Steiger. That cross examination occurred during a Motion to Suppress Evidence which was held in the matter of State v. Charles E. Hahn, and State v. Omar D. Brooks. Trooper Steiger testified on September 14, 1995.

5. This office received a copy of the transcript of the testimony of Trooper Steiger on October 16, 1995, and I saw same shortly thereafter.

6. A copy of that transcript is annexed hereto and made apart hereof.

7. Defendants Hahn and Brooks were arrested by Trooper Steiger and his partner while traveling on Interstate 78, in Hunterdon County, an interstate route that has been referred to during the course of this hearing as one that has heightened attention from the New Jersey State Police as a drug corridor.

8. Trooper Steiger was cross examined by Ms. Skarpetowski concerning whether or not it was his practice to shine his spotlight across the highway. Trooper Steiger testified that he

would do so on occasion, but could not recall whether he had done so leading up to the arrest of Mr. Hahn. At Page 12 of the transcript between lines 17 and 25, Trooper Steiger testifies that the spotlight is used to illuminate passing vehicles so you can see who is inside the vehicle. At Page 13 from line 15 through 23 Officer Steiger indicates that one of the reasons for using a spotlight to look into a vehicle is to determine the race of the individuals inside the car. At Page 19, from lines 7 through 15, Trooper Steiger testifies that it is sometimes common practice to use the spotlight. At Page 20, from lines 12 through 17, Trooper Steiger testified that a reason to use the spotlight would be to see the occupants and their race as the cars passed.

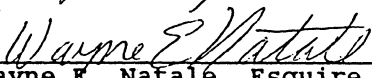
9. Trooper Steiger's testimony is clear that his use of the spotlight to illuminate Route 78 and to observe the occupants of passing vehicles and the race of those occupants relates to the use of the spotlight and the making of observations before the stop.

10. On October 13, 1995, The Honorable Marilyn Herr, of the Superior Court of New Jersey, Hunterdon County, decided the Suppression Motion in the matter of State v. Hahn and State v. Brooks. Judge Herr decided the Motion in favor of the State. A partial copy of her written opinion is attached hereto made a part hereof.

11. While sustaining the search, Judge Herr stated at Page 4, "It is of concern to this Court that Trooper Steiger commented that it was unusual in his experiences as a highway patrol of-

PLEASE TAKE NOTICE that on the 14th day of November, 1995, at 9:00 a.m., or at such other time as the court shall designate, the undersigned counsel for Defendants will move for an Order Reopening the Fact-Finding Portion of This Hearing and admitting into evidence the transcript of the cross examination of New Jersey State Trooper James Steiger, which took place on September 14, 1995, in Hunterdon County.


P. JEFFREY WINTER ESQUIRE


Wayne E. Natale, Esquire

Carrie D. Dingle, Esquire

William H. Buckman, Esquire

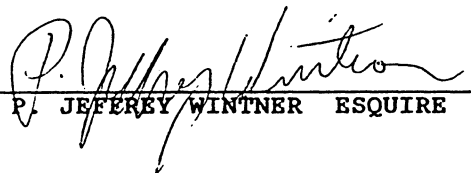
Justin T. Loughry, Esquire

DATED: November 2, 1995

ficer for the car owner not to be driving the car. It was also troubling that he uses a spotlight to identify the racial make-up of the vehicle occupants before he stops them but then does not radio this information to dispatch so that it can achieve the alleged benefit of protecting him from assault by 'nondescript' persons on the highway. Even though I find the stop here is justified, this trooper's superiors need to review his work and assess whether he is stopping only vehicles containing minority occupants."

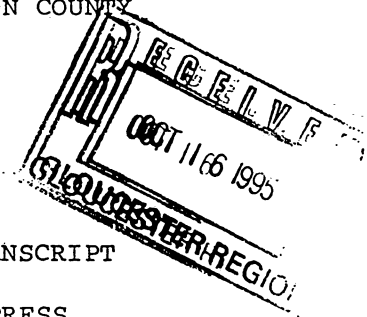
12. Despite all the litigation concerning the racial stopping practices of the New Jersey State Police on the highways of this State, it is apparent that as late as October of 1995, a Superior Court Judge is expressing concern regarding those practices as a result of a stop that occurred on March 23, 1995, and expressing the need for review of a state trooper's work by his superiors, in order to determine whether he is discriminating against minorities in his automobile stopping practices.

I hereby certify that the above statements made by me are true. I realize that if any of these statements made by me are willfully false, I am subject to punishment.


P. JEFFREY WINTNER ESQUIRE

DATED: November 2, 1995

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUNTERDON COUNTY
(CRIMINAL)
INDICTMENT NO. 95-6-99



STATE OF NEW JERSEY,

STENOGRAPHIC TRANSCRIPT
OF
MOTION TO SUPPRESS

vs.

CHARLES E. HAHN AND
OMAR D. BROOKS,

(Partial Transcript)

Defendants.

Place: Hunterdon County Courthouse
Flemington, New Jersey
On: September 14, 1995

B E F O R E :

HONORABLE MARILYN RHYNE HERR, J.S.C.

TRANSCRIPT REQUESTED BY:

VERNON W. CLASH, Deputy Public Defender

A P P E A R A N C E S :

HUNTERDON COUNTY PROSECUTOR'S OFFICE
BY: HARVEY B. LESTER, Assistant Prosecutor
For the State of New Jersey

OFFICE OF THE PUBLIC DEFENDER
BY: CAROL SKARPETOWSKI, Assistant Deputy Public
Defender
For the Defendant Charles E. Hahn.

GLYNN AND ASSOCIATES
BY: BARBARA NABORS, ESQ.
For the Defendant Omar D. Brooks.

JOHN B. NEWTON, JR.
Official Court Reporter
Hunterdon County Courthouse
Flemington, New Jersey

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JAMES. W. STEIGER By Ms. Skarpetowski		3		

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDEN.</u>	<u>EVID.</u>
D-1	Document	33	
D-2	Document	33	

JOHN R. NEWTON, JR., C.S.R.

1 (The following is an excerpt from the above hearing,
2 the Cross-Examination of Trooper James Woodrow Steiger by
3 Assistant ~~Prosecutor~~ Skarpetowski.)

4 THE COURT: All right. Cross-examination.. Miss
5 Skarpetowski.

6 CROSS-EXAMINATION BY MS. SKARPETOWSKI: Cross cross.

7 Q Trooper Steiger, do you have your daily activity
8 reports with you for March 23rd, 1995 today?

9 A Do I have my what, ma'am?

10 Q Daily activity logs.

11 A No, I don't.

12 Q Now, you stated that you were on road duty on March
13 twenty-third; is that correct?

14 A Yes, ma'am.

15 Q And what time did your shift start?

16 A 9 p.m.

17 Q 9 p.m.

18 And this occurred at almost 2 o'clock in the morning?
19 Is that correct?

20 A Yes, ma'am.

21 Q Now, at 2 in the morning do you recall where you were
22 coming from when you decided to set up your stationary
23 surveillance at the U-turn?

24 MR. LESTER: Your Honor, I have to object to the form
25 of that question. First of all, counsel called it almost 2

1 a.m. I don't want to establish that it was 2 a.m. It was 1:46
2 a.m. If counsel wants to say approximately 2 a.m., that's
3 terrific. I don't want to start shifting times here. So I
4 object to the form of the question that calls the time 2 a.m.
5 If it is approximately 2 a.m., I don't have a problem with
6 that.

7 THE COURT: I will sustain the objection.

8 Can you rephrase the question, counsel?

9 Q Can you recall where you were coming from when you set
10 up your stationary surveillance around quarter to 2 a.m. on
11 March 23rd, 1995?

12 A I don't understand what you mean by stationary
13 surveillance, ma'am.

14 Q It is your testimony that you had your car stopped in
15 the U-turn; is that correct?

16 A Yes, that is correct.

17 Q And your car was stopped there and it was stationary;
18 is that correct?

19 A Yes, that is correct, ma'am.

20 Q And your stationary position that you were in was to
21 conduct a surveillance; isn't that correct?

22 A It was to conduct stationary radar of westbound
23 traffic. If that's what surveillance means, that's accurate.

24 Q Now, when you conduct radar, isn't it true, officer,
25 that you usually set the radar at a certain speed, and then if

Steiger - Cross - Skarpetowski

1 a car passes you at faster than that speed, your radar beaps;
2 isn't that correct?

3 A No, ma'am.

4 Q It's not correct that that's how radar works?

5 A That is correct.

6 Q So you have never used radar that you would set at say
7 70 miles an hour?

8 MR. LESTER: Your Honor, I have to object to the form
9 of the question. What is --

10 THE COURT: I sustain the objection.

11 MR. LESTER: Thank you.

12 Q How many courses have you attended dealing with the
13 use of radar?

14 MR. LESTER: Your Honor, I have got to object to the
15 form of the question. We are not here doing a motor vehicle
16 stop, we're here to do a -- a guilt or nonguilt of the motor
17 vehicle offense of speeding. That's not what we are here to
18 do.

19 THE COURT: Well, certainly the basis for the stop is
20 the allegation of speeding determined by radar, counsel, so I
21 am certainly going to permit her to examine --

22 MR. LESTER: Very well.

23 THE COURT: -- the basis of it.

24 You may proceed.

25 MS. SKARPETOWSKI: Thank you, your Honor.

JOHN R. NEWTON, JR., C.S.P.

Steiger - Cross - Skarpetowski

1 Q How many courses have you taken dealing with the use
2 of radar?

3 A Okay.

4 Q Well, let me rephrase it. Have you ever taken a
5 course regarding the use of radar?

6 MR. LESTER: Your Honor, may counsel answer the first
7 question before we get on to the second one?

8 THE COURT: The witness, the witness may answer the
9 question.

10 MR. LESTER: Yes. Thank you. I meant to say may
11 counsel allow.

12 THE COURT: Yes, you may.

13 A Okay.

14 MR. LESTER: I believe the question was how many
15 courses.

16 A Okay. To be a radar operator a trooper has to have an
17 eight-hour block of instruction with a Certified Radar
18 Instructor. He then is allowed to use the radar for 80 hours,
19 two -- two working weeks without writing a motor vehicle
20 summons for the speeding violation. After the 80 hours, he
21 then is allowed to issue summonses for speeding.

22 Q Now, this eight --

23 A You then have radar recertification, I believe it's
24 every two years subsequent to your initial certification.
25 That's the answer to my question.

1 Q Now, this eight-hour course that you stated that you
2 took, can you recall when you took that course?

3 A I believe it's January of 1986.

4 Q Do you have a certification with you regarding that
5 course?

6 A No, I don't.

7 Q And you stated that you get recertified. Have you
8 ever been recertified?

9 A Yes.

10 Q And when were you recertified?

11 A I'd have to look at the radar card, the back of the
12 radar card. The recertification -- recertification is written
13 on the back of the radar card.

14 Q And that deals with the radar machine that you are
15 using?

16 A No.

17 Q Now, who was in fact using the radar, yourself or
18 Officer Rowe?

19 A I was.

20 Q You were using the radar and you were also driving the
21 vehicle?

22 A Yes.

23 Q Now, and it's your testimony that -- that you used
24 this radar and you clocked every car that goes by?

25 A Only vehicles that I suspect are traveling at a high

Steiger - Cross - Skarpetowski

1 rate of speed, I'll then activate the radar --

2 Q So --

3 A -- antenna.

4 Q -- when you are sitting in the stationary position you
5 don't have the radar on.

6 A Sometimes -- in this specific case I -- yes, I did.

7 Q You did have it on?

8 A Have it on, yes, I did.

9 Q Then why did you turn it off and turn it back on?

10 A I didn't say I turned the radar off and on. The radar
11 antenna is turned on and off. The radar unit itself is turned
12 -- left on, remained on, then the on/off switch activates the
13 radar antenna to shoot out the beam.

14 Q Is this beam a bright light?

15 A No.

16 Q Can you see it by the naked eye?

17 A I cannot, no.

18 Q Were you also using other equipment during this
19 stationary surveillance?

20 A What do you mean by other equipment?

21 Q Were you using any other equipment in your troop car
22 to conduct the surveillance of these passing cars westbound on
23 I-78?

24 A I don't understand the nature of the question, ma'am.

25 Q Were you using any other equipment? Were you using

1 binoculars?

2 A No.

3 Q You were just using the naked eye; is that correct?

4 A Yes.

5 Q And did you have any lights or any illumination
6 equipment that you were using so that you could see these cars
7 as they were passing by?

8 A I don't know.

9 Q You don't know?

10 A I don't recall.

11 Q Is it possible that you were using the spotlight from
12 the side of your car so that you could see the cars as they
13 were passing you?

14 A I might have had the spotlight on.

15 Q And it's your testimony that with your naked eye you
16 were attracted -- your attention was attracted to this Dodge;
17 is that correct?

18 A Yes.

19 Q And can you tell us approximately how far away this
20 car was from you when your naked eye knew that that car was
21 speeding?

22 A Approximately 300 to 400 feet.

23 Q And that would have been 400 feet eastbound from where
24 you were; is that correct?

25 A That is correct.

Steiger - Cross - Skarpetowski

1 Q So you -- you could tell that that was a car that you
2 wished to clock; is that correct?

3 A I could tell that that car was traveling at a high
4 rate of speed.

5 Q Have you had special training to be able to have a
6 visual knowledge of how fast a car is traveling on an
7 interstate?

8 A Have I had training?

9 Q Have you had training?

10 A I have had a little over ten years of experience.

11 Q Have you had any training that certifies you to know
12 that that your naked eye can tell that a car is speeding?

13 MR. LESTER: Your Honor, I have to object to the form
14 of that question. The trooper's not talking about knowing
15 something, he is talking about suspecting something, and there
16 is a difference. So I object to the form of the question.
17 That's not what the trooper said earlier, but the question is
18 focusing on knowledge, knowing something, not suspecting
19 something.

20 THE COURT: I will sustain the objection.

21 Q Did you have any special training that would heighten
22 your suspicions as to when cars are traveling at a fast rate of
23 speed with your naked eye?

24 A No, ma'am.

25 Q Now, you are not sure that your spotlight was being

Steiger - Cross - Skarpetowski

1 used; is that correct?

2 A That is correct.

3 Q Now, prior to your shining this radar that you didn't
4 have set at a stationary speed on this automobile, when is the
5 last time you turned the antenna on and off?

6 A I don't understand what you mean by shining, ma'am.

7 Q That really has nothing to do with the question.

8 THE COURT: Okay. Restate the question then, counsel.

9 Q Officer, at the point that you shined or put the radar
10 in the direction of this Dodge that your naked eye could tell
11 was speeding, how long before that had you turned the antenna
12 on and off to to direct the radar at a prior car?

13 MR. LESTER: I have to object to the form of that
14 question. I think we should be establishing is it shined or
15 directed. I don't want counsel to later argue that something
16 is shining when it was only -- when it was only a -- a radio
17 beam that was directed. So I object to the form of the
18 question as being vague.

19 THE COURT: Counsel, will you rephrase the question,
20 please?

21 Q Prior to directing the radar at the Dodge that you
22 ultimately stopped, how long had it been since you shined or
23 directed the radar at another car that was --

24 THE COURT: Are you striking the word "shined"?

25 MS. SKARPETOWSKI: I am striking the word "shined".

JOHN B. NEWTON JR. C. S. D.

Steiger - Cross - Skarpetowski

1 MR. LESTER: Can we have --

2 Q Directed it at another vehicle prior to this one?

3 THE COURT: She struck the word. Sit down.

4 MR. LESTER: If the witness can answer it.

5 But, Judge, I have to mention at this point in time if

6 Miss Skarpetowski could turn the sarcasm down a notch.

7 THE COURT: No. Please, counsel.

8 MR. LESTER: Very well.

9 THE COURT: Please sit down.

10 A I don't know.

11 Q You may have had your spotlight shining, too; is that
12 correct?

13 A That is correct.

14 Q And that would have been shining straight across I-78;
15 is that correct?

16 A Probably, yeah.

17 Q And the reason for your shining the spotlight straight
18 across I-78 was so that you could look inside the cars because
19 you thought maybe someone was doing something illegal?

20 A I don't know what -- whether I had the light on in
21 this case or not. The spotlight is used to illuminate passing
22 vehicles.

23 Q And it's used to illuminate passing vehicles so you
24 can see who's inside the vehicle; isn't that correct?

25 A That's correct.

Steiger - Cross - Skarpetowski

1 Q And the reason that you want to look inside the
2 vehicles is so that you can see who's in the vehicle. Is that
3 correct? How many people are there?

4 A That's one of the reasons, yes.

5 Q And also to look inside the vehicle to see if anyone's
6 smoking pot or smoking a pipe so then you can pull that vehicle
7 over because they are committing a criminal act; is that
8 correct?

9 A I -- I don't know if I would be able to see whether
10 they were smoking pot as they go by. I don't know.

11 Q Isn't that one of the reasons why you shine the light
12 into the vehicles?

13 A To determine whether they are smoking pot or smoking a
14 pipe? No.

15 Q Then the only reason that you shine the light into the
16 vehicles is to see who's inside the vehicle?

17 A There are a number of reasons why we use a spotlight;
18 to determine the number of occupants, to determine the color or
19 make of the car, to determine the license plate of the vehicle.

20 Q To determine the race of the individuals inside the
21 car, is that one of the reasons why you use the spotlight to
22 shine inside the vehicle, sir?

23 A That might help.

24 Q Now, this radar, does this give a printout?

25 A No.

JOHN D. NEWTON JR. C. S. D.

Steiger - Cross - Skarpetowski

1 Q It doesn't give a printout.

2 And you are not familiar with any radar that you would
3 set at a certain speed that would beep that tells you when
4 somebody is going by that is traveling beyond that speed. You
5 never heard of that before; is that correct?

6 A Those -- those radar units are antiquated.

7 Q And prior to this, you don't recall when you got a
8 reading on another passing car; is that correct?

9 A That is correct.

10 Q How long had you set up that surveillance?

11 A I don't know.

12 Q Were you there more than an hour?

13 A I don't know.

14 Q When prior to this did you make a stop on that
15 particular day?

16 A I don't know.

17 Q Would your daily activity report allow you to answer
18 these questions?

19 A It might.

20 Q But you didn't bring that today; is that correct?

21 A That is correct.

22 Q And the reason that you didn't bring that was because
23 you didn't think you needed it, or did Mr. Lester tell you not
24 to bring it?

25 A What is your question?

Steiger - Cross - Skarpetowski

1 Q The reason why you didn't bring your daily activity
2 log with you today, is it because you didn't think you needed
3 it, or did Mr. Lester tell you not to bring it?

4 A Mr. Lester did not tell me not to bring it, and it's
5 -- I never knew it was part of my investigation case folder to
6 begin with.

7 Q Officer, do you recall testifying in a number of
8 motions to suppress within the last six months where I was the
9 attorney?

10 A I believe so, yes.

11 Q And during those motions to suppress that you
12 testified in, didn't you at those times have your daily
13 activity sheet with you?

14 A I don't know.

15 Q Now, you stated that the reason you pulled this car
16 over was because you decided that it was speeding. Now, how
17 long did it take you to pull out of where you were?

18 A How long did it take me to go from the U-turn to
19 where?

20 Q How long did it take you to pull out from where you
21 were to follow the vehicle?

22 A From the amount of time it took me to go from park to
23 drive, a matter of seconds.

24 Q Did you have to put the radar down?

25 A No.

Steiger - Cross - Skarpetowski

- 1 Q Did you have to hand it to your partner?
- 2 A No.
- 3 Q Where was it?
- 4 A On the dashboard.
- 5 Q It was on the dashboard.
- 6 But your car was facing northeast; is that correct?
- 7 A Yes.
- 8 Q So you were facing in the opposite direction that
- 9 traffic was -- was flowing; is that correct?
- 10 A No.
- 11 Q Traffic is flowing westbound, you are facing north,
- 12 how is that not correct?
- 13 A You asked me whether I was in the opposite direction.
- 14 I would have to be facing east to be in the opposite direction
- 15 as far as I'm concerned with that question.
- 16 Q You weren't facing east.
- 17 A I was facing northeast.
- 18 Q So you were more of a 90 degree angle from the other
- 19 -- the westbound traffic.
- 20 A I don't know the specific angle, ma'am.
- 21 MS. SKARPETOWSKI: Do we have a board? Can we use
- 22 this, Judge?
- 23 THE COURT: Yes. Bring that up, please, Tony.
- 24 SERGEANT AT ARMS: Where would you like it, Judge?
- 25 MS. SKARPETOWSKI: Here, is this okay?

JOHN R. NEWTON, JR., C.S.R.

Steiger - Cross - Skarpetowski

1 THE COURT: That would be fine.

2 SERGEANT AT ARMS: Watch your fingers.

3 Q Officer, I am going to ask you to draw a diagram of
4 I-78 westbound and where in fact -- what in fact direction your
5 car was facing.

6 A What was the question again?

7 Q I would like to you draw me I-78 westbound and the
8 U-turn and the direction that your car was in fact facing.

9 It doesn't matter what you use.

10 A This is the troop car.

11 That's the defendant's vehicle.

12 This is I-78 westbound.

13 That's north.

14 That's the right shoulder.

15 This is the U-turn.

16 Q And what mile marker is that at?

17 A 16.7.

18 Q Now, this car, this is your car. And you were in the
19 driver's side; is that correct?

20 A That's the troop car. Correct.

21 Q And Trooper Rowe was in the passenger side; is that
22 correct?

23 A That's correct.

24 Q And the spotlight would have been right on your
25 driver's side pointing out towards 78; is that correct?

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Steiger - Cross - Skarpetowski

1 A The spotlight is located here.

2 Q And it was pointing out towards I-78?

3 THE COURT: I am sorry, so that the record is clear,
4 have you put a black circle in the left-hand corner of the
5 passenger compartment area of the car?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: All right. Thank you.

8 A What was your question, ma'am?

9 Q My question was then this is the spotlight that was
10 shining out over to I-78?

11 A I don't know.

12 MR. LESTER: I have to object to the form of that
13 question. Just as the trooper was going to say, I heard him
14 say "I don't know", the trooper has repeatedly said he doesn't
15 know if the spotlight was on or off. So the question: This is
16 the spotlight, I object to the form. The trooper never said
17 there was a spotlight shining.

18 THE COURT: Rephrase the question, counsel. If there
19 was a --

20 Q How often --

21 THE COURT: -- a spotlight shining.

22 Q How often did you use the spotlight when you were
23 conducting such surveillances, officer?

24 MR. LESTER: Your Honor, may the witness be seated --

25 MS. SKARPETOWSKI: Sure.

Steiger - Cross - Skarpetowski

1 MR. LESTER: -- or need he stay standing?

2 THE COURT: It is depends whether the trooper was done
3 with the diagram.

4 Q I was going to ask one more question with the diagram,
5 but you can sit down, officer.

6 THE COURT: All right.

7 Q Officer, how often would you say that in the course of
8 surveillances such as this that you would use that spotlight?

9 A I don't know.

10 Q Is it common practice that when you are conducting
11 these surveillances that you would use that spotlight?

12 A We could use it, we don't have to use it.

13 Q What is your common practice for the use of the
14 spotlight?

15 A Sometimes.

16 Q You use it regularly; is that correct?

17 MR. LESTER: May the witness answer the first question
18 before we get on to the second question?

19 THE COURT: Yes, he may. I suspect counsel couldn't
20 figure out why it was taking so long, but --

21 MS. SKARPETOWSKI: That's pretty much what it was. I
22 will --

23 THE COURT: I will permit him to do so.

24 THE WITNESS: I was trying to think of the question how
25 she phrased it.

JOHN B. NEWTON, JR., C.S.R.

Steiger - Cross - Skarpetowski

1 A Sometimes when I run radar I will have all the lights
2 on, sometimes I will have no lights on, sometimes I'll have my
3 overheads on and I will conduct radar. So it varies.

4 Q You can't say for sure that you didn't have the
5 spotlight on; is that correct?

6 A That is correct, I might have had on -- it on.

7 Q So --

8 A I might not have. I don't recall.

9 Q So, therefore, it -- you could have been using it. Is
10 that correct?

11 A That is correct.

12 Q And the reason why you were using it was to see the
13 occupants and their race as the cars passed.

14 A That would be --

15 Q Isn't that correct?

16 A That would be a reason to use a spotlight, not the
17 sole reason to use a spotlight.

18 Q Did you have a search warrant that allowed you to use
19 that spotlight?

20 A No.

21 Q And did you talk to any of your supervisors and is
22 this what they told you to do?

23 A To do what?

24 Q To use the spotlight when conducting such stationary
25 surveillance such as this.

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Steiger - Cross - Skarpetowski

1 A Did my supervisor tell me to use a spotlight when
2 conducting stationary radar? No.

3 Q Have you -- did you discuss it with them and did they
4 know that this was a common practice, for you to use the
5 spotlight?

6 A I did not discuss using a spotlight when conducting
7 radar with my supervisors, no.

8 Q And isn't it a fact that you don't put that in your
9 report, whether or not you used the spotlight?

10 A I don't.

11 Q It is common practice for you not to put that in your
12 report.

13 A I don't know. Sometimes I will put it in my report,
14 sometimes I will.

15 Q Sometimes you will and sometimes you will?

16 A Sometimes I won't and sometimes I will.

17 Q Now, did you run an NCIC check on this car before you
18 stopped it?

19 A Did I? No.

20 Q Did your partner?

21 A No.

22 Q So no radio call was made to Headquarters indicating
23 the license plate of this vehicle to determine whether or not
24 there had been a NCIC hit for this car being stolen?

25 MR. LESTER: When? I object to the form of that

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1 question. When? During the entire course of the event or at
2 the moment the vehicle was being pursued? When?

3 THE COURT: Miss Skarpetowski, can you clarify that?

4 MS. SKARPETOWSKI: I will ask the officer.

5 Q Did you ever conduct an NCIC, call in to find out
6 whether or not this car was stolen?

7 A I don't know.

8 Q Do you know whether or not your partner called in the
9 license plate of this car at any time to determine whether or
10 not it was stolen?

11 A I don't know.

12 Q Do you know whether or not any communication was made
13 with Dispatch regarding this vehicle?

14 A I don't know.

15 Q Did you call Dispatch at any point regarding this
16 vehicle?

17 A I don't know.

18 Q Did you ever make a call indicating that you were
19 going to stop a Dodge?

20 A I don't know.

21 Q Did you ever make a call indicating you were going to
22 stop a vehicle that had a Black man driving and a White man as
23 a passenger on March 23rd, 1995 around 2 p.m. -- at 2 a.m. in
24 the morning?

25 A I don't know whether I called the stop in or not.

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1 Q Is it common practice to call the stop in?

2 A Yes.

3 Q Is it normal police procedure to call the stop in?

4 A It's standard operating procedure.

5 Q Is it standard operating procedure prior to stopping a
6 vehicle to call it in to determine whether or not the car is
7 stolen?

8 A That's one of the reasons, yes.

9 Q And you don't know that you did that.

10 A That's correct.

11 Q You don't know if your partner did that.

12 A That's correct.

13 Q Okay. After you left your stationary position and
14 followed this vehicle, how far did you follow the vehicle?

15 A We were at mile post 16.7, we stopped at approximately
16 mile post 16, so it was approximately seven-tenths of a mile.

17 Q Did this vehicle appear to you to speed up at any
18 time?

19 A When?

20 Q When you were following it.

21 A I don't know.

22 Q Did you clock the vehicle other than using radar by
23 following it?

24 A No.

25 Q So while you were following it you can't tell me

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1 whether or not the car was going 55 or 66; is that correct?

2 A That is correct.

3 Q How fast did you go to catch up to it?

4 A I don't know.

5 Q Now, then immediately upon stopping the vehicle you

6 went to the passenger side and your partner went to the

7 driver's side; is that correct?

8 A That is correct.

9 Q But you commenced the questioning; is that correct?

10 A What was that word?

11 Q You commenced the questioning; is that correct?

12 A That is correct.

13 Q So you were on the opposite side of the vehicle

14 questioning through the passengers window; is that correct?

15 A That is correct.

16 Q Now, when you were questioning through the passenger's

17 window, did you speak to the passenger?

18 A When?

19 Q When you were questioning the driver through the

20 passenger's window.

21 A At that time, no.

22 Q Did you ask the passenger to roll the window down or

23 was it already rolled down?

24 A I don't know.

25 Q What was the weather conditions on March 23rd, 1995?

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Steiger - Cross - Skarpetowski

1 A It was -- from what I know it was clear.

2 Q Was it cold?

3 A I don't know.

4 Q Did you have your windows down in the troop car?

5 A I don't know.

6 Q Did you have your heat on in the troop car?

7 A I don't know.

8 Q Now, you questioned the driver through the window; is

9 that correct?

10 A I asked him to produce his driver's license and

11 registration.

12 Q And he did so. Is that correct?

13 A He handed me his driver's license.

14 Q And did it appear or did it seem to you to be a valid

15 driver's license?

16 A I probably did not know at that time.

17 Q Did you go back to your troop car and call in to see

18 whether or not it was in fact a valid driver's license or

19 whether or not it had been revoked or suspended for any reason?

20 A No, I did not.

21 Q What other questions did you ask the driver through

22 the passenger window?

23 A I don't believe I asked him any questions.

24 Q You just immediately then asked him to exit the

25 vehicle?

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1 A After he handed me his driver's license and the right
2 front passenger handed the registration, yes.

3 Q Did you ask them for their insurance card?

4 A No.

5 Q Now, then you immediately asked the driver out of the
6 vehicle; is that correct?

7 A After I was handed those documents, yes, that's
8 correct.

9 Q And then it's your testimony that then your partner
10 then came to the passenger side to stand near the passenger?

11 A Yes.

12 Q How did that happen?

13 A He walked over there.

14 Q He walked around the front of the car?

15 A What is your question, ma'am?

16 Q Did he walk around the front of the car?

17 A I don't know.

18 Q Well, how do you know he walked over there?

19 A Well, I know he didn't run over there, and I know he
20 didn't climb over the top. He would either have to walk around
21 and walk -- or walk in front or walk behind. I have worked
22 with Trooper Rowe for two years.

23 Q So how did he get over there?

24 A He walked there.

25 Q But you don't know where he came from?

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1 A He came from the driver's side of the vehicle.

2 Q Did he walk around the back of the car or the front of
3 the car?

4 A I don't know.

5 Q And did you instruct him to do so?

6 A No.

7 Q So when you first approached the car, you went to the
8 passenger side and stood there and Trooper Rowe went to the
9 drivers side and stood there, but Trooper Rowe did not ask any
10 questions; is that correct?

11 A From what I recall, that is correct.

12 Q Then a short time thereafter you asked the driver out
13 of the vehicle and asked him to come to the back of the
14 vehicle, then you asked Trooper Rowe to come to the passenger
15 side to watch the passenger?

16 A I don't know -- no. No. Can you re -- ask me one
17 question at a time?

18 Q I asked you one question, sir.

19 A You asked me did I ask the driver out of the car, and
20 then did I instruct Trooper Rowe to go to the passenger side of
21 the vehicle.

22 Q Did you?

23 MR. LESTER: Your Honor, I do, I have to.

24 THE COURT: He's already testified to the fact that he
25 asked the driver out of the car, so that's a given statement

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1 already.

2 MR. LESTER: I know. But Miss --

3 THE COURT: The follow on question is -- is -- is
4 perfectly clear and he can answer it. I don't see any
5 objection, Mr. Lester.

6 MR. LESTER: I know, Judge. But the witness is trying
7 to answer the questions. When Miss Skarpetowski asks compound
8 questions --

9 THE COURT: It is not a compound question. She has
10 included already a statement that he has made. And that's on
11 the record, he's testified to it. And -- and now the question
12 is: Did you do the next thing.

13 MR. LESTER: Very well.

14 THE COURT: I think it can be answered.

15 A Did I instruct Trooper Rowe to go over there? No.

16 Q But you say he did it. He didn't go to the back of
17 the car with the driver, you did; is that correct?

18 A That is correct, yes.

19 Q But -- and then somehow or other, you don't know how
20 he got there, but you believe he walked -- he then walked and
21 stood by the passenger door?

22 MR. LESTER: Your Honor, I have to object to the form
23 of the question. Somehow or another, you don't know how he got
24 there, that's three questions.

25 MS. SKARPETOWSKI: That's his testimony.

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1 THE COURT: His testimony is he -- his testimony is he
2 didn't know whether he went around the front or the back,
3 counsel. So I think you need to incorporate that if you are
4 going to ask the question.

5 MS. SKARPETOWSKI: He didn't know whether or not he
6 came around the front or the back of the car.

7 Q But then somehow he ended up at the passenger side of
8 the car; is that correct?

9 A That is correct.

10 Q But you didn't instruct him to go there. But you
11 didn't instruct him to go there.

12 A What is your question, ma'am?

13 THE COURT: You didn't instruct him to go to the
14 passenger side of the vehicle; is that correct?

15 THE WITNESS: That is correct, yes.

16 THE COURT: All right.

17 Q So he just did this. That's because that's the normal
18 way that you do these things, or you just know each other so
19 well that this is just the way you do things?

20 MR. LESTER: Your Honor, I have to object to the form
21 of the question. How does he know what was in Trooper --
22 Trooper Rowe's mind?

23 THE COURT: I think he can say so.

24 MR. LESTER: I know, Judge. If -- but if the question
25 were asked: Do you know why Trooper Rowe went there, that

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1 would be a question that any witness can answer. Miss
2 Skarpetowski asks questions that are difficult to answer
3 because of the manner that they are asked. So I hate to slow
4 down the proceeding.

5 THE COURT: Well, with that instruction I will ask her
6 to rephrase the question.

7 Go ahead.

8 MS. SKARPETOWSKI: Thank you, your Honor.

9 Q Do you know why Trooper Rowe went to the passenger
10 side of the vehicle to stand there?

11 A To watch the right front passenger.

12 Q Did the right front passenger prior to that time make
13 any furtive movements which indicated he was reaching for a
14 weapon or other objects?

15 A Not that I know of.

16 Q Now, when you started questioning Mr. Brooks at the
17 back of the car, you asked him specifically who Charles Hahn
18 was; is that correct?

19 A That is correct.

20 Q And he specifically told you that he was the right
21 front passenger of the car; is that correct?

22 A That is correct.

23 Q Then you specifically asked him why Mr. Hahn wasn't
24 driving his vehicle; is that correct?

25 A That is correct.

1 Q Is there something illegal about an individual
2 allowing another individual to drive his vehicle while he's a
3 passenger in it?

4 A No.

5 Q And is there something that connects that question to
6 the speeding offense?

7 A I don't know.

8 Q Did you think that car was stolen?

9 A It might have been stolen.

10 Q Did you do anything to try to find out?

11 A Yes.

12 Q What did you do to try to find out?

13 A I asked Mr. Brooks who Mr. Hahn was.

14 Q But you didn't call in NCIC, which would have taken
15 two seconds on your radio; is that correct?

16 A I don't know whether I called the stop in or not,
17 ma'am.

18 THE COURT: Counsel, I had planned a telephone call to
19 come in at 12:15. I think this will be a place I am going to
20 have to break for lunch. We will continue then at 1:15 this
21 afternoon.

22 MS. SKARPETOWSKI: Your Honor, can I make a request? We
23 do have another motion that is scheduled at 1:30. And under the
24 guise of the answers to the questions I received this morning,
25 I would like my discovery prior to completing my

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1 cross-examination of Trooper Steiger. So if at all possible, I
2 would request that this be adjourned to a later date until I
3 can receive the discovery that the Court has ordered that I
4 receive.

5 MR. LESTER: I object, Judge. I object for the reason
6 I expressed the very first moment we addressed this case. It's
7 counsel's fault that she doesn't have her material. She could
8 have filed her motion on August twenty-second or twenty-third
9 when she received my answer to Miss Nabors' request for the
10 information. When I said to Miss Nabors: Please make a motion,
11 she could have made it returnable today even though it's not a
12 regular motion day. And if the -- if the Court had -- or if
13 the Court saw fit to under the rules make an exception so that
14 the material could be available --

15 THE COURT: I will see you at 1:15, counsel.

16 (The witness steps down.)

17 (At which time a luncheon recess was taken.)

18 SERGEANT AT ARMS: All rise.

19 The Superior Court of the State of New Jersey is now
20 in session, the Honorable Marilyn R. Herr presiding.

21 THE COURT: All right. Good afternoon, ladies and
22 gentlemen, please be seated.

23 All right. The witness should be in the witness chair
24 and we will continue the cross-examination of Trooper Steiger,
25 please.

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1 Before we do that, Mr. Lester, is there anything you
2 want to put on the record?

3 MR. LESTER: Yes, I do, Judge.

4 Given the fact that the Court has made a ruling and
5 that I am going to comply with that ruling, I was able to by
6 fax get copies of the so-called Daily Activity Patrol Log of
7 Troopers Rowe and Steiger for the day in question. And I am
8 handing them to counsel as we speak. So that that is a
9 nonissue before the Court.

10 THE COURT: Okay. Thank you very much.

11 (The witness resumes the stand.)

12 THE COURT: All right. You are still under oath,
13 Trooper Steiger. Do you recognize that?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Okay.

16 All right. You may proceed, Miss Skarpetowski.

17 MS. SKARPETOWSKI: Thank you, your Honor.

18 Your Honor, can I have these marked?

19 THE COURT: Yes.

20 MS. SKARPETOWSKI: As Defense Exhibits 1 and 2.

21 (At which time two documents were so marked D-1 and
22 D-2 for identification.)

23 CONTINUED CROSS-EXAMINATION BY MS. SKARPETOWSKI:

24 Q Officer, I am going to show you what's been marked as
25 Defense Exhibit 1 and Defense Exhibit 2 and ask you if you

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1 recognize those.

2 A Yes, I do.

3 Q And are they your individual Daily Activity Logs that
4 you and Trooper Rowe prepared on March 23rd, 1995?

5 A Yes.

6 Q And was this a group effort?

7 A Yeah, they are both mine and Rowes.

8 Q Is it a group effort? Did you do it together?

9 A It looks that way, yes.

10 Q They appear to be identical, don't they? They are
11 actually Xeroxes of the same report and you each signed them?

12 MR. LESTER: I have to object to the form of that
13 question. Basically, Judge, I avoided an issue on having the
14 Court rule by getting something faxed. I don't have the
15 originals. I had -- I decided to get it within the hour over
16 our lunch break.

17 THE COURT: I understand that, but --

18 MR. LESTER: I think that is an unfair question, to say
19 are they -- did one Xerox the other. We don't have the
20 originals here.

21 MS. SKARPETOWSKI: Your Honor, they are exact --

22 MR. LESTER: If we had handwriting that one had blue
23 ink and one had black ink --

24 THE COURT: Mr. Lester.

25 MR. LESTER: Yes, Judge.

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1 THE COURT: Let's let the trooper answer the question.
2 If he has difficulty, he will tell us, I am sure.

3 Q They are identical, aren't they?

4 A One is Rows and one is mine.

5 Q And they are actually exactly the same report that one
6 of you signed and then one of -- one he signed; is that
7 correct?

8 A That is correct, yes.

9 Q So I assume that means that you were together in
10 everything you did that evening?

11 A That is correct, yes.

12 Q So you were in the same troop car the whole evening.

13 A Yes.

14 Q Now, taking you back to a question I asked you
15 earlier, can you tell me if you utilized your radar prior to
16 pulling the car that Mr. Hahn was a passenger in --

17 MR. LESTER: Your Honor, let me just object to not that
18 question. Can we determine D-1 is whose and D-2 is whose?

19 THE COURT: That would be helpful.

20 Can you identify, please, officer -- you see the
21 document marked D-2 -- or D-1, I am sorry?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And whose is that?

24 THE WITNESS: That is my Daily Activity Patrol Log.

25 THE COURT: Okay. And is D-2 another Daily Activity

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1 Patrol Log?

2 THE WITNESS: Yes. That's Trooper Rowes.

3 THE COURT: Okay.

4 MR. LESTER: Thank you.

5 Q And back to the original question, but they are
6 exactly the same report and you both signed them; is that
7 correct?

8 A That is correct.

9 Q And after reviewing them, can you now tell me whether
10 or not you utilized radar to pull over another vehicle prior to
11 quarter to 2 a.m. on that day?

12 A We stopped another vehicle for speeding, but I don't
13 know whether it was radar or a pace.

14 Q You don't recall?

15 A That is correct.

16 Q It doesn't say in there?

17 A It doesn't say anything, right.

18 Q It doesn't say anything there that -- that you used
19 radar on this incident either, does it?

20 A That is correct.

21 Q And this other car that you stopped, do you recall
22 searching it?

23 MR. LESTER: Your Honor, I have to object to the form
24 to that question. Relevance? We are talking about what
25 happened to Mr. Hahn and Mr. Brooks. I find the question to be

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1 irrelevant.

2 THE COURT: Counsel, what is the relevance?

3 MS. SKARPETOWSKI: Your Honor, under the circumstances
4 due to some of the answers given by this officer, I believe
5 it's extremely relevant to know what else he did during the
6 stops that occurred on I-78 on March 23rd, 1995.

7 MR. LESTER: May we learn what answers in particular?

8 MS. SKARPETOWSKI: I don't believe I am entitled -- I
9 have to give that information.

10 THE COURT: Well, I think you need --

11 MR. LESTER: The Court --

12 THE COURT: -- need to establish more of a background
13 in regard to the other stops before you ask questions and
14 suggest that there might be something in comparison.

15 MS. SKARPETOWSKI: The answer in particular that I am
16 -- that I am pointing to is the fact that the trooper admits
17 that he used his spotlight to determine the racial makeups of
18 the occupants of the car.

19 MR. LESTER: Your Honor, that's not what --

20 THE COURT: I don't think that question was asked.

21 MR. LESTER: And if I may, your Honor --

22 MS. SKARPETOWSKI: Yes, it was, your Honor. And that
23 was his response.

24 MR. LESTER: If I may, your Honor, this trooper said he
25 does not remember if he used the spotlight or not on this

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1 particular stop.

2 THE COURT: That's correct. He did.

3 And what is your question in regard to --

4 MS. SKARPETOWSKI: But he --

5 THE COURT: Wait a minute. Please don't interrupt.

6 MS. SKARPETOWSKI: I am sorry.

7 THE COURT: What is your question in regard to prior
8 stops?

9 MS. SKARPETOWSKI: Well, that's my my question.

10 THE COURT: What is your question? State it.

11 Q It is, specifically stated, I want to know whether or
12 not he made another stop based on speeding, what the racial
13 makeup was of that particular vehicle, and whether or not he
14 requested of that vehicle if he could search it.

15 THE COURT: I will permit you to explore with him what
16 happened during the prior stop. And apparently there's only
17 one stop on the daily log prior to this. Is that -- is that
18 what you have ascertained by looking at it?

19 Q Officer, is that the case on that -- that activity
20 log, is there only one prior stop that you made on that day?

21 A It appears to be two.

22 Q Two prior stops on that day. And when was the first
23 one then?

24 A 11:48.

25 Q 11:48 p.m. on March twenty-second?

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1 A That is correct.

2 Q And do you recall that stop?

3 A No.

4 Q You don't recall that stop.

5 From reviewing that activity log, you don't remember
6 who in fact you stopped and what you stopped them for?

7 A We stopped them for speeding and for not wearing their
8 seat belt.

9 Q Similar to the stop that we are talk -- we are
10 discussing before the Bar; isn't that correct?

11 A That is correct.

12 Q And do you recall whether or not you issued a ticket
13 to the driver and the passenger for not wearing a seat belt?

14 A I don't recall.

15 Q Do you recall whether or not you asked the individuals
16 that you stopped to exit the vehicle?

17 MR. LESTER: Your Honor, I have to object to the
18 relevance. Counsel is fishing around, and there's no relevance
19 to her fishing expedition. The -- the document speaks for
20 itself. It says 498 on it, and we all know that to be
21 speeding. The Court can take judicial notice that that's
22 speeding. It says 3 dash 76.2F. And that's a seat belt
23 violation. And the Court can take judicial notice of that.

24 But as far as fishing around on these other two stops,
25 I maintain that there is no relevance other than counsel's

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1 theory which has not been established.

2 THE COURT: I think there is enough of a basis for her
3 to ask these questions given the testimony of the trooper, and
4 I am going to permit it, Mr. Lester.

5 MS. SKARPETOWSKI: Thank you, your Honor.

6 Q Officer, can you answer the question?

7 A Can you repeat it, please?

8 Q Do you recall whether or not when you made these other
9 stops for speeding and for failure to wear a seat belt, whether
10 or not, first of all, you asked the occupants out of the
11 vehicle?

12 MR. LESTER: May we have one question at a time?

13 THE COURT: Yes, you may.

14 A No, I don't recall, ma'am.

15 Q You don't recall whether or not you asked the occupant
16 out of the vehicle?

17 A That is correct.

18 Q Do you recall what the racial makeup was of the
19 individual that you stopped for speeding and not wearing a seat
20 belt?

21 A No, I don't.

22 Q Do you recall whether or not you received the consent
23 to search that vehicle?

24 A I did not get consent to search.

25 Q Do you recall whether or not that car was registered

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1 in the State of New Jersey or within any other state?

2 A It looks like Pennsylvania.

3 Q But you don't recall the details.

4 THE COURT: Did you ask for a consent to search in
5 that stop, officer?

6 THE WITNESS: Not that I recall, ma'am.

7 Q You don't recall the details?

8 MR. LESTER: I have to object to the form. What are
9 the details?

10 THE COURT: I sustain the objection.

11 Q You don't recall who you stopped, right?

12 A Right.

13 Q You don't recall if you asked them to get out of the
14 vehicle. Correct?

15 A That is correct, ma'am.

16 Q And you -- but you do recall that you did not ask them
17 to search?

18 THE COURT: That's not true. I asked him.

19 MS. SKARPETOWSKI: Oh.

20 THE COURT: He said that his recollection was that
21 they didn't consent to search, but he didn't recall whether he
22 asked them if they would consent to search.

23 Q Officer, do you ask every car you stop to search?

24 A No, ma'am.

25 Q And the factors that you use before you come to a

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1 conclusion that you want to search a car are many; is that
2 correct?

3 MR. LESTER: Objection, your Honor. State versus
4 Abreu, A-b-r-e-u, our Appellate Division has said that a police
5 officer does not need a reason to ask consent to search,
6 therefore the question is irrelevant.

7 MS. SKARPETOWSKI: I do not believe it is irrelevant,
8 your Honor. It goes to whether or not the car was stopped to
9 search it or the car was stopped for a reasonable reason. And
10 that is the reason for asking that question.

11 THE COURT: I will permit it.

12 MS. SKARPETOWSKI: Thank you.

13 Q Officer, the fact that when you stopped this car there
14 was a Black man driving and a White man as a passenger, did
15 that have something to do with your requesting the consent to
16 search?

17 A Which stop are we on now, ma'am?

18 Q We are talking about the one that's before the Bar.

19 A I thought you were talking about the first stop.

20 Q You don't recall the racial makeup of the first stop,
21 do you, officer?

22 A No.

23 Q Well, then I can't be talking about that stop now, can
24 I?

25 A I don't know.

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1 THE COURT: Can you answer the question?

2 Q Can you answer the question?

3 A Can you repeat the question?

4 MS. SKARPETOWSKI: John, could you repeat the
5 question?

6 THE COURT: Go ahead, John.

7 (Question read back by the Court Reporter.)

8 A No.

9 MR. LESTER: Your Honor, I have --
10 Well, the witness answered it. I have to renew my
11 objection. There is an Appellate Division case on point that
12 says it doesn't matter.

13 THE COURT: It doesn't matter what the Appellate
14 Division case says in regard to this particular question,
15 counsel has a right to ask it. She has a right to ask the
16 question.

17 MR. LESTER: Yes, if the Court finds it relevant.

18 THE COURT: We are exploring credibility.

19 I absolutely do find it relevant.

20 MR. LESTER: The Appellate Division has previously
21 not.

22 THE COURT: I find it relevant in this case based on
23 testimony already on the record.

24 MS. SKARPETOWSKI: Thank you, your Honor.

25 Q And other than the other stop that you don't recall

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1 and this stop, there was no other stops made on I-78 or any
2 other place by you or Trooper Rowe on that date; is that
3 correct?

4 A That is correct.

5 Q Now, when you stopped this car you immediately gave
6 the driver a ticket for speeding?

7 A No.

8 Q Did you ever give him a ticket for speeding?

9 A Yes.

10 Q And when did you actually physically hand that ticket
11 to Mr. Brooks?

12 A I don't recall.

13 Q Because you never did; isn't that correct? You sent
14 it to Hunterdon County Jail with him, you never gave it to him;
15 isn't that correct?

16 A I don't recall sending it to Hunterdon County Jail.

17 Q Do you recall physically handing that ticket to Mr.
18 Brooks?

19 A No.

20 Q Do you recall physically handing any tickets to Mr.
21 Hahn?

22 A I don't recall.

23 Q Do you know whether or not Mr. Hahn has ever received
24 a ticket?

25 A Yes.

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1 Q He received a ticket?

2 A Yes.

3 Q You gave it to him?

4 A I wrote him a seat belt ticket. Correct.

5 Q And do you know whether or not he ever received it?

6 A Yes, he was issued a summons.

7 Q Do you know from your own personal knowledge that that
8 ticket was placed in Mr. Hahn's hands ever?

9 A I don't recall whether it was specifically placed in
10 his hands or not.

11 Q So you wrote a ticket, but you don't know what
12 happened to it.

13 A It was issued to Mr. Hahn and Mr. Brooks.

14 Q And you gave it to them.

15 THE COURT: I think the question is do you recall how
16 it was issued to them?

17 THE WITNESS: No, I don't, ma'am.

18 Q So from your own personal knowledge you don't know
19 that they ever received tickets. They never signed anything
20 acknowledging receipt of them?

21 A That's not practice in New Jersey, for them to sign
22 for the ticket.

23 Q Can you answer my question? Do you know from your own
24 personal knowledge whether or not they ever received these
25 tickets?

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1 A Yes, they did.

2 Q How do you know that?

3 A They were issued.

4 Q How do you know they received the tickets? You never
5 handed it to them; isn't that correct?

6 A I don't recall whether I did or not.

7 Q Did you hand anyone a ticket or write out any tickets
8 on I-78 on March 23rd, 1995?

9 A Yes, I did.

10 Q You wrote them out on the scene, and they saw that you
11 wrote them out.

12 MR. LESTER: I have to object to the compound
13 question. I believe we have two there.

14 THE COURT: We do. You can ask -- answer the first
15 one first and then the second one.

16 Q They saw you write out a ticket?

17 MR. LESTER: I object to the -- to that question.

18 THE COURT: I sustain the objection.

19 Q Were they in the car when you wrote out the ticket?

20 MR. LESTER: I object to that question. It assumes
21 that they were done in the car. There's been no fact --

22 THE COURT: It doesn't assume anything. She just
23 merely asked the question were the defendants in the car when
24 he wrote out the tickets. That's easy to answer.

25 MR. LESTER: Very well.

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1 A No.

2 Q So when did you write out the ticket?

3 A Back at the station.

4 Q So you didn't write out a ticket on I-78.

5 A In this matter, no.

6 Q And that would have been done after you strip searched
7 these two individuals.

8 A Probably, yes.

9 Q Now, when you stopped the car and you asked Mr. Brooks
10 out and you started questioning him about why Mr. Hahn wasn't
11 driving his own vehicle, Trooper Rowe was standing next to Mr.
12 Hahn; is that correct?

13 A Yes.

14 Q How far away was he from him?

15 A I don't know.

16 Q What was he doing?

17 A What was who doing?

18 Q Trooper Rowe.

19 A I believe he was standing there.

20 Q And how was he standing?

21 A I don't know.

22 Q Was he standing right next to the window?

23 A I don't know.

24 Q Was he staring in the window?

25 A I don't know.

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1 Q Did he have his hands on his weapon?

2 A I don't know.

3 Q Did he say anything to him?

4 A I don't know.

5 Q Could you hear any of the conversation between Trooper
6 Rowe and Mr. Hahn?

7 MR. LESTER: I have to object to the form of that
8 question. There has been no testimony that there was
9 conversation between Trooper Rowe and Mr. Hahn.

10 THE COURT: I sustain the objection.

11 Q Was there any conversation between Trooper Rowe and
12 Mr. Hahn?

13 THE COURT: That you heard.

14 Q That you heard?

15 A I don't know.

16 Q So you didn't hear any. Would that be a correct
17 answer?

18 A I don't recall.

19 Q Now, after you determined that Mr. Hahn owned this
20 vehicle and you had Mr. Brooks out of the vehicle, you asked
21 Mr. Hahn for identification. Is that correct?

22 A Can you repeat that, please?

23 Q After you took Mr. Brooks out of the vehicle and you
24 questioned him as to why he was driving the vehicle when the
25 owner of the vehicle was in the vehicle, okay? Then you asked

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1 Mr. Hahn for identification; is that correct?

2 MR. LESTER: I have to object to the form of that
3 question. There was much more conversation than simply who is
4 the owner of the vehicle. If counsel is going to ask a
5 question --

6 THE COURT: Counsel, I'll permit the question because
7 it -- there is no implication there that that was the exclusive
8 content of the conversation. It is that part of the
9 conversation that she is interested in knowing about clearly
10 and whether that happened prior to asking the passenger to
11 identify himself. I will permit the question.

12 You may answer.

13 A That is correct.

14 Q And did Mr. Hahn hesitate in any way with showing you
15 his identification?

16 A No.

17 Q Did he in any way appear to hide his identification?

18 A No.

19 Q He clearly told you his name was Charles Hahn and that
20 it was his vehicle; is that correct?

21 A Yes.

22 Q Prior to this, or at any time before you asked Mr.
23 Hahn out of that vehicle, did you see him make any furtive
24 movements which would indicate he was reaching for a weapon or
25 some other object?

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1 A No.

2 Q Now, after you were confirmed that Mr. Hahn was the
3 owner of the vehicle, he had a valid registration. Correct?

4 A I'd have to --

5 Q Did he have a valid registration?

6 A Yes.

7 Q And you had a driver that had given you his license
8 and it was a valid driver's license. Correct?

9 A That is correct.

10 Q You asked the passenger out of the vehicle anyway;
11 isn't that correct?

12 A That is correct.

13 Q And when you asked the passenger out of the vehicle,
14 that's when you asked if you could look around the car; isn't
15 that correct?

16 A No. I believe I asked him if I could look in the car
17 while he was still seated in the vehicle.

18 Q And how did you do that, formally asked him if you
19 could look in the car?

20 A I don't know exactly what my words were but I asked
21 permission to search the vehicle.

22 Q Well, isn't it a fact that your words were on the
23 lines of: You don't mind if I look inside your car, do you?
24 Isn't that in fact what happened, officer?

25 A That might have been what I said.

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1 Q Okay. And that's not quite asking him to search the
2 vehicle now, is it?

3 A That's a search.

4 Q And then after he said you could, and you looked
5 cursory around the car, that's when you went back to your
6 trooper car and got this form; isn't that correct?

7 A Not -- no.

8 Q So what -- what's -- what's incorrect about that?

9 A I had gone, I had asked Mr. Hahn some questions, got
10 his identification, returned to my troop car, got the consent
11 to search form, asked Mr. Hahn if I could search the vehicle,
12 he advised that I could, I then had him exit the vehicle and
13 sign the Consent to Search Form --

14 Q So it is your testimony --

15 A -- on the troop car.

16 Q -- testimony, officer, that you didn't search or look
17 around inside of the vehicle prior to having Mr. Hahn sign that
18 form?

19 MR. LESTER: Objection to the form that of question.
20 What does look around mean? From the outside with his eyes?
21 That's not a search.

22 MS. SKARPETOWSKI: Your Honor, that is the testimony of
23 the officer. And I'm just asking him to go along with his
24 testimony.

25 THE COURT: His testimony wasn't look around, his

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1 testimony was look inside.

2 MR. LESTER: Judge, just --

3 MS. SKARPETOWSKI: I will change the word to go look
4 inside.

5 THE COURT: And -- and -- and his testimony was that
6 may have been what he said. In other words: You don't mind if
7 I look inside your vehicle is what he agreed --

8 MS. SKARPETOWSKI: Yes.

9 THE COURT: -- was what he may have said.

10 MS. SKARPETOWSKI: Yes.

11 MR. LESTER: In passing, Judge, that's why I have been
12 making all of these objections to the form of the question
13 because Miss Skarpetowski does jump on something if you -- if a
14 question is asked the way she wants it to be.

15 MS. SKARPETOWSKI: Your Honor --

16 MR. LESTER: I just note that for the record.

17 THE COURT: It is noted.

18 MS. SKARPETOWSKI: Thank you.

19 THE COURT: All right.

20 Now, the question is --

21 Q The question is, officer, isn't it true that what you
22 asked Mr. Hahn to do was look inside the vehicle, and that's
23 all you asked him? "May I look inside your vehicle?"

24 A I don't know exactly what I said.

25 Q But isn't it also true that you did in fact look

1 inside the vehicle and then come back to Mr. Hahn and tell --
2 and ask him: Well, I have now searched your vehicle, sign this
3 form?

4 MR. LESTER: Objection to the form of the question.
5 What does the word "look" mean? Does that mean a physical --

6 THE COURT: Please. Please.

7 MR. LESTER: -- inside or visual observation. That's
8 what I have troubling with.

9 THE COURT: Mr. Lester, the question was asked: Isn't
10 it true that that's what you did. If it isn't true, he can say
11 so; if it is true, he must say so; if he's got a problem with
12 the question, he can say so.

13 MR. LESTER: Well, the reason I object, your Honor, and
14 I hate to do it because I am slowing this thing down, is
15 because Miss Skarpetowski's interpretation of the word "look"
16 that she has in her mind may encompass a physical check inside
17 the vehicle, whereas the witness' may be to visually observe.
18 So I am trying to understand what the word means.

19 THE COURT: You can cover it on redirect. You can
20 cover it on redirect. The question asked him already on cross
21 is: Is it true, or didn't you say I don't mind -- you don't
22 mind if I look inside your vehicle, and he said that may have
23 been what he said. Now, if look has some particular meaning to
24 him, you can discover that on redirect, but she certainly has
25 the right to explore what happened after that or what happened

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1 in sequence with that, and I'll permit it.

2 MS. SKARPETOWSKI: Thank you, your Honor.

3 Q Can you answer the question?

4 A Can you repeat it, please?

5 Q Isn't it true that after you asked to look inside the
6 vehicle, that that is in fact what you did?

7 A I don't know whether I asked him if I could look
8 inside the vehicle. I don't know if those were my words
9 exactly, so I cannot answer that question.

10 Q Isn't it a fact that you looked inside the vehicle
11 before you asked him to sign the consent form?

12 A I'm sure I looked inside the vehicle.

13 Q And you actually -- after you looked inside the
14 vehicle, or even -- well, let me ask you. Before you looked
15 inside the vehicle, did you ask Mr. Hahn out of the vehicle?

16 A I looked inside the vehicle right from the start when
17 I was -- when I stopped them.

18 Q After you asked Mr. Hahn if you could look inside his
19 vehicle, before you proceeded to look inside his vehicle, did
20 you ask him to exit his vehicle?

21 A Like I said, I -- once I stopped the vehicle I
22 approached it, I looked inside the vehicle and I continued to
23 look inside the vehicle.

24 Q Prior to Mr. Hahn signing this alleged consent form
25 that you put on the back of -- on the front of the troop car,

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1 prior to him signing that didn't you physically go in and look
2 inside the vehicle?

3 MR. LESTER: Your Honor, I have to object to the form
4 of that question: Didn't you physically go in and do what?
5 While present observe? Break the plain of the door? That's
6 what I am talking about.

7 When it comes to words, I -- I have a tendency to want
8 my adversaries to be precise so as they are not thinking one
9 thing while the witness isn't thinking of another.

10 Can Miss Skarpetowski tell us in words what she is
11 asking did the witness do. Did he physically go inside the
12 vehicle and look around with his eyes, with his hands. What is
13 she asking. That's the problem that I have in this area.

14 THE COURT: Miss Skarpetowski? Can you clarify the
15 question?

16 MS. SKARPETOWSKI: I believe the question is a valid
17 question, but I will rephrase it --

18 THE COURT: Thank you.

19 MS. SKARPETOWSKI: -- so that Mr. Lester can be happy.
20 I don't know.

21 Q Officer, prior to having Mr. Hahn affix his signature
22 to the piece of paper that's been marked as State's Exhibit 1,
23 did your body or any part thereof go inside the vehicle?

24 A No.

25 Q Isn't it true, officer, that after you asked Mr.

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1 Hahn: Can I look around your vehicle, then when you came up to
2 him with the form, you said to him: You've already consented
3 to the search, just sign this form?

4 A Did I say only that?

5 Q Yes sir?

6 A No.

7 THE COURT: Was that part of what you said?

8 A Just sign this form? No.

9 Q Did you say: You have already consented to the
10 search, sign this form anytime during the time that you were
11 asking Mr. Hahn to sign the consent form?

12 A Not that I recall.

13 Q But you could have?

14 A After explaining the form, yes.

15 Q How long, officer, did it take you to fill out the
16 form?

17 A Approximately a minute.

18 Q A minute?

19 A Half a minute to a minute.

20 Q And at the time that you were having Mr. Hahn sign
21 this form, you never stated anything to him that you've already
22 searched, signing the form is just a perfunctory practice?

23 A No.

24 Q And at the point that you stopped this car, who had
25 the keys?

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1 A When I stopped the car?

2 Q Yes.

3 A No.

4 THE COURT: The question was who had the keys, I
5 think.

6 A I thought they were in the ignition.

7 Q They were in the ignition, but who was driving the
8 vehicle?

9 A Mr. Brooks.

10 Q Mr. Brooks was driving the vehicle. Mr. Brooks
11 therefore had the keys; is that correct?

12 MR. LESTER: Your Honor, I have to object to the form
13 of that question. What does that mean, he had the keys. He
14 had it within his constructive possession, et cetera. And I
15 object to the form.

16 THE COURT: Let's not have a speech every time you
17 have an objection.

18 MR. LESTER: Yes, ma'am.

19 THE COURT: If you have an objection, just say you
20 have an objection.

21 Can you rephrase the question, please?

22 Q Were the keys in the ignition?

23 A I believe so.

24 Q And ordinarily, officer, if a driver was driving a
25 car, wouldn't he have control of the keys?

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1 MR. LESTER: I have to object to that.

2 THE COURT: Sustained.

3 Q Did you ever ask Mr. Brooks for permission to search
4 this vehicle?

5 A No.

6 Q Who would have heard you reading the form to Mr. Hahn?

7 MR. LESTER: Objection, your Honor.

8 Q If you know.

9 MR. LESTER: Withdraw the objection.

10 A I don't know.

11 Q How far away was Trooper Rowe from you when you were
12 reading the form to Mr. Hahn?

13 A Approximately 20 to 30 feet.

14 Q So Trooper Rowe was still at the passenger side of the
15 car?

16 A He was to the right of the stopped vehicle. Correct.

17 Q He was still where he came after you asked Mr. Brooks
18 out of the car?

19 A No. I believe he was standing where Mr. Brooks was.

20 Q Which would have been at the back of the vehicle?

21 A Right.

22 Q Where was your car parked?

23 A Behind the stopped vehicle.

24 Q Directly behind the stopped vehicle?

25 A Approximately.

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1 Q So how many feet would you say it was?

2 A Approximately 20 to 30 feet.

3 Q You're 20 feet from the stopped vehicle.

4 A Approximately.

5 Q So you weren't parked behind the vehicle, there were
6 two car lengths between you and vehicle?

7 A I don't know how many car lengths there were behind
8 the vehicle. Approximately 20 to 30 feet.

9 Q Is that normal practice when you pull a car over, that
10 you leave two car lengths between the car and your trooper car?

11 MR. LESTER: Objection, your Honor.

12 THE COURT: I will permit the question.

13 A It could be further, it could be closer.

14 Q Now, at the point that you say that Trooper Rowe was
15 20 to 30 feet from where you were with Mr. Hahn, was he with
16 Mr. Brooks?

17 A Yes.

18 Q Was Mr. Brooks under arrest?

19 A No.

20 Q Was Mr. Hahn under arrest?

21 A No.

22 Q Were either of these individuals told that if you
23 found anything in the car that it would be used against them?

24 A No.

25 Q Did you ever tell these people that the reason why you

Steiger - Cross - Skarpetowski

1 wanted to search the car was because you thought it might
2 contain contraband?

3 A Did I tell them that?

4 Q Yes.

5 A No.

6 Q Did you tell them why you wanted to search the car?

7 A No.

8 Q You just ordered them?

9 MR. LESTER: Objection, your Honor. What -- I don't
10 understand the question: You just ordered them.

11 THE COURT: No, I will permit the question.

12 MR. LESTER: You just ordered them what. I don't
13 understand the question.

14 THE COURT: Out of the car perhaps.

15 MR. LESTER: Well, that is my point, Judge. If you
16 don't know and I don't know, how can the witness possibly
17 know? If Miss Skarpetowski can simply ask the question,
18 perhaps it's not objectionable -- objectionable, but: You just
19 ordered them isn't a question.

20 THE COURT: I'll sustain the objection.

21 Q You ordered them out of the car?

22 A I asked them to step from the car.

23 Q Would you consider that an order?

24 A It could be construed as an order, yes.

25 Q And would you have placed them under arrest had they

JOHN B. NEWTON, JR. C. C. P.

SP 128188

OAG 006818

Steiger - Cross - Skarpetowski

1 not complied with your order?

2 A I would explain to Mr. Brooks that under case law he
3 is required to exit the vehicle, as well as Mr. Hahn.

4 Q You explained that to them?

5 A I would have explained.

6 Q And the reason why you -- you have a right to take Mr.
7 Hahn out of the vehicle is?

8 A I am going to have him sign the form outside the
9 vehicle. I believe the case law is State versus Smith.

10 Q And you testified that you saw no furtive movements,
11 your heightened sense of fear was not there; isn't that
12 correct, officer? Isn't that your testimony?

13 A That I did see no furtive movements?

14 Q That's correct.

15 A That is correct.

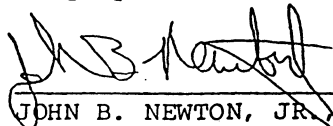
16 MS. SKARPETOWSKI: I have no further questions.

17 (The hearing continues.)

18

19 C E R T I F I C A T I O N

20 I, JOHN B. NEWTON, JR., a Certified Shorthand
21 Reporter, (Certificate No. 1001) and Notary Public of the State
22 of New Jersey, do hereby certify that the foregoing to be
23 prepared in full compliance with the current Transcript Format
24 for Judicial proceedings, and is a true and accurate transcript
25 of my original stenographic notes to the best of my knowledge
and belief.

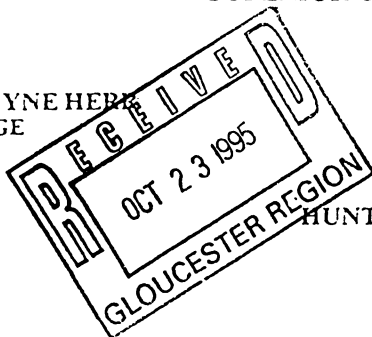

JOHN B. NEWTON, JR. C.S.R.

DATED: October 11, 1995

FILE COPY

SUPERIOR COURT OF NEW JERSEY

MARILYN RHYNE HERR
JUDGE



HUNTERDON COUNTY COURT HOUSE
P.O. BOX 502
FLEMINGTON, NEW JERSEY 08822
TELEPHONE (201) 788-1472

HUNTERDON COUNTY

October 13, 1995

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OCT 16 1995

Office of the Public Defender
HUNTERDON REGION

State v. Charles Hahn
State v. Omar Brooks
Indictment No. 95-06-00099-I

Dear Counsel:

This is my decision in the above matter. Defendants Charles Hahn and Omar Brooks' motion to suppress evidence seized at a traffic stop on March 23, 1995 was argued on September 14, 1995 and carried over to September 19, 1995.

BACKGROUND AND PROCEDURAL HISTORY

This is a motion to suppress the evidence seized by police pursuant to an automobile stop and subsequent warrantless search. Following the arrest of defendants, the grand jury returned a two-count indictment charging defendants with 1) unlawfully possessing a controlled dangerous substance, namely cocaine, in a quantity of five ounces or more, with an intent to distribute, contrary to the provisions of N.J.S.A. 2C:35-5a(1), N.J.S.A. 2C:35-5b(1) and N.J.S.A. 2C:2-6 and 2) unlawfully possessing a controlled dangerous substance, namely cocaine, contrary to the provisions of N.J.S.A. 2C:35-10a(1) and N.J.S.A. 2C:2-6.

Defendants filed a Motion to Suppress Evidence seized from the vehicle and briefs supporting it.

Defendants' motion papers assert that the troopers 1) had no basis for pulling the car over, as they assert no motor vehicle laws were being violated, but stopped the vehicle based upon a

State v. Charles Hahn

State v. Omar Brooks

October 13, 1995

Page 2

"profile;" 2) had no basis for a heightened suspicion of danger requiring the removal of the passengers and justifying their questioning; and 3) if the stop was valid, the consent given by Mr. Hahn was not freely and voluntarily given.

The State argues that the warrantless search was lawful based upon the lawfulness of the stop and the consent given by Charles Hahn, the owner of the vehicle and a passenger therein.

After a hearing conducted on September 14, 1995, at which Trooper Steiger and Defendant Hahn were the only witnesses, I find the following facts.

On March 23, 1995, at approximately 1:46 a.m., New Jersey State Troopers James Steiger and Kevin Rowe, were on road duty in uniform. They were conducting stationary radar of Interstate 78 westbound traffic from a marked troop car that was parked at the milepost 16.7 u-turn in Clinton Borough. They positioned their radar toward the flow of traffic but did not keep it activated. Although traffic was light, the troopers noticed a vehicle travelling alone in the left lane of the three lane highway about 300 to 400 feet away that appeared to be speeding. The troopers then activated the "on" switch of the antenna and clocked the vehicle when it was about 100 feet away at 66 miles per hour in that 55 miles per hour zone. They also had a spot light on the troop car which Trooper Steiger says may or may not have been activated. (I give no credence to Defendant Hahn's testimony that it was on as they passed the surveillance location because he later stated that he was asleep until the troopers were following them to effect a stop.) The trooper agreed on cross-examination that if it was on, he used it to look inside the car to determine the number of people and the color, make and license plate of the car. He agreed it also might help to determine the race of the vehicle's occupants. On redirect, he explained that he used the spot light to ensure that the correct car was followed when the pursuit began, and to alert the dispatcher of these facts in the event of a shooting. he did not bring his daily activity sheet to court and could not remember if he actually did call in this information prior to the stop.

In any event, when the troopers drove the troop car westbound to stop the vehicle for the motor vehicle violation, it had moved to the center lane. The troopers pulled behind the vehicle and activated the overhead lights in order to alert the driver to pull over. The vehicle pulled onto the right shoulder and stopped near milepost 16.0 in Union Township, Hunterdon County.

Trooper Rowe approached the driver's side of the vehicle while Trooper Steiger approached the passenger side, observed that neither occupant was wearing a seat belt and asked the driver, Defendant Brooks, for his driver's license and vehicle registration. While Defendant Brooks handed over a Pennsylvania driver's license, the passenger, Charles Edwin Hahn, took out his wallet and handed over a vehicle registration. Both defendants willingly and unhesitatingly handed over the documents. Trooper Steiger then asked driver/defendant

State v. Charles Hahn

State v. Omar Brooks

October 13, 1995

Page 3

Brooks to exit the vehicle and step to the rear. Simultaneously, Trooper Rowe went over to the passenger side of the vehicle.

Once at the rear of the vehicle, Trooper Steiger told defendant Brooks why he was pulled over and asked him who was "Charles Hahn," the name appearing on the registration. Defendant Brooks indicated that Charles Hahn was the passenger; was not driving because he was tired; and that they were coming from the Bronx, where they visited defendant Brooks' girlfriend, Kathy for three hours. Trooper Steiger then talked to passenger Hahn, who was still seated within the vehicle. Hahn indicated that he was not familiar with New York and that was why defendant Brooks was driving. He confirmed they were coming from New York where defendant Brooks had visited his girlfriend but contradicted Brooks by saying the visit was for 20 minutes. Hahn denied he had waited in the vehicle and explained that he visited for a time and then waited in the car so Brooks could be alone with his girlfriend. Trooper Steiger then asked for and received defendant Hahn's driver's license in order to establish his identity as the owner of the vehicle, to verify it was not stolen and to issue him a summons for a seat belt violation. Steiger agrees he never called to check the validity of either defendants' drivers license nor did he ask for an insurance car, nor were there any furtive movements but he nonetheless said, "You don't mind if I look inside your vehicle" or some such statement. When Hahn said "Sure," "I guess," Trooper Steiger had Hahn exit the vehicle so he could explain the consent form to him (S-1) and have him sign it. Steiger then searched the car. Hahn asserted that he was asked to get out of the car and patted down before being asked to consent to a search. He also said the car was searched and then Steiger said, "I need you to sign this (S-1) and we've already searched the car." Hahn asserts Steiger never read S-1 to him prior to Hahn signing it. However, I have decided the credibility issues against Hahn due to the inconsistency of his testimony, re: the spot light.

Once the consent form was signed, Trooper Steiger placed the signed form in the troop car and directed both defendants to wait near the guardrail by their vehicle. While Trooper Rowe stood nearby, Trooper Steiger search the vehicle. That search produced an electronic gram scale that was packaged within a brown bag within a plastic tray type container and a phillips head screwdriver, located in the front center of the vehicle and crack cocaine in a clear plastic bag located within a brown paper bag, underneath the carpeting in the trunk of the vehicle. In order for Trooper Steiger to obtain this last item, he had to use the phillips head screwdriver to remove four "after market" apparently non-factory installed screws that held a cover over the top of a bulge in the carpeting in the trunk and retrieved drugs: 158.6 grams of cocaine (5.5 ounces).

Both defendants were then placed under arrest and transported to the Perryville Station where a strip search was conducted. A search of defendant Hahn incident to arrest revealed on his person a metal pipe with residue, located in his left sock, as well as a Motorola pager. Laboratory analysis determined 1) the cocaine from the truck weighed 158.6 grams. or

approximately 5 and one-half ounces and 2) the pipe contained trace amounts of cocaine.

LEGAL ANALYSIS

Valid Automobile Stop

It is well-settled that before an automobile is stopped, "at least articulable and reasonable suspicion that a motorist is unlicensed or that the automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law" must exist. Delaware v. Prouse, 440 U.S. 648, 663 (1979).

In State v. Judge, 275 N.J. Super. 194, 199 (App. Div. 1994), the New Jersey Appellate Division indicated that "[i]t is undisputed that stopping defendant's motor vehicle for speeding satisfied the articulable and reasonable suspicion requirement of Delaware v. Prouse, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, 673 (1979). See also State v. Casimono, 250 N.J. Super. 173, 178, 593 A.2d 827 (App. Div. 1991), certif. denied, 127 N.J. 558, 606 A.2d 370, certif. denied, --- U.S. --- 112 S.Ct. 1978, 118 L.Ed.2d 577 (1992)." Further, in State v. Nugent, 125 N.J. Super. 528, 534 (App. Div. 1973), the Appellate Division stated that even though a defendant is "subsequently found not guilty of a motor vehicle violation does not impugn the propriety of the initial stop." See also State v. Murphy, 238 N.J. Super. 546 (App. Div. 1990).

In the case at bar, defendants' vehicle was speeding, which falls within the confines of Prouse, and the stop of the vehicle was valid because the occupant was subject to seizure for violation of law, specifically, speeding 66 miles per hour in a 55 mile per hour zone in violation of N.J.S.A. 39:4-98. In their briefs, the defendants argued that the driver was not speeding but Hahn testified he was sleeping. He did not testify that defendants were not speeding and so the officer's testimony is unrefuted as to speed and is accepted as true. Nonetheless, defendants also argue that the car was not stopped because of speeding but certainly it is troubling that Trooper Steiger had only stopped two other vehicles for speeding during the 9:00 p.m. to 1:45 a.m. period on an interstate highway where statistics reveal a significant number of drivers, over 34% according to the most recent Department of Transportation statistics (reported in the September 17, 1995 Newark Star Ledger on p. 1, 24), travel at speeds over 65 miles per hour. While there is no evidence before me that indicates the number of vehicles on the highway between 9:00 p.m. and 1:45 a.m., I am certain that three vehicles do not represent 34% of that traffic. It is of concern to this court that Trooper Steiger commented that it was unusual in his experiences as a highway patrol officer for the car owner not to be driving the car. It was also troubling that he uses a spot light to identify the racial makeup of the vehicle occupants before he stops them but then does not radio this information to dispatch so that it can achieve the alleged benefit of protecting him from assault by "non descript" persons on the highway. Even though I find the stop here is justified, this trooper's superiors need to review his work and assess whether

State v. Charles Hahn

State v. Omar Brooks

October 13, 1995

Page 5

he is stopping only vehicles containing minority occupants.

Justification for Ordering Defendants Out of Vehicle

The defendants next assert that the troopers had no justification for ordering the passengers out of the vehicle, and therefore what was subsequently found as a result of that order is not admissible. This Court disagrees.

It is well settled that an officer may remove a driver from a vehicle when it is stopped for a traffic violation, regardless of the reason for the stop or the circumstances surrounding it. Pennsylvania v. Mimms, 434 U.S. 106, (1977). The New Jersey Supreme Court has decided that Mimms is consistent with the protections offered by the New Jersey Constitution. State v. Smith 134 N.J. 599, 611 (1994). Thus the removal of the driver, defendant Brooks, from the vehicle is justified.

The New Jersey Supreme Court in State v. Smith, supra, also discussed the routine removal of passengers in vehicles stopped for traffic violations and refused to extend the Mimms doctrine to passengers in all situations, even though it recognized that the United States Supreme Court has appeared to interpret Mimms to include passengers. [Smith, 134 N.J. at 612, citing Michigan v. Long, 463 U.S. 1032, 1047-48 (1983), and Rakas v. Illinois 439 U.S. 128, 155 n.4 (1978) (Justice Powell in concurrence)].

In Smith, the New Jersey Supreme Court cites with approval Professor LaFave's Search and Seizure: A Treatise on the Fourth Amendment §9.4(a), at 514-15 (2d ed. 1987), which quotes the lower court concurring opinion in Mimms, distinguishing passengers from drivers:

'an operator's expectation of privacy differs from that of an occupant of a vehicle detained for a traffic violation,' as the driver is detained for some violation by him or the car he is driving, while the detention of the passengers is no more than an inevitable incident of the stopping of the car.

Smith, 134 N.J. at 613-14.

The Smith court discusses the need for a balancing test regarding removal of the passengers. This balancing test must evaluate "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Smith, 134 N.J. at 614 citing Mimms, 434 U.S. at 109. The first prong of this balancing test consists of factors that bear on the officer's safety, and the second weighs the intrusion into the passenger's liberty occasioned by the trooper's order to a passenger to get out of the car as a routine safety precaution. The court concludes that "the scale tips against a *per se* rule that a passenger

SP 128194

OAG 006824

TURNPIKE CASES
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Attorney for Various Defendants
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL SECTION
GLOUCESTER COUNTY
INDICTMENT NO. I 492-7-88

STATE OF NEW JERSEY

V.

Criminal Action

PEDRO SOTO

STATE OF NEW JERSEY

V.

INDICTMENT NO. 379,80,81-6-89B

KAREN BROWN
TERRY MONROE
DARRELL STANLEY

STATE OF NEW JERSEY

V.

INDICTMENT NO. 814,15-11-89B

CHAUNCEY DAVIDSON
RODERICK FITZGERALD

STATE OF NEW JERSEY

V.

INDICTMENT NO. 930,31-12-89A

LARNIE BODDY
PAUL DACOSTA

STATE OF NEW JERSEY

V.

INDICTMENT NO. 90-1-149

DONALD CREWS
ALFRED POOLE

)

)

)

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-231

V.

RONNIE LOCKHART
OCIE NORMAN

STATE OF NEW JERSEY

INDICTMENT NO. 90-2-237

V.

DELMAS BRASWELL
KIM HARRIS
FRED ROBINSON

STATE OF NEW JERSEY

INDICTMENT NO. A90-3-298

V.

CHARLES GRAYER
KEVIN JACKSON
MILTON LUMPKIN
KEITH PERRY

STATE OF NEW JERSEY

INDICTMENT NO. B90-8-688

V.

WILLIAM BONDS
DIANE HUGHES
BARBIE STANFIELD

STATE OF NEW JERSEY

INDICTMENT NO. 90-8-702

V.

ANTOINE PETERS

STATE OF NEW JERSEY

INDICTMENT NO. 91-9-64

V.

SAM GANT
ALTON WILLIAMS
THEOTIS WILLIAMS
A/K/A WALTER DAY

BRIEF
IN SUPPORT OF MOTION

STATEMENT OF FACTS

)

During the course of the lengthy Plenary Hearing, in this matter, witnesses for the defense, including former New Jersey State Troopers Kenneth Ruff and Kenneth Wilson testified that state troopers who were "profilng" at night would park facing the New Jersey Turnpike and shine their spotlights out onto the turnpike in order to identify the occupants of passing motor vehicles and to determine the race of those occupants. Dr. Elmo Randolph testified that he frequently observed New Jersey State Troopers on the turnpike shining their spotlights across the turnpike at night, prior to making motor vehicle stops. He testified that whenever he was stopped at night on the turnpike it was after he had passed through the spotlight of a trooper who was shining it across the turnpike. He also testified that he had frequently seen other black motorists stopped on the turnpike, at night, under similar circumstances.

)

Not only has the State consistently argued throughout these proceedings that New Jersey State Troopers would be unable to determine the race of motor vehicle occupants at night, but their witnesses have denied that New Jersey State Troopers would shine their spotlights across the highway and into oncoming cars, prior to pulling a vehicle off the road, as doing so would create a hazardous condition for the motor vehicle operator.

The transcript of the testimony of Trooper Steiger clearly contradicts this position taken by the State. It establishes that Trooper Steiger and his partner regularly employed the practice of shining the motor vehicle spotlight across the highway in order to identify occupants of passing vehicles and in order to determine the race of motor vehicle occupants, before a stop is made. It is thus, germane to the issues before this Court and to the credibility of the case presented by the State.

This testimony was not presented by the defense during its case in chief or its rebuttal case because it was unknown to the defense and had not yet taken place. Trooper Steiger testified in a different proceeding, in a different county, and may well have been unaware of the significance to the case at bar, of his testimony at the time he rendered it. If Trooper Steiger had been called as a witness in the case at bar, he well might not have made the admissions that he made in the Hunterdon County matter. Thus, his testimony there provides this Court another small window through which it can discern the true methods of operation employed by the New Jersey State Police.

THE LAW

The testimony of Trooper Steiger, produced in the transcript attached to the Certification of P. Jeffrey Wintner, should not be excluded as hearsay. In fact, the statements of Trooper Steiger are admissible as to exceptions to the Hearsay Rule under R. 803(b) as the statement of a party opponent offered against

that party. The statement of Trooper Steiger would be admissible under sections (1), (3), and (4) of that rule. Trooper Steiger's testimony may be viewed as the party's own statement. It is certainly a statement by a person authorized by the party to make a statement concerning this subject. Clearly Trooper Steiger was authorized by the New Jersey State Police to testify concerning the methods he used in effectuating automobile stops during a Motion to Suppress. It also represented the statement by a servant of the New Jersey State Police concerning a matter within the scope of his employment, made during the existence of the relationship. In the comment to Evidence Rule 803(b), at p.767, the author the the 1995 edition to the New Jersey Rules of Evidence, Richard J. Biunno states, "It provides that when a person is authorized by a party to make a statement concerning the subject matter of that statement, the statements made are admissible against the party who authorized them to prove the truth of the matter contained therein." He further notes at p.768 that R. 803(b)(3) is not limited to civil proceedings.

Nor should the statements of Trooper Steiger be excluded as untimely. In the case at bar, Defendants have established a course of conduct by the New Jersey State Police constituting wrong doing on their part with regard to their practices of stopping motorists on the highways of the State of New Jersey. Members of the New Jersey State Police, as a general rule, are not willing to come forward and admit to these practices. Defendants had no reasonable prospect of obtaining this information or tes-

timony from Trooper Steiger prior to his testimony on September 14, 1995, in the Hahn case in Hunterdon County. The State Police should not be able to benefit, in this case, from the exclusion of highly probative and highly relevant damaging evidence, by their own efforts to keep such evidence from coming to light.

CONCLUSION

For the foregoing reasons, the transcript of the cross examination of Trooper James Steiger in the matter of State v. Charles Hahn, and State v. Omar Brooks, should be admitted into evidence to be weighed by the Court in the case at bar.


P. JEFFREY WINTNER ESQUIRE


Wayne E. Natale, Esquire

Carrie D. Dingle, Esquire

William H. Buckman, Esquire

Justin T. Loughry, Esquire

DATED: November 2, 1995

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Judge Novis
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State of New Jersey

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Governor

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Attorney General

JAMES J. CIANCIA
First Asst. Attorney General

November 9, 1995

VIA FAX AND REGULAR MAIL

Honorable Robert E. Francis, P.J.
Superior Court of New Jersey
Gloucester County Court House
Woodbury, New Jersey 08096

Re: State v. Pedro Soto

Dear Judge Francis:

Please accept this letter in opposition to the motion to reopen the record filed by the defense in the above-captioned matter. The State recognizes that as with rebuttal testimony, the decision to reopen the record lies with the trial court. See Henry Clay v. Jersey City, 84 N.J. Super. 9, 18 (App. Div. 1964). [The decision "was addressed to the discretion of the trial court"]. Factors such as the age and protracted nature of the trial may be considered by the court. Id. The trial court should consider the case based upon the nature of the proffered testimony and the circumstances and may determine to grant or deny the motion.

In the present case the defense attempts to offer partial transcripts of the testimony of Trooper James Steiger in the matters of State v. Hahn, and State v. Brooks during suppression hearings. It appears in the Hahn and Brooks matters that the alleged stop was made on March 23, 1995 on Route 78 in Hunterdon County. The State urges this court to decline the defense motion to reopen the case since the alleged incident took place at a different time and location than that relevant to the activities of the troopers assigned to the Moorestown Station for the period of April 19, 1988 through May 18, 1991. While this court allowed the defense wide latitude in presenting evidence during the course of the hearing, to reopen the case at this point to allow transcribed testimony in another proceeding involving an incident four years after the relevant time period in this case is unwarranted. The court permitted the defense to explore the policies and practices of State Police regarding their patrol activities on the New Jersey Turnpike. Captain Teszla who



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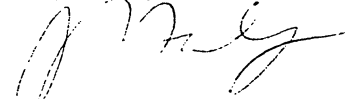
SP 128203

Honorable Robert E. Francis
Page 2

is responsible for supervising the activities of Troop D was called as a witness to testify and explained the responsibility of troopers assigned to the Turnpike. In addition, there was extensive testimony regarding the unique nature of the Turnpike and the physical layout of that roadway. No such testimony exists regarding the patrol activities of troopers on Route 78 in Hunterdon County. It is the State's position is that one isolated incident occurring several years after the relevant time period involved in the present litigation is not relevant or material to the issues before Your Honor.

Presently, oral argument on the merits of the suppression motion is scheduled for Tuesday, November 14, 1995. When our office received defendant's motion to reopen the record on November 3, 1995, I immediately wrote a letter to P. Jeffrey Wintner, Esq., with copies to other counsel requesting discovery. It was specifically requested that the defense provide us with a full transcript of the testimony of Trooper James Steiger and the entire court opinion in the Hahn and Brooks matter. Unless the court is disinclined to reopen this matter, the State would request such discovery before we proceed with oral argument. To date, I have not received the requested discovery. The State's position that there might be other items in the transcript and court opinion which when viewed in their entirety may allow the State to make additional argument if the court is inclined to grant defendant's motion. Please advise at your earliest possible convenience regarding scheduling in this matter.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

JMF:lg

c P. Jeffrey Wintner, Esq., **VIA FAX AND REGULAR MAIL**
Office of the Public Defender
William H. Buckman, Esq.
Cary D. Dingle, Esq.
Wayne E. Natale, Esq.
Justin Loughry, Esq.
Brent Hopkins, Asst. Prosecutor--**VIA FAX AND REGULAR MAIL**



file

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
CN 080
TRENTON, NJ 08625-0080

CHRISTINE TODD WHITMAN
Governor

DEBORAH T. PORITZ
Attorney General

JAMES J. CIANCIA
First Asst. Attorney General

November 3, 1995 ..

P. Jeffrey Wintner, Esq.
Office of the Public Defender
Gloucester Region
65 Newton Avenue
Woodbury, New Jersey 08096

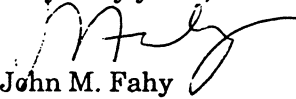
Re: Turnpike Cases -- Motion to Reopen the Record

Dear Mr. Wintner:

I have just received your Motion to Reopen the Record in the above-captioned matter this afternoon. I have forwarded it to the State Police but will be unable to meet with my client until Wednesday, November 8, 1995 at the earliest due to a prearranged vacation day on Monday, November 6 and the State holiday on Tuesday, November 7. It is requested that you provide the State with discovery as to any records you have in the matter of State v. Hahn and State v. Brooks dealing with the suppression hearings. At a minimum, such information should include the full transcript testimony of Trooper James Steiger and the entire court opinion.

As you are aware, oral argument on the merits of the suppression motion is presently scheduled for Tuesday, November 14, 1995. Until we receive the discovery, however, no decision will be reached regarding the State's position as to the present defense motion and any need for an adjournment.

Very truly yours,


John M. Fahy
Sr. Deputy Attorney General

JMF:lg
c Hon. Robert E. Francis, J.S.C.
William H. Buckman, Esq.
Cary D. Dingle, Esq.
Wayne E. Natale, Esq.
Justin Loughry, Esq.
Brent Hopkins, Asst. Pros.



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DEBORAH T. PORITZ
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JAMES J. CIANCIA
FIRST ASST. ATTORNEY GENERAL

August 10, 1995

Honorable Robert E. Francis, J.S.C.
Gloucester County Court House
1 North Broad Street
Woodbury, New Jersey 08096

Re: State v. Pedro Soto
(Consolidated Motion to Suppress Evidence)

Dear Judge Francis:

The State has received the defense's Reply Brief and Notice of Motion to Strike in the above-captioned matter. After reviewing the Reply Brief, no further additional written submission will be made by the State. Rather, the State will rely upon its initial Brief and Appendix and oral argument.

With regard to the Notice of Motion to Strike which deals primarily with cases cited which refer to Dr. Bernard Siskin, the State points out that under Evidence Rule 201, the Court may take judicial notice of decisional law from this State and every other state and the jurisdiction of the United States. Further, pursuant to Evidence Rule 202, judicial notice may be taken subsequent to the evidentiary hearing. It appears that the defense misconstrues the reason the State cited cases which refer positively to Dr. Siskin in its brief. As the Court will recall at the time of hearing, the State argued strenuously that this Court should base its decision upon the testimony offered by Dr. Leonard Cupingood since this was the expert the State chose to call and the Court had the opportunity to observe. The State still continues to maintain that the Court should be very cautious in allowing the credibility of a witness to be affected by a single opinion of another judge, and trusts this Court recognizes that fact.



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Honorable Robert E. Francis, J.S.C.
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With regard to scheduling, I presently am unavailable due to vacation on August 24, 25, 28, 29, and September 7, 8, 11, 12, 13, 14, and 15. Hopefully, the Court will advise us regarding the date for oral argument as soon as possible to avoid conflicts with other scheduled matters.

Respectfully submitted,

John M. Fahy
Senior Deputy Attorney General

JMF:lg

c Brent Hopkins, Asst. Prosecutor
P. Jeffrey Wintner, Dep. Public Defender
Wayne E. Natale, Esq.
Carrie D. Dingle, Esq.
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State of New Jersey

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November 27, 1995

Harvey B. Lester, Esq.
Assistant Prosecutor
Hunterdon County Prosecutor's Office
8 Court Street
P.O. Box 756
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Re: State v. Norvell James Briggs, State Frank Edward Connor, Jr.,
Ind. No. 95-04-0064

State v. Omar Dawood Brooks, State v. Charles Edwin Hahn, Ind.
No. 95-06-0099

Dear Mr. Lester:

I have been advised that there is a scheduling conference in the above-captioned matters for Friday, December 8, 1995 at 1:30 p.m. Please be advised that I will be unable to attend and do not anticipate participating in this litigation, except by providing advice and sample briefs. I began a trial today in the Superior Court of Mercer County in a civil rights matter which should last for several weeks. I discussed the fact that I am tied up with the ongoing lawsuit with Catherine M. Brown, Legal Affairs Director, Office of the Attorney General and she indicated that no other Deputy Attorney General will be assigned to appear on behalf of our office. Rather, she suggested that the Prosecutor's Office should handle the discovery matter in Hunterdon County and that our office could provide whatever advice and backup assistance was required.

Basically, at this stage of litigation, you should oppose the discovery application and argue that the defendants have not made a sufficient colorable basis showing under State v. Curtis Kennedy. While Trooper Steiger indicated that he utilized the spotlight to shine across the roadway, he indicated that he was not taught this by his supervisors and such evidence does not support a finding that



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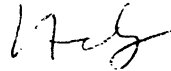
Harvey B. Lester, Esq.
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there is a pattern of practice on behalf of members of the troop as a whole. Further, the materials supplied to attorneys in Hunterdon County by the Middlesex County Public Defender's Office relate to a different roadway during a different time period and are not reflective of road conditions at this time in Hunterdon County. Finally, the affidavit submitted by the Assistant Deputy Public Defender suffers from many of the same criticisms Judge Baime made of the Public Defender's submission in State v. Curtis Kennedy. These defects should be argued once again.

Enclosed you will find a copy of the brief filed in Gloucester County in the State v. Pedro Soto, et al matter. This brief will provide you with a review of case law for opposing selective enforcement motions.

If you have any questions, please feel free to call me at your convenience. If you call, you should probably leave a home phone number since it is unlikely that I will be back to the office any day before 5 o'clock. Sorry I cannot be of further assistance at this time.

Very truly yours,



John M. Fahy
Senior Deputy Attorney General

JMF:lg