

NOTICE TO THE BAR

LAW DIVISION - UNION COUNTY CRIMINAL ACTION

IN THE MATTER OF ALLEGED :
RACIAL PROFILING BY THE :
NEW JERSEY STATE POLICE : ORDER RE: DISCOVERY
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This matter coming before the Court in the presence of Deputy Attorney Paul Heinzl, on behalf of the State, and Deputy Public Defender Joel Harris, Deputy Public Defender P. Jeffrey Wintner, and William H. Buckman, Esq., on the team of attorneys for defendants and the Court, having reviewed the documents submitted, having heard the arguments of counsel, and for good cause shown;

It is on this 20th day of February, 2002,

ORDERED that the State need not provide to the defense its method of indexing the CD Rom containing discoverable documents. The Attorney General's Office, however, shall designate a contact person or persons familiar with the indexing of the data for all discovery provided to the defense and the names, addresses, facsimile numbers, e-mail addresses and business telephone numbers of such person(s), by March 6, 2002. The defense shall be permitted to contact said person(s) through e-mail, facsimile or other writing to request assistance in locating specific documents within the disks provided. The State's representative shall, within 3 business days, respond in writing as to the location of said documents within the disks. If the State cannot locate the documents requested which are alleged to be located on the disks, the State shall provide written copies of said documents to the defense forthwith; and it is

FURTHER ORDERED that the defense's application for discovery of individual trooper stop/arrest data is granted. The defense shall be entitled to stop/arrest data for stops made by the trooper involved in that criminal proceeding, for a minimum of 100 stops to a maximum of 300 stops for the same roadway over a two year period prior to the stop in question. If the 100 stops cannot be obtained over the two year period, the time period shall be extended until 100 stops are reached, but in no event shall the time period go further back than January 1, 1988. The defense shall be entitled to discovery for all stops by the trooper(s) on that roadway for a period of two months after the stop in question. The discovery pre and post stop shall include radio logs, patrol logs and/or CAD documents; and it is

FURTHER ORDERED that the discovery previously ordered for consent searches must be provided to the defense by April 19, 2002, and if not provided, the defense may move for dismissal of any consent search case where a colorable basis has been established; and it is

FURTHER ORDERED as to Hotel/Motel discovery, the State shall provide discovery for 25% of all stops made under the Hotel/Motel program for each year the program was in existence. The defense shall be entitled to decide which cases shall make up the 25% per year but it will be the same stops for all defendants. The discovery shall include all radio logs, patrol logs, arrest reports, copies of summonses or warnings, front and back. The State shall advise any defense attorney in writing, as to any criminal case pending before a trial court or the Appellate Division, whether pre-trial or post-trial or post-conviction relief, where the defendant has directly or indirectly raised a claim of racial profiling and a colorable basis has been established, whether or not that particular stop was based on information secured in whole or in part through the Hotel/Motel program; and it is

FURTHER ORDERED that the State shall provide to the defense, by April 19, 2002, any and all documents relating to complaints or allegations of racial profiling made by any trooper or civilian. If the State claims a privilege exists because of an on-going criminal, administrative or internal affairs investigation, the State shall immediately after April 19, 2002, make application to the court on notice to the defense of the privilege claim. The court then shall conduct an in camera hearing on a sealed record to decide if the documentation in issue shall be withheld and for what period to time. The State's

claim that the names of troopers or civilians who made the allegations or of the troopers against whom the allegations were made be redacted because of a privacy interest is denied; and it is

FURTHER ORDERED that any document not provided to the defense pursuant to prior orders, based on a claim of privilege, shall be provided by April 19, 2002, unless the State, on written notice to the defense, prior to April 19, 2002, files an application with the court claiming the privilege. The hearing on the claim of privilege shall be heard as stated in the previous paragraph. If the motion is not filed, the privilege is deemed waived; and it is

FURTHER ORDERED that the defense shall be entitled to any and all documents involving allegations of mis-reporting of race by troopers without redaction of names by April 19, 2002. If there is a claim of privilege, the claim shall be resolved as previously state in this order; and it is

FURTHER ORDERED that the portion of the previous order entered by this court, dated January 4, 2002, setting the time period for discovery for the Construction Unit of the T.P.U. is vacated. The State shall provide to the defense copies of all patrol logs for stops made by the Construction Unit from January 1, 1988 through April 19, 1999. The State shall also allow the defense access to all radio logs for the Construction Unit for the same period, but the State shall not be obligated to segregate same for inspection. The defense shall also be entitled to copies of arrest reports, investigating reports or CAD reports for any stop on written request. The defense shall also be entitled to a copy of the front and back of any summonses or warnings issued for any stop made by the Construction Unit for the time period in question; and it is

FURTHER ORDERED that the State shall provide, if not already done so, copies of any documents reviewed and/or relied upon by the Special Deputy Attorney General James Gerrow which led to his statements before the Superior Court at the time the pleas and sentencing of former Troopers Kenna and Hogan. The State shall also secure a certification from Special Deputy Attorney General Gerrow underlying specifically what documents or information he relied upon in making his statements at the time of the pleas and sentencings of former Troopers Kenna and Hogan and submit same to the Court and defense counsel by March 15, 2002.