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State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

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MEMORANDUM

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TO: Alexander P. Waugh, Jr.
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FROM: George N. Rover
Deputy Attorney General
Division of Alcoholic Beverage Control

DATE: April 22, 1997

SUBJECT: State Police

As you know, USDOJ has requested that the State Police produce numerous documents relating to traffic stops on the southern portion of the New Jersey Turnpike for the years 1994, 1995 and 1996. To date, we have provided USDOJ with State Police traffic enforcement/search and seizure policies and guidelines and a very limited number of official records relating to law enforcement activity. Specifically, we have only provided USDOJ with a summary of summonses and warnings issued by State Troopers from the Cranbury and Moorestown Station on the Turnpike for 1996 and copies of radio logs for two days at the Cranbury and Moorestown Stations. At this time USDOJ is requesting that

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other official records of law enforcement activity (e.g. radio logs, consent to search reports, summonses, warnings) be provided for inspection.

USDOJ is seeking to obtain these records to create a statistical database from which it can engage in a critical analysis of State Police traffic stop activity based upon the race of the driver. In addition, USDOJ will also be seeking to have the State give its blessing to a violator survey. This survey will attempt to identify the percentage, by race, of those who violate the motor vehicle laws while traveling on the southern portion of the New Jersey Turnpike. It appears that USDOJ will seek to compare the data from the traffic stop analysis to the violator survey and determine whether the percentage of minorities subject to traffic stops by State Troopers from the Moorestown and Cranbury Stations supports a claim of selective enforcement. For the reasons set forth in the Soto brief, we will obviously have serious questions about not only the methodology used, but the inferences that can be drawn, from any such analyses or surveys.

While we will continue to address documents and information requests on a case-by-case basis, I suggest that we pursue a parallel course of action with USDOJ. In my discussions with USDOJ's representative, Mr. Posner, it has become quite evident that he has very little knowledge or experience with

respect to other important issues connected to this matter; more specifically factual information that is indicative of persons engaged in illegal trafficking activity (e.g. the vehicle is a third party rental; the driver is licensed in a state different than that which the car was rented), drug and illegal firearms trafficking trends and patterns, or the fact that the southern portion of the Turnpike is a primary transportation route for this contraband. I am also certain that he is unaware that, in large measure, the investigative techniques used by State Police have been approved and adopted by law enforcement officials from an agency within his own department, the Drug Enforcement Administration (DEA). The relationship between NJSP and DEA has been close for many years. Since the mid-1980's, the DEA has trained NJSP personnel and, in fact, has on numerous occasions requested the assistance of NJSP personnel to train, on its behalf, other law enforcement agencies. Even as late as last week, DEA requested that NJSP personnel assist in one of its training programs being given to the _____ State Police.

From an operational perspective, from 1986 through 1991, DEA and NJSP worked jointly in the Operation Pipeline project to interdict the shipment of narcotics coming into and through New Jersey. Operation Pipeline was discontinued in 1991 by former Colonel Justin Dintino and was reinstated in 1993 under the name Operation Roadside. This federally funded program focused on interdicting the trafficking of narcotics via commercial

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vehicles, primarily tractor trailers. This program was discontinued in 1996 due to a lack of federal funding.

We have numerous intelligence documents and training materials that demonstrate the close, if not intimate, working relationship between the NJSP and DEA. Of particular significance, these materials are replete with references to so-called "indicators" of drug trafficking including those indicators that focus on the race or ethnic origin of the suspect. I do not mean to suggest that in any of these materials the DEA supports the view that the operator of a vehicle can be stopped strictly based upon his or her race. However, once a motor vehicle is stopped for a motor vehicle violation, the DEA, through its training materials and intelligence information, make it very clear that certain racial or ethnic groups are more likely than other groups to be engaged in illegal activity. A strong argument can be made that it is misguided for a non-law enforcement arm within the same federal Department to exercise 20-20 hindsight over the actions of the highway patrol, particularly when the basis for its opinion will be statistical analyses that have questionable methodologies and which do not take into account the many variables (e.g. officer experience, drug trafficking indicators) related to narcotic and firearms interdiction. Indeed, I believe that the higher levels of DEA might have some serious questions about the motives and objectives of the present inquiry.

What I propose to do is to bring some of this information to the attention of Mr. Posner. In particular, I have an Operation Pipeline training tape, made by the DEA and the New Mexico State Police, which identifies the various indicators of those transporting narcotics. The tape does reaffirm the constitutional principle that a person cannot be stopped based solely upon his or her race. However, the remainder of the tape frequently identifies certain groups of minorities as those who are likely to be engaged in narcotics trafficking. In addition, DEA (and the Federal Highway Administration) through its various training programs constantly highlights indicators and patterns of drug traffickers with a particular emphasis on the race and ethnic origin of the traffickers. (See selected excerpts from recent documents).

Over the next month I would like to send some of these materials to Mr. Posner not only to "awaken" him to the fact that this inquiry cannot be performed in a vacuum but also to expose him to the fact that NJSP, like most other State Police, are following through on a national narcotics interdiction mission spearheaded by the DEA and the current Clinton Administration. We certainly all agree that if there is a problem trooper who is motivated by race in his law enforcement actions, swift and immediate disciplinary action should be taken. However, it is unjust and demoralizing to cast suspicions on law enforcement

officers who are simply following the lead of the primary drug enforcement agency in the country, simply based upon a limited statistical analysis of traffic stop data.

As part of this parallel course of action, I believe the Attorney General should consider reaching out to several other Attorney General's and write a letter or meet with high level DEA and/or Justice Department officials to review the scope and objectives of the present inquiry. Simply put, USDOJ cannot have it both ways; DEA cannot continue to encourage the NJSP to aggressively interdict narcotic shipments while at the same time subject the NJSP, who are using the DEA's interdiction techniques, strategies, and intelligence operations, to a critical inquiry based upon nonconclusive statistical data.

A second, unrelated issue involves NJSP Consent to Search data. I am anticipating that USDOJ, while expressing interest in State Police traffic stop data, is more interested in the consent to search data. As you know, State Police requires that any driver that agrees to allow an officer to search his vehicle must sign a written form. These forms are retained by State Police. Conceptually, I believe that this information does not relate to the issue being examined by USDOJ since it addresses post-stop law enforcement activity.

Why then do I believe USDOJ is interested in this data?

I anticipate that USDOJ will attempt to follow the same course of action pursued by plaintiffs in the Maryland case; the use of Consent to Search statistics as evidence of selective prosecution. In the Maryland action, the plaintiffs successfully argued that the percentage of minorities subjected to consent searches supported a finding that the Maryland State Police (MSP) engaged in selective prosecution. As a result of this finding, the MSP and a group of plaintiffs entered into a Consent Order. This order not only required the MSP to enact certain policies relating to traffic stops but it also allows the plaintiffs to monitor MSP stop practices for the next two years and permits the plaintiffs to go into court to compel any additional changes that it believes are necessary to carry out the spirit of the order. What is very troubling is that the basis for the entry of the Consent Order was the fact that the MSP requested Consent to Searches from what the plaintiff's claim was a high percentage of minorities.

Although USDOJ has been noticeably silent on the consent to search issue in our discussion, they are continuing to press for these documents. At some point, we will be forced to turn them over. Prior to that, I would like to begin "educating" USDOJ of our position on these documents and what conclusions can be drawn from them. It is my opinion that they are irrelevant to the inquiry of whether law enforcement officers are engaging in selective prosecution. This information has nothing to do with

the reason why a motorist is stopped initially which is the basis of the USDOJ inquiry. I am not suggesting that we refuse to provide these documents. Rather, I would like to articulate the State's position that these documents are not relevant to the USDOJ inquiry of whether minorities are being stopped based upon their race. I believe that it is important to address USDOJ's expectations, particularly because of the Maryland case, before it starts analyzing Consent to Search data. At the very least, we should state that to USDOJ that if it wants to use this data as an indicator of State Police activity then USDOJ must be required to examine, in each case, the factual circumstances that resulted in the officer requesting the consent to search. USDOJ is going to want it both ways; use the total consent to search data percentages (which have no relevance to the issue of who is stopped), without examining the facts underlying each search and hold that statistic up as evidence of State Police behavior. We should make it clear up front that we disagree with this use of data and any conclusions to be drawn from it.

Please give me your thoughts on these issues. .

GNR/vkc