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# Feds take over Turnpike shooting

## U.S. agrees to AG's unusual request for civil rights investigation

### WHAT IT MEANS

- The U.S. Attorney's Office and the FBI start a new, independent investigation into the shooting on the Turnpike.
- If cause is found, they would file civil rights charges. If convicted, the troopers would face up to 10 years in prison.
- The Attorney General's Office would share findings from its lengthy, expensive investigation with the U.S. Attorney.
- The state will continue its appeal of the dismissal of the charges against Hogan and Kenna in the shooting.

BY BRIAN DONOHUE  
STAR-LEDGER STAFF

Three days after a state judge dismissed criminal charges against two state troopers for the 1998 Turnpike shooting, federal officials opened their own civil rights investigation into the incident yesterday.

State Attorney General John

Farmer Jr. said he asked the federal authorities to enter the case because the state's own prosecution has been damaged by a judge's accusations that it pursued the troopers for political reasons.

Farmer said he met earlier this week with U.S. Attorney Robert Cleary to discuss the state's crumbling case against state Troopers

John Hogan and James Kenna, who were charged in the shooting of three minority men.

Farmer sought the meeting after Superior Court Judge Andrew J. Smithson delivered a scathing dismissal of indictments against Hogan and Kenna on Tuesday in Trenton.

In his dismissal, Smithson ac-

cused former Attorney General Peter Verniero of pushing the prosecution of

the troopers in order to boost his chances of winning a tough Senate fight over his nomination to a

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## TROOPERS

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seat on the state Supreme Court.

Farmer said the opinion raised damaging questions about the state's ability to prosecute the case against the troopers.

"While I am confident that we will be vindicated in our appeal, it's clear from Judge Smithson's opinion that the state's case is going to take considerable time to resolve," he said. "Such a delay is not in the interest of justice, in the interest of the victims or the troopers."

"The rhetoric in Judge Smithson's decision does cast a cloud over my office, which I think is completely inappropriate and which I think will be removed," Farmer said.

Attorneys on all sides of the issue called Farmer's request extraordinary, citing a common reluctance by prosecutors to turn their cases over to the federal government.

The decision by Farmer, a former assistant U.S. attorney, came after intense pressure from civil rights leaders and minority lawmakers for the federal government to investigate the 30-month-old case that sparked a national debate over racial profiling.

"I think this is very appropriate, what the feds are doing. Unless something changes, the Ministers Council believes this will in fact lead to the prosecution of these troopers," said the Rev. Reginald Jackson, executive director of the Black Ministers Council.

"It's important that the minority community in the state be assured that all of us must remain vigilant to see that justice is done in this matter."

Peter McDonough, spokesman for Gov. Christie Whitman, said the Governor supports the decision to request a federal probe.

"We fully support everyone taking a look at this," said McDonough. "If the federal government would want to be part of the solution, we would welcome them."

Robert Galantucci, the attorney representing Hogan, criticized the state for "forum shopping" for a case that had been obliterated by Smithson's decision earlier this week.

"They are shopping for a place where they can get another bite at the apple that will be more favorable to them," Galantucci said. "Judge Smithson was extremely courageous, and rather than go before a courageous judge they seem to want a forum that is more favorable."



PHOTOS BY JEREMY MCCREATH/STAR LEDGER

Convicting Trooper Jamaa Kenna, left, and John Hogan on federal civil rights charges would be even tougher than prosecuting them in state court, legal experts say, because the government must prove the additional element of racial bias.

Kenna's attorney could not be reached for comment.

Farmer said the state will continue to appeal Smithson's decision to dismiss charges of attempted murder against Kenna and aggravated assault against both troopers for the shooting.

The state will also continue to pursue charges in a separate indictment charging the pair with lying about the race of drivers they stopped and failing to get drivers' permission before searching their vehicles.

Now, federal prosecutors will begin a probe that Farmer said could result in a federal trial even before the state's own appeal is settled. If convicted on federal charges, Hogan and Kenna could serve as much as 10 years in prison.

Hogan and Kenna had both been charged with attempted murder and aggravated assault for the April 23, 1998, shooting in which they fired 11 bullets into a van carrying four minority men, seriously injuring three passengers.

The shooting set off a national storm over racial profiling, an admission by the Attorney General's Office that troopers engaged in racial profiling and an overhaul of the 2,600-member force to end the practice.

The case has slowly unraveled.

Prosecutors dropped the most serious charge against Hogan two weeks ago, citing new witness testimony backing Hogan's assertions that he fired only in self-defense when the van backed toward him.

On Tuesday, Smithson dismissed all charges against Hogan and Kenna in connection with the shooting, charging that state prosecutors had misled the grand jury in a "political expediency."

Following the judge's ruling, a number of organizations including the Black Ministers Council, the state conference of the NAACP, the Anti-Defamation League of New Jersey, and the Black and Latino Legislative Caucus called for the Justice Department to step in and begin its own investigation.

Convicting Hogan and Kenna on federal civil rights charges would be even tougher than prosecuting them in state court, legal experts said, because the government must prove the additional element of racial bias.

Still, federal prosecutors have frequently won convictions for racially motivated police brutality against officers who were acquitted in state court. Peter Neufeld, the New York City attorney representing several of the shooting victims, said all four van passengers had been told of the federal probe and were heartened by the decision.

Neufeld pointed to two New York cases in which he and his partners Barry Scheck and Johnnie Cochran have been involved, including the shooting of Amadou Diallo, in which federal prosecutions gained convictions where state charges failed to stick.

"If anything, this will create more pressure and increase the likelihood that justice will be secured for these young victims and will result in the conviction and punishment of Troopers Hogan and Kenna," Neufeld said.

Federal investigators now formally begin a probe into a case they have been monitoring from the beginning.

"We've been closely watching, closely following the state's investigation and the events of last week," said Michael Drewniak, spokesman for the U.S. Attorney's Office in Newark.

The state is also operating under a federal consent decree to eliminate discriminatory practices in the State Police.

Staff writers Kathy Barrell Carter and Robert Schwaneberg contributed to this report.

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