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STATE OF NEW YORK
STATE ETHICS COMMISSION

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In the matter of

An Investigation into the Alleged
Misuse of Resources of the Division
of State Police

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Alfred E. Smith State Office Building
80 South Swan Street
Eleventh Floor, Suite 1147
Albany, New York 12210-8004

September 26, 2007
2:30 p.m.

STENOGRAPHIC RECORD of an Investigative
Interview in the above-entitled matter.

INTERVIEWEE: GLENN VALLE, ESQ.

PRESENT: HERBERT TEITELBAUM, ESQ.
Executive Director

APPEARANCES: FOR THE ETHICS COMMISSIONS:

HERBERT TEITELBAUM, ESQ.
Executive Director

MEAVE M. TOOHER, ESQ.
Investigative Counsel, New York State
Ethics Commission

JOAN SULLIVAN, ESQ.
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter

1 P R O C E E D I N G S
2 G L E N N V A L L E,
3 called as a witness before the Commission, and
4 being duly sworn/affirmed by the Notary Public,
5 was examined and testified as follows:
6 EXAMINATION BY MS. TOOHER:
7 Q. State your name for the record.
8 A. Glenn Valle.
9 Q. And what is your position?
10 A. Chief Counsel to the New York State Police.
11 Q. How long have you been in that position?
12 A. I have been Chief Counsel for 18 years.
13 Prior to that I served as a First Assistant
14 Counsel for a little over a year and, prior to
15 that, Assistant Counsel for three -- about three
16 years in the Attorney General's office. So, I
17 have been with that office for over twenty-two
18 years.
19 Q. And, in your capacity as Chief Counsel are
20 you involved with FOIL at the State Police at all?
21 A. In a tangential manner, in the sense that
22 quite often our Records Access Officer will
23 consult with my office with regard to any legal
24 questions as far as interpreting the actual Public

1 Officers Law section and how it may applicable to
2 the question at hand or the documents we have. We
3 receive probably -- I think we receive roughly a
4 thousand FOIL requests per year. The vast
5 majority we have no knowledge of -- when I say
6 "we," my office. It's hard to say how many a year
7 we may be consulted with, but it's not infrequent
8 at all. Our Records Access Officer is a frequent
9 customer, so to speak, but it's a little more
10 difficult recently because they actually
11 physically moved the records section to an
12 entirely different building in the Washington
13 Avenue Extension. So, she has actually a little
14 bit of a trip. And, quite generally speaking on
15 my staff we have nine attorneys in the office. I
16 have a Deputy Counsel and Assistant Counsel who
17 specifically deal with the day-to-day FOIL legal
18 requests. Occasionally, then, if they have a
19 question they will come to me as Chief Counsel to
20 get my input.

21 Q. Who in your office is responsible for FOIL
22 inquiries?

23 A. Generally, one of two Deputy Counsels;
24 Darren O'Connor, and the other individual would be

1 an Assistant Counsel by the name of Julie Mortati,
2 M-o-r-t-a-t-i. So, they would be the persons
3 that, generally -- One of those two individuals
4 would be the person that our Records Access
5 Officer would make initial contact with.

6 Q. What type of issues come from the Records
7 Access Officer?

8 A. An issue would be -- here is a request.
9 Here's maybe the records we have. Is there --
10 obviously, if there are no records, that's the end
11 of the case. But if records have been located,
12 then there may be a question as to whether or not
13 there is a valid exemption contained under the
14 Public Officers Law. As you may know, the Public
15 Officers Law sort of speaks with double negatives.
16 It's not the easiest one to follow. But, bottom
17 line is it's presumptively available unless it
18 fits into one of the exception categories. So, I
19 think, generally, the overwhelming majority of
20 questions asked legally would be: Do one of these
21 exemptions fit, which would either support
22 redaction of the record or completely withholding
23 the record itself.

24 Q. And, who makes a determination on redaction

1 or withholding?

2 A. Well, that generally -- if we say that we
3 believe legally there are grounds to redact this
4 record, they would go along with counsel's
5 opinion.

6 Q. So, by "we" you mean counsel's office makes
7 the determination as to redaction or withholding
8 of the particular document?

9 A. Well, let me clarify that. There may be an
10 -- let's say it would depend on the type of
11 information. It might be information that field
12 command may have. See, many of our FOIL requests
13 are for like accident reports or criminal
14 investigation reports. So, there could be
15 questions with regard to information contained,
16 say, in an investigation that we as counsel may
17 not know whether there is an issue involved with
18 redaction. For instance, does it impact on an
19 ongoing law enforcement investigation, we may not
20 know and our field people may know. So, our
21 Records Access Officer could determine if a
22 particular record which was compiled for law
23 enforcement purposes could jeopardize a criminal
24 investigation or disclose a confidential informant

1 or something like that. As to whether or not
2 there was a necessity to redact that information
3 that may be made by an operational person. We
4 would give more of a legal, if there is an
5 operational need or a privacy need if it is
6 supportable by the statute, so to speak. Is that
7 clear?

8 Q. I think so.

9 A. You know, there is an operational component
10 in the State Police and a legal component. And
11 the Records Access Officer who is sort of
12 retrieving this stuff without firsthand knowledge.
13 She gets them from all over the state. We have
14 200 stations in the state. And, again, most of
15 the FOIL requests we probably get relate to, you
16 know, the type of business that we are in the
17 business of, enforcing the criminal laws or
18 investigate accidents, and stuff like that.

19 Q. Now, the State police has a FOIL process; is
20 that correct?

21 A. Yes.

22 Q. And, where is that?

23 A. I believe it's 50 NYCRR.

24 Q. Under that process are requests required to

1 be in writing?

2 A. Yes.

3 Q. And, is it the policy of the State Police to
4 require FOIL requests in writing?

5 A. Generally speaking. And a FOIL request
6 should be in writing. It's generally not
7 difficult to get something in writing, and I guess
8 there was recent legislation that opened up the
9 ability to file for a request by e-mail. So in
10 this day and age, I believe it's not really
11 difficult to request a FOIL -- that a FOIL request
12 be in writing. But sometimes information is given
13 -- You know, there's FOIL and then there is a
14 dissemination of information. So, if -- you know,
15 quite often we may have a Troop Commander
16 answering questions, say, from the press giving
17 information out on a particular case. You may get
18 it on any given day on the news at night if
19 there's a high profile case by either a press
20 officer or major, troop commander, captain,
21 whatever, giving information. But a request that
22 requires the actual gathering of records,
23 material, we generally, if not exclusively, would
24 consider it then a FOIL request and require that

1 it's to our agency in writing.

2 Q. If it's a request for documents or records
3 of the State Police, you --

4 A. I think that's a good bright line here.

5 Have we ever released a document or a letter
6 without a formal FOIL request, yeah, probably.

7 Q. Do you receive oral requests for documents?

8 A. Oh, we probably do. I would suspect that my
9 press officer -- or our press officer -- probably
10 gets calls from the press asking for information.
11 And sometimes that call, that request, may be for
12 merely information. Or all of a sudden because of
13 its volume, because of the scope, because of where
14 the documents may be, it could be considered a
15 FOIL request. And I think quite often our press
16 officer may tell a reporter you have to make a
17 FOIL request for that. But, certainly, our press
18 officer would answer questions. I think sometimes
19 if it's a particular document: We want to see a
20 letter that, you know, was sent, we would -- may,
21 I should say, release that document.

22 Q. If you were to try and articulate the policy
23 of the State police concerning release of
24 documents --

1 A. Generally speaking, overwhelmingly --
2 overwhelmingly. But, of course, we may have
3 subpoenas requesting documents. There's all sorts
4 of processes that may request documents; it's not
5 just under FOIL. Generally speaking, with few
6 exemptions, document release would be controlled
7 under the provisions of FOIL and would be governed
8 by our regulations which would, in fact, require a
9 written request. And, generally speaking, for
10 most media requests that relate to documents, I
11 would be of the opinion that it would require an
12 FOIL request. I know of instances that it has
13 been. In particular: Are you familiar with the
14 aviation records? I know of instances that it has
15 been with regard to aviation records.

16 Q. You received a communication from
17 Superintendent Felton in about mid May concerning
18 aviation records?

19 A. Sometime in the middle to latter part of
20 May, right.

21 Q. Superintendent Felton came to you concerning
22 the potential release of aviation records; is that
23 correct?

24 A. I don't know that I cam to him or he came to

1 me. We consult each other frequently. He comes
2 to our office; I go to his office. And he did
3 bring up -- he said that, as I recollect, he said
4 the executive chamber or "second floor" in common
5 parlance -- I don't know what he said -- the
6 Governor's Office, one of those three, is working
7 or has a FOIL request for our aviation records
8 relating to travel, executive travel, travel of
9 the Governor, Bruno, and, you know, basically
10 identifying travel outside of State Police travel.
11 And is that something -- are those records we
12 would normally give up? And I said, "Yeah. Just
13 let me see the documents, again, just what
14 documents you are talking about." And at some
15 point I got the documents. He gave -- he sent
16 them over to me. I got them and I looked at them.
17 And, they were clearly, in my opinion, something
18 that we would release under FOIL.

19 Q. What were the documents?

20 A. They were the basic aviation documents.
21 There's like three parts I consider to the
22 document that I saw. Then I found out that
23 there's actually more. We have got the blotters
24 or something that the aviation people keep. I

1 didn't even know they existed. But the documents
2 that I recollect looking at are like three parts.
3 Number one would be this request that was sent to
4 the Governor's office by the requester seeking use
5 of the State Police aircraft. And it would just
6 have a very brief description of what, when,
7 generally the purpose, which was very brief, and
8 that was approved somewhere on that sheet by the
9 representative of the executive chamber. That was
10 part one.

11 Then, there was a document that was sent
12 by our aviation unit to the executive chamber that
13 would reflect, after approval, the information
14 contained as to where and when and how. And it is
15 my understanding -- it became my understanding
16 over the last few months that the way this process
17 works is that someone requests from the Governor's
18 office. If that is approved, the Governor's
19 office -- not the requester, the Governor's office
20 sends that to our aviation unit in Albany. And it
21 shows that this person wants to be transported on
22 this date to such-and-such a location at this
23 time. And that generates then, one, the approval.
24 Our aviation unit knows that that is an approved

1 flight; that they can do it. Then, they take that
2 information, sort of type up in a little more
3 detail the itinerary and send it back to the
4 executive chamber somehow or through our Executive
5 Service Detail whatever, which is more or less --
6 okay, this is how we understand it. This is what
7 we have.

8 Then, our aviation unit requests that
9 that document be approved. So, now, we have two
10 documents. And that is done just so that
11 everybody is on the same page; there's no mistake.
12 I guess years ago they would get up in the air and
13 somebody would say, "We're going to Manhattan" and
14 they were heading out to Buffalo.

15 The third document is the trip ticket.
16 I think they call it the manifest. That's
17 actually like in the glove compartment of the
18 aircraft or the helicopter. That is done by the
19 flight crew. It's a contemporaneous document which
20 actually reflects when the aircraft took off, who
21 was actually on it, all sorts of data. Some of it
22 is required by the FAA if it's an instrument
23 flight. And that is signed and filled out by the
24 pilot. And at the return to the terminal in

1 Albany they hand it in; that that is what really
2 happened and the list of passengers. And there's
3 all sorts of technical instrument data, how many
4 hours were on the engine, such like that. A lot
5 of it is required for maintenance purposes, FAA or
6 whatever. But a lot of those documents will
7 change. If you look at sometimes who's supposed
8 to fly and who actually flied -- I guess I should
9 say flew -- it could differ. But I think the
10 accurate one is the pilot's check as we are doing
11 this; it's you and you and you. So, there are
12 three parts to those documents I'm talking about.

13 Q. Those are the documents that the
14 superintendent brought to you in mid May?

15 A. Yes. It wasn't like a whole pile. It was
16 like representative; like this one, this one.

17 Q. The documents that the Superintendent
18 brought to you in mid May to your recollection
19 were limited to these types of aviation documents?

20 A. Absolutely. And I think limited to being --
21 like this one flight like a representative flight.

22 Q. So, it was only an example of the aviation
23 documents?

24 A. Yes. It wasn't duplicative but every flight

1 has the same documents. I didn't review twenty
2 flights. I reviewed one flight.

3 Q. Did you know what he was providing to the
4 executive chamber?

5 A. No.

6 Q. So, you don't know if he provided you with
7 the one flight and that was what was being
8 provided?

9 A. I don't know what -- I have no idea. I
10 don't know what particular flight it was.

11 Q. I don't mean a particular flight. Did he
12 provide the chamber with documents for more than
13 one flight?

14 A. That's my understanding based on subsequent
15 review of this entire incident. But, at that
16 point I didn't know how many flights, how many
17 months, how many weeks were involved.

18 Q. So, he showed you a sample?

19 A. Correct. And that's basically all I asked
20 for. I didn't ask to see the entire batch or the
21 entire subject. I didn't know what it really was.
22 There's a FOIL request that the executive chamber
23 is working on for aviation manifest. Do we --
24 generally, this would be a document we generally

1 would send out. And I would believe so, but, "Let
2 me just see it." I don't like to answer the
3 question unless I know -- it could be a document I
4 didn't know existed. I don't work with aviation
5 generally. So I said, "Let me see the document."

6 Q. And, so, you looked at these flight
7 manifests?

8 A. I said, "Let me see a representative. Let
9 me see a sample of the documents, you know. I
10 don't really remember what I said. It wasn't in
11 writing.

12 Q. But you didn't look at the whole batch?

13 A. No. I only looked at a very small -- what
14 he was asked for at that point, or what he sent, I
15 don't know, okay. It would seem to me that I just
16 recollect looking at one flight.

17 Q. When you looked at these documents, what
18 were you reviewing the manifests for?

19 A. Just to see whether there is any information
20 that would fall under any of the exemptions to
21 FOIL; that we would have a privacy interest, you
22 know. Obviously, most of the others have been
23 duplicative.

24 Q. Are there any security issues that can arise

1 as a consequence of the manifests?

2 A. I would say very few, frankly, especially
3 manifests of flights that have already been
4 completed. There isn't a manifest until the
5 flight is completed, so I wouldn't see a security
6 issue with that at all. To my recollection,
7 aviation records have been released in the past
8 under FOIL by our agency.

9 Q. These types of records --

10 A. -- and that's why my initial answer to that
11 was: Yes, but let me see what we are talking
12 about. I didn't know. It's possible. Maybe
13 someone's home address is on there. These things
14 could change. There may be Social Security
15 numbers. I don't know what information may be
16 contained in a manifest without seeing it.

17 Q. And did the Superintendent talk to you about
18 the nature of the requests at all?

19 A. No. Absolutely not, no.

20 Q. He just told you: We have a request from
21 the executive?

22 A. Not "we have," no. He said the Governor's
23 office -- or whatever was the term that was used
24 -- has a request, is working on a FOIL request

1 with regards to aviation records for executive
2 travel.

3 Q. And did he say anything else?

4 A. No, other than, "Do we normally release
5 those" or "would we normally release these
6 records?" "Are those records subject to FOIL?" I
7 forget exactly what it was.

8 Q. And you responded that, yes, they were?

9 A. I responded at first yes, generally
10 speaking, but let me see a document, or let me see
11 what you are talking about and I will give you a
12 definitive.

13 Q. Had the Superintendent come to you on FOIL
14 requests before?

15 A. This particular Superintendent, no.

16 Q. Are you aware as to what his familiarity
17 might be with FOIL?

18 A. I don't have any personal knowledge of what
19 he knows about FOIL, no. I don't know whether he
20 has read the Public Officers Law or not. My
21 understanding is that he has never been in any
22 position to oversee as a Records Access Officer.
23 But everybody throughout the agency at some point
24 can be involved in FOIL.

1 Q. Have prior Superintendents come to you about
2 FOIL requests?

3 A. Yeah, I'm sure they have.

4 Q. Do you recall the nature of those requests?

5 A. No, I don't.

6 Q. Do you ever remember the prior
7 superintendents coming to you concerning document
8 requests from the executive chamber?

9 A. No.

10 Q. So, this was the first time you had ever
11 received that type of inquiry?

12 A. This is the first time that I recollect sort
13 of a rendering a comment with regard to an
14 executive chamber FOIL request as opposed to a
15 State Police FOIL request.

16 Q. So that in your experience as counsel with
17 the State Police you had not had to opine on
18 document requests from the executive chamber
19 before?

20 A. I can't recollect one, but that is to the
21 best of my recollection. I have been there
22 twenty-two years and, you know, I have handled
23 thousands and thousands of legal questions and
24 issues.

1 Q. I understand.

2 A. So, really it's hard for me to say anything
3 in an absolute. I have had four superintendents,
4 you know. I don't remember things that happened
5 two weeks ago sometimes anymore.

6 Q. We all suffer from that sometimes. But you
7 don't recall?

8 A. I can't say yes. The same thing like did
9 other superintendents ever mention FOIL or discuss
10 FOIL. Yes. I'm sure it happened over the years
11 there would be FOIL requests made to the agency,
12 of things that were in the newspaper. I guess
13 they did say: Do I have to give this up? And I
14 would say yeah, we have to give this up. Or, I
15 would bring to the attention of a Superintendent
16 if a high profile FOIL request came to me through
17 our Records Access Officer that I thought the
18 media -- that the denial of that FOIL request,
19 especially if this was a media FOIL request, could
20 result in in adverse publicity or publicity. I
21 have discussed that on a number of occasions with
22 superintendents.

23 Q. Did you discuss that issue with the
24 Superintendent when he asked you about the

1 manifests, the possibility of adverse publicity?

2 A. No. No, because this was a no-brainer.

3 These were going out. I looked at them and said

4 there is a right for the public to know when we

5 are flying aircraft at \$1,000 an hour.

6 Q. And did you have any subsequent inquiries

7 from the Superintendent concerning release of

8 documents?

9 A. Subsequent inquiries --

10 Q. Did he come to you again concerning

11 providing documents to the executive chamber?

12 A. During the course of this, no. But I do

13 want to make clear, you know, that it wouldn't be

14 unusual for the Superintendent and I to discuss

15 FOIL. We have been in the Times Union regularly

16 just within the last couple of months for not

17 releasing the names of witnesses in a case, you

18 know, the Times Union, Bob Friedman.

19 Q. I have no issue with your discussing FOIL

20 with the Superintendent.

21 A. I want it clear that that has happened. It

22 may have been in connection with the Governor's

23 Office; an e-mail and say that we have got a FOIL

24 request and we have assessed it. And, just to let

1 you know, when someone doesn't get an answer, no
2 matter what the administration, if someone isn't
3 happy with the State Police they go to the
4 Governor's office and say the State Police are not
5 being nice to us. So, we sometimes as a courtesy
6 our press office may call the Governor's press
7 office to give a heads up.

8 Q. And the consequence of those kinds of calls
9 have you had requests in the past from the chamber
10 to turn over documents?

11 A. No. I never remember ever having any
12 administration telling us or suggesting to us or
13 hinting to us we should turn over documents if we
14 didn't want to turn over those documents. I never
15 recollect any interference with the Cuomo
16 administration, the Pataki administration, and the
17 Spitzer administration.

18 Q. When Superintendent Felton brought you these
19 documents did he indicate to you he had had any
20 conversations with your PIO about those documents?

21 A. No.

22 Q. Did he ever indicate to you that there had
23 been a request for these documents to the PIO
24 directly and that the chamber had stepped in and

1 requested them?

2 A. No. I don't have any recollection of that,
3 no. I mean I subsequently heard from my press
4 officer that in March there was a flurry. I don't
5 remember contemporaneously having any information
6 about that. But it's possible, you know. My
7 press officer, I meet him in the hall sometimes or
8 in the bathroom. And he says, "Oh, you know, I
9 got a call from Fred Dicker." And I told him that
10 -- and I say, you know, I'm fine. It doesn't
11 register necessarily on my hard drive.

12 Q. Do you have any recollection of the
13 Superintendent coming back to you on additional
14 documents for the executive chamber?

15 A. No. That, I am certain about. No.

16 Q. And are you aware that the executive chamber
17 did at some point receive ground itineraries on
18 Senator Bruno's schedules?

19 A. I am now.

20 Q. Did the Superintendent ever discuss with you
21 those ground itineraries?

22 A. No.

23 Q. And did he ever discuss with you the
24 creation of documents reflecting what had happened

1 as part of those ground itineraries?

2 A. No.

3 Q. And, to your knowledge, have ground
4 itineraries ever been released as part of a FOIL
5 request?

6 A. To my knowledge, no. I wasn't even aware
7 that we were providing ground transportation to
8 anybody until probably sometime in May.

9 Q. Would you see a distinction between ground
10 itineraries versus the manifest information that
11 you had okayed to be released?

12 A. Generally speaking, no, because the ground
13 itineraries, as I understand them here -- and we
14 should narrow it because there's only one person
15 that ground itineraries deal with, and that is
16 Senator Joseph Bruno. That's what I have
17 discovered. And we don't provide him ground
18 transportation on a regular basis or even on an
19 irregular basis unconnected with an aviation
20 flight. For instance, when he wants to go home at
21 night when he's at the capital we don't take him
22 home. The only ground transportation, as I
23 understand it, I think that this was the case --
24 that it was provided to Senator Bruno was in

1 direct connection with an air flight. So, I
2 always see this as one continuous transaction.

3 I have also analogized it to a
4 connecting flight. You go to the hub and then you
5 take the next little thing. They are all one
6 continuous event. Now, they are interrelated for
7 two reasons in my opinion. And it would be
8 subject to FOIL for two reasons. The request,
9 whether it's granted or not by the executive
10 chamber -- and I think it's clear, hopefully --
11 the State Police doesn't determine whether or not
12 a flight is official business and justified. It's
13 the representation of an individual. I have
14 business to do. Therefore, I need a plane or
15 helicopter. Therefore, it is granted. The ground
16 portion, the ground leg is reflective of what was
17 supposedly represented in making the request for
18 transportation, so it's one continual transaction:
19 Flight, ground transportation, back to the
20 heliport and back up, one continual loop. So, the
21 underlying reason for compilation of this is -- I
22 think the Ethics Commission recently came out with
23 an opinion regarding FOIL and eligibility for this
24 would certainly be one and the same. There is

1 really nothing different between using aviation
2 resources or using ground resources. Maybe not
3 quite as expensive, but relatively expensive when
4 we are talking about having an investigator
5 driving someone around. Whether it's expensive or
6 not expensive it is using state resources.

7 There may be, however -- there could be
8 something contained in the ground itinerary, more
9 detail that maybe would be subject to redaction
10 that maybe wouldn't be contained in an aviation
11 record possibly.

12 Q. Why would you think that would be subject to
13 redaction?

14 A. Well, redaction, generally, I think the
15 redactive areas that would be in play here would
16 be personal privacy. So I think -- or probably
17 personal privacy. So, if somebody says on a
18 ground itinerary, "stopped to visit their child"
19 and there is an address or a location that could
20 jeopardize the privacy of the child, maybe that's
21 something that would be redacted.

22 Q. What about security issues?

23 A. Well, security -- I mean I wouldn't see
24 security as an issue if it's after the fact, first

1 of all. And I don't know that I would see a
2 security -- I wouldn't see a security issue after
3 the fact, okay. That's number one.

4 Q. So, you would see no issue with releasing
5 the ground itineraries?

6 A. Generally not. Again, if you are talking an
7 entire category, you would have to necessarily see
8 a particular document. From what I have seen of
9 most of these ground itineraries that I have
10 looked at, basically it says like: Sheraton
11 Hotel, city hall, this restaurant, another
12 building, another hotel. So, I guess with ground
13 itineraries you could be talking in terms of the
14 abstract -- the universe. Could a ground
15 itinerary contain something? Conceivably.

16 Q. You have seen the ground itineraries of
17 Senator Bruno that were in the press and provided
18 to the executive chamber?

19 A. Yeah. I think we provided them.

20 Q. When you say "we provided them" --

21 A. This agency, my agency.

22 Q. Had you seen them prior to the time they
23 were provided to the executive chamber?

24 A. No.

1 Q. Were you aware of their existence prior to
2 the time they were provided?

3 A. I had no idea we had them, no idea about
4 this entire process. I didn't know we drove the
5 guy around.

6 Q. So you had no knowledge that Senator Bruno
7 was being provided transportation?

8 A. No, not until very late this spring.
9 Actually, I found out for the first time from
10 Senator Bruno's office himself. That's when I
11 found out that we were driving him.

12 Q. And, when were you first aware of the
13 itineraries?

14 A. Subsequent to the press article which I
15 think was what, July 1st or June 30th.

16 Q. July 1st. So, the July 1st article in the
17 Times Union was the first time that you had become
18 aware that these documents exist?

19 A. Correct.

20 Q. I am going to show you what was previously
21 identified as Commission 1 through 5. I will just
22 give you a moment to look at those documents.

23 A. I'm familiar with them.

24 Q. Can you identify those documents for the

1 record.

2 A. These supposedly -- and, again, I have no
3 personal knowledge at all. But from speaking to
4 individuals in the State Police, I believe these
5 documents reflect documents that were sent by the
6 State Police to the executive chamber reflective
7 of ground itineraries or ground travel, whatever
8 you want to call them, with regards to Senator
9 Bruno and would be the documents subject to the
10 conversations between Bill Howard and the
11 Superintendent.

12 Q. That was concerning a FOIL request for
13 information that the chamber had received?

14 A. I don't know. I can't answer that.

15 Q. Do you see any concerns in releasing these
16 documents to the public?

17 A. No. I've looked through these extensively.
18 Again, the only thing that I would think is if
19 there was a location here that was, as I said, a
20 child, a daughter, a son of the traveler and it
21 had noted that there, that may be a privacy issue,
22 maybe. And I don't even know whether it would be.
23 I haven't given it a lot of thought.

24 Q. Let me read to you from the September 1st

1 interview of Superintendent Thomas Constantine and
2 share with him the same documents. We asked him
3 if there would be any situation where you would
4 provide these documents in your capacity as
5 Superintendent. And he said, "This is the type of
6 thing that you would have to meet personally with
7 the Governor trying to find out what this is all
8 about. The hair would go up on the back of your
9 neck and you would say, 'What is this about?' It
10 would be automatic to say that.

11 We also spoke with Superintendent
12 McMahon about those same documents and releasing
13 them to the public. And we asked him if there was
14 any circumstance under which he could conceive of
15 releasing the documents. And he said, "I believe
16 the only way is if it was a FOIL request and we
17 were, on review, ordered to do it after we
18 declined. And so, you know, if a court ordered us
19 to release it, that would be the only way."

20 Finally, we spoke with Superintendent
21 Bennett on the release of these same documents.
22 And he indicated, "We are not going to release
23 them. If Senator Bruno wanted to release them, we
24 would say, 'This is your itinerary, your

1 information. You release it.'"

2 Does that in any way impact on your
3 opinion?

4 A. Absolutely not. I think the last statement
5 is rather ridiculous. And I served as chief
6 counsel to all three of those individuals and have
7 the highest respect for all three of them, the
8 highest respect.

9 Q. Let me give you just a little bit more
10 information because we asked him why he would not
11 release these documents to the public in this
12 instance. And I am speaking of Superintendent
13 Bennett. He said, "Because it does jeopardize
14 security, you know. For instance, if I lay all
15 four of those out here and start coming up with a
16 pattern in his travel, certain locations
17 repeatedly, or all travel is done for example at
18 certain hours of the day, like every one of them
19 indicating they are arriving at the Downtown
20 Heliport, those are the types of things that, if I
21 were looking to cause harm to somebody, those are
22 the things I would like to know because of
23 concerns as to the arrival plans, things like
24 that."

1 Do you think those are legitimate
2 security concerns?

3 A. No, I don't.

4 Q. And, why is that?

5 A. Because -- read that back to me again and I
6 can comment on it in a little more detail.

7 MS. TOOHER: "Because it jeopardizes the
8 security, you know. For instance, if I lay all
9 four of these out here and start coming up with a
10 pattern in his travel, certain locations
11 repeatedly, or that all travel is done, for
12 example, at certain hours of the day like every
13 one of them indicating they are arriving at the
14 Downtown Heliport, those are the types of things
15 that, if I were looking to cause harm to somebody,
16 these are the types of things that I would like to
17 know because of concerns as to the arrival plans,
18 things like that."

19 A. I would disagree with that. In my personal
20 opinion there would not be an ability to
21 articulate a valid security concern with the
22 generic type of information. These are not
23 regular flights. There is not a complete pattern.
24 We have Senator Bruno, and he is quite often the

1 subject of press conferences. He may make
2 appearances across the state. We don't provide
3 security to Senator Bruno. We provide him merely
4 transportation. He is someone who is out in the
5 public giving press conferences. He's out and
6 about and he's not the type of individual that has
7 a position in government that we provide security.
8 I don't see this as jeopardizing security at all.

9 Q. But Senator Bruno has --

10 A. You could say the same thing about the
11 aviation records. Say the helicopter takes off
12 generally at 3:00, so you could argue maybe that
13 the aviation records -- I mean he has to travel to
14 the airport to take the flight.

15 Q. But Senator Bruno has received threats in
16 the past; is that correct?

17 A. I don't know that for a fact. I understand
18 that a number of years ago we did provide some
19 level of security because there was some -- I
20 think there was a fire at his Saratoga office.
21 And, I think at one point someone was arrested at
22 the Capitol during some demonstration. I don't
23 know that he has personally received threats to
24 his well-being. I'm not aware of any.

1 BY MR. TEITELBAUM:

2 Q. May I interrupt? I believe the what the
3 quotes are referring to is not whether security
4 was being provided or is being provided by the
5 State Police to anybody. I believe what the last
6 quote was referencing was the disclosure of a
7 travel pattern by a public official. So, the
8 question to you is: Does the disclosure of travel
9 patterns on the ground by a public official
10 implicate security issues in your mind?

11 A. I think based on these, no.

12 Q. Could there be? And, you are putting your
13 hands on what?

14 A. Based on these four or five documents that
15 represent specific trips, my answer would be no.

16 Q. At that time, do you know whether an
17 assessment was made -- let me withdraw that. Is
18 it fair to say that travel patterns reflected in
19 documents of the sort that are before you could
20 implicate security concerns?

21 A. Travel patterns --

22 Q. Of a public official as contained on
23 documents of the sort which are before you now,
24 could it implicate security concerns?

1 (Pause taken)

2 A. I guess it conceivably -- it would depend on
3 the particular document and it would depend on the
4 frequency of the travel.

5 Q. Would you have wanted to see these documents
6 before they were sent over to the executive
7 chamber?

8 A. Would I have wanted to see them? I never
9 mind seeing anything.

10 Q. That's not my question. My question is:
11 These specific kinds of documents, would you have
12 wanted to see them before they went out to the
13 executive chamber?

14 A. If somebody -- it's not generally my job to
15 make recommendations with regards to security. It
16 would be my job to determine whether or not under
17 the law we could legally withhold certain
18 information. So, I mean I certainly would want to
19 see them if somebody had a security concern, yes,
20 because I could assist them to -- you know, assist
21 them in articulating a legal reason one way or the
22 other. But I'm not the security officer for the
23 State Police. I'm not trying to get around your
24 question. I would expect people, if they had a

1 security issue -- or operational people -- to come
2 to me if they had a security question to see
3 whether their security concern is legally
4 justified.

5 Q. Would you have wanted somebody to review
6 those sorts of documents in State Police to assess
7 whether there was a security concern; whoever was
8 the person charged with the responsibility of
9 making those assessments in State Police before
10 they went out to the executive chamber?

11 A. It wouldn't be a bad idea for someone to
12 look at them, certainly.

13 Q. Would it not be inappropriate?

14 A. It would be inappropriate.

15 Q. From your perspective would it be necessary
16 to have that kind of policy in place?

17 A. I don't know that I can answer that. I
18 don't know that I could answer if it would be
19 necessary.

20 MR. TEITELBAUM: Sorry to interrupt.

21 BY MS. TOOHER:

22 Q. But, with your experience, in your
23 experience with the State police you had never
24 seen documents like this?

1 A. I had never seen any of those documents.

2 Q. Had you seen documents similar to this
3 before?

4 A. No.

5 Q. Are you aware of how these documents came
6 into being?

7 A. I am now. My understanding is this document
8 --

9 Q. Commission 5?

10 A. -- number 5, that was a document supplied
11 originally by Senator Bruno's office to,
12 presumably, someone in our New York City office.
13 That represents a trip of May 17th and May 18th.
14 So, this document I think was faxed by Senator
15 Bruno's office to the State Police.

16 Q. Do you know how it got from the State Police
17 to the executive chamber?

18 A. I believe that was faxed based on my
19 examination of the records and hearing the
20 individuals speak about this, I believe that
21 document was faxed. I believe it would have to be
22 because I don't believe we had it electronically.

23 Q. You know who faxed it?

24 A. No, I don't. And it could have been brought

1 down. It could have been physically.

2 Q. And the remainder of the documents?

3 A. The remainder of the documents I believe
4 were documents that were subsequently drawn up by
5 State Police personnel in New York City and sent
6 up to the Superintendent's office. And these, in
7 fact, were either electronically or physically
8 brought down to the second floor, the executive
9 chamber.

10 Q. And are these original documents or
11 documents constructed after the fact?

12 A. These are not -- they are not
13 contemporaneous documents. They were constructed
14 based on the recollections of investigators who
15 did the actual driving.

16 Q. And in your experience with the State Police
17 have you ever seen these types of documents
18 constructed after the fact before?

19 A. These types of documents, no, I haven't.
20 But I have never seen these types of documents
21 before.

22 Q. I believe you testified before the Senate
23 that these were normal documents. And they asked
24 you concerning these documents if these were

1 normal documents of the state Police.

2 A. I don't recollect saying these were "normal
3 documents." I really don't. I mean they are
4 State Police documents. I mean State Police
5 documents are not non-state police documents.
6 There has been an issue here with regard to
7 questions back and forth: Are these actual
8 documents? Well, once you create something it's a
9 document. I mean it's a record of the State
10 Police once it's created. Was it a
11 contemporaneous record, no. Is it a record --
12 it's a record at the moment it's created.

13 Q. So, at this juncture in time you would
14 consider these records of the State Police?

15 A. They are, once they are compiled. But the
16 second question would be: Do they purport to be,
17 you know -- are they fakes in a sense. Are they
18 -- what is the term of art when a painting
19 is duplicated, the term that painters use?

20 Q. A replica?

21 A. They are not phony documents in the sense
22 that they don't purport to be contemporaneous
23 documents. I don't know if that's clear. What I
24 am saying is once something is created it is,

1 indeed, a State Police record. Like it or not,
2 it's a record. It's a document.

3 Q. Once something is created by a member of the
4 State Police in their official capacity?

5 A. Correct.

6 Q. Is that what you are saying?

7 A. If there were a FOIL request now for these
8 documents you would have to honor it. You can't
9 say: Well, they don't exist. They are State
10 Police documents.

11 Q. And have there been any subsequent FOIL
12 requests for these documents?

13 A. Not that I know of. There may have been,
14 but I'm not sure.

15 Q. Who would be responsible for maintaining
16 these documents?

17 A. Well, these documents are not normally -- or
18 not normally maintained in the normal course of
19 business. And, as I think I testified in the
20 Senate, the itineraries dealing with ground
21 transportation of Senator Bruno were kept for a
22 number of years. And they generally were, either
23 the documents, the itineraries supplied by Bruno's
24 office or an e-mailed recitation of these

1 itineraries. And the individual in New York City,
2 Senior Investigator Kevin Smith who handled the
3 scheduling of these trips and these drivers in
4 2004 through, I think, the better part of 2006,
5 made a habit of retaining these documents in a
6 file.

7 Q. When you say "these documents" --

8 A. These types of ground itineraries.

9 Q. The original itineraries provided by Senator
10 Bruno's office?

11 A. Yes, or -- Let's step back a second. My
12 understanding is that when Senator Bruno would be
13 transported a ground itinerary at some point was
14 created. It was either, if time permitted, sent
15 by Senator Bruno's office to the Senior
16 Investigator or, if time didn't permit or if it
17 wasn't ready, it would be telephonically
18 communicated to the Senior Investigator. This is
19 what the Senator needs. This is the time of
20 pickup, this is the time of drop-off. And, then,
21 that would generally be reduced to an e-mail,
22 perhaps, and then sent to the investigator for
23 use. So there was a mix. Some of them were
24 Bruno-created and some of them were State

1 Police-created. And those, for the most part -- I
2 never saw if every one was, I believe -- because
3 they supplied them to you. There were a number of
4 these types of itineraries from the years 2004
5 through 2006. Subsequent to 2006, at some point
6 in the latter part of 2006, Senior Investigator
7 Kevin Smith was replaced by a Senior Investigator
8 Anthony Williams, and, there was also a change of
9 personnel in Majors. And these documents are no
10 longer retained, neither the ones sent by Senator
11 Bruno's office nor the ones that were created by
12 information from Senator Bruno's office, and they
13 were disposed of soon after the trip finished.

14 Q. When you had prior FOIL requests for the
15 aviation documents which you indicated happens on
16 a fairly regular basis --

17 A. Not necessarily a "fairly regular basis,"
18 but it has happened in the past, which is not
19 unusual.

20 Q. Have these itineraries ever been released as
21 part of those documents?

22 A. Not to my knowledge, but I don't know that
23 there were any FOIL requests relating to flights
24 of Senator Bruno that there was necessarily a

1 ground itinerary. I know we get requests -- have
2 gotten requests from time to time. Frankly,
3 generally, from what I recollect most of the
4 aviation FOIL requests would be directed at
5 flights taken by the Governor. I don't recall
6 specifically any FOIL request relating to aviation
7 records of Senator Bruno. I'm not saying it
8 didn't exist. It may have been all executive
9 travel. I'm just really not sure.

10 Q. Do you know if the aviation records that
11 were reflected by the chamber initially were
12 limited in time or scope?

13 A. I don't know because I didn't deal with it.
14 I would only be repeating hearsay to you because I
15 have heard.

16 Q. What is your understanding?

17 A. My understanding was that there were two
18 basic requests for aviation documents made by Bill
19 Howard to Acting Superintendent Felton. The first
20 was for a period of a couple of months, and then
21 the second was for the remaining couple of months.
22 So, I believe, as Acting Superintendent Felton may
23 have testified, it was almost from the first of
24 the year to the present. That is his

1 recollection, as I understand it; that there were
2 two requests for aviation records relating to the
3 Governor and Senator Bruno at a few months
4 interval in batches of a couple of months
5 separated maybe by a few weeks, not by a couple of
6 months.

7 Q. And the request for itineraries, do you know
8 if that was limited in time or scope?

9 A. My knowledge of the itinerary request,
10 basically, is reflected in the e-mails that you
11 have. I think there was, as memory serves me, a
12 request for this original trip May 17th. I think
13 that was sometime around May 25th or something
14 like that. I am going to have my notes with me if
15 you'd like me to check that out. And then, there
16 was a request for three trips sometime later. One
17 of the trips is duplicative of a trip that was
18 already provided. And, then, I think at the very
19 beginning of July there is a fourth. I think
20 there are basically three requests for ground
21 information, and then there is one request for a
22 trip that is supposed to be the next day or
23 something like that. That is in reference to a
24 request by acting Superintendent Felton as to

1 whether or not it was appropriate to continue with
2 this travel.

3 Q. Now, would that change the release of
4 information if it were being given in advance of a
5 trip? Would it raise security issues if the
6 information was released in advance of a trip?

7 A. It could possibly. It would depend on how
8 soon in advance, how much in advance it was. It
9 would depend, once again, on what was involved,
10 what was contained in the itinerary.

11 Q. Given these itineraries, if we look at the
12 may 17th --

13 A. You see, you would have to take a look at
14 the big picture here. Obviously, any individual
15 -- if somebody wanted information with regards to
16 anybody, yeah. If there is somebody out to get
17 that person, any information, yes. But if you
18 were challenged with regard to security
19 information, if, say Senator Bruno himself, his
20 office -- the Governor, for instance, we provide
21 security 24/7 to the Governor. My understanding
22 is that his press office releases every day his
23 itinerary: The Governor is going to appear in
24 Battery Park in the City.

1 Senator Bruno's office, press office,
2 may release an itinerary. These are public
3 officials. They have a very public presence so
4 it's not a simple question, does it involve -- the
5 fact that the Senator is going to appear at city
6 hall, if that is the subject of a press release,
7 there is no security interest.

8 Q. The individuals' appearances in and of
9 themselves, I would agree with you that if they
10 are public appearances certainly would be known to
11 the general public. But if they are appearances
12 that involve his personal schedule --

13 A. Again, that's why I said it's not an easy
14 question. You would have to take a look at it.
15 You would have to look at factors. After the
16 fact, certainly, that he had dinner at an Italian
17 restaurant, well, they don't give out addresses.
18 Sometimes they give the location. This one is
19 located at Russo's Restaurant. The fact that the
20 Senator had dinner at Russo's Restaurant on May
21 24th '07, I see no security issue at all. If this
22 existed. And it's a week from now and the Senator
23 is going to have dinner at Russo's Restaurant at
24 7:00, possibly it could. But, then, you have to

1 factor in, okay, what is the level of security,
2 what is the risk.

3 Q. Is there any reason that you can think of
4 that the State Police would be providing regular
5 updates of the Senator's location to the executive
6 chamber?

7 A. No -- no.

8 Q. So, if they were providing updates of the
9 Senator's location during the course of his trip
10 would there be a State Police reason to do that?

11 A. Updates during the trip itself? In other
12 words, like he's down there in the City one day
13 and --

14 Q. Correct.

15 A. In other words, it looks like he's down in
16 the City one day, and it would be like
17 contemporaneously he is here now at two o'clock,
18 and he's going here, I would see no reason for
19 that whatsoever.

20 Q. What about a day in advance? If you are
21 providing this information again to the executive
22 chamber is there a State Police basis for
23 providing that information to the executive
24 chamber?

1 A. Absolutely, there could be. If the
2 executive chamber asks for it, that is a State
3 Police basis. Now, there is a need for the State
4 Police to do it, no. But if the emanation is from
5 the executive chamber then it could be. There is
6 nothing -- no, there's nothing that should be
7 speculative about this information to the
8 executive chamber. We are part of the Executive
9 Department, so I would say that if the executive
10 chamber wanted to know certain information with
11 regards to an itinerary that was in our
12 possession, I see no basis to deny that
13 whatsoever, especially under the circumstances
14 where the ground itinerary is reflective of the
15 aviation. Again, we are talking only in terms of
16 when ground itineraries connected with authorized
17 State Police flights. Really, we are not
18 discussing ground itineraries of Senator Bruno on
19 a day to day basis. We are only discussing
20 itineraries of Senator Bruno when he is in a State
21 Police car with a State police driver. So, there
22 is a big distinction as to day-to-day whereabouts
23 or where Senator Bruno is. We don't drive him
24 generally. For instance, if the "second floor,"

1 as a check, wanted to say, hey, we got a request.
2 This individuals says: I need the helicopter for
3 legislative purposes, we would like to check what
4 does he say he's doing the next day. Is the wool
5 being pulled over our eyes or is the ground
6 itinerary supportive. Because if there are FOIL
7 requests and if there are accusations that there
8 is a misuse of state resources, the executive who
9 is indeed the entity approving it could also be
10 called on the carpet as well as the person who may
11 be abusing it. And I'm not saying anybody abused
12 anything here, but I think the analogy may be that
13 I gave that you brought up the Senate testimony or
14 that if you loan my teenaged son a car and he
15 says: I am going to do this, that, or the other
16 thing, and I say: May I check to see if this was
17 the case. It's like a cross-check or something.
18 It's not like the executive chamber is asking for
19 details of a criminal investigation or
20 surveillance. The executive chamber can't get on
21 the back of a former Superintendent head. If they
22 say: We understand you are doing an investigation
23 against a certain individual. We would like to
24 see details. This is approved. This is approval

1 of state resources, flights, and drivers. The
2 FOIL requests that you raise, some of them are
3 valid, some of them. And the quotations from some
4 of the former Superintendents state what we are
5 talking about here. This was not a FOIL request
6 of the State Police. As far as I'm concerned, the
7 executive chamber in my legal opinion is entitled
8 to any of this information. What they do with it
9 or whether they release it under FOIL or whether
10 they have a responsibility to look at some of
11 this, it is the responsibility of the person who
12 is releasing it under FOIL to make these
13 determinations. So, in answer so some of your
14 questions, Mr. Teitelbaum, if we were involved in
15 a FOIL request and my agency was the recipient of
16 that request, I would have a greater interest in
17 being involved in the release of that information.
18 But the transfer of information within government
19 entities is somewhat different.

20 Q. Even if you are aware it is being released
21 to the media?

22 A. Even if you are aware it is being released
23 to the media, if there is an issue that jumps out
24 you may want to advise that, hey, we think there

1 could be a problem here. Certainly, I think we
2 should be able to render an opinion. I'm not
3 saying that at all. But we don't have control
4 over that. We can't refuse within the Executive
5 Department to say: You are not allowed to see
6 this record.

7 MR. TEITELBAUM: May I interrupt for a
8 second?

9 MS. TOOHER: Sure.

10 BY MR. TEITELBAUM:

11 Q. When were you asked to opine on the
12 FOILability of documents for the executive
13 chamber?

14 A. I can only speculate.

15 Q. What was your understanding?

16 A. My understanding is that I think
17 Superintendent Felton wanted to see if it's
18 something that we did so that there was not an
19 inconsistency in policy. In other words, if we
20 were being -- if somebody had come to us and said
21 no -- we said no, you don't get these records, we
22 would have a problem, I think he just wanted to
23 make sure if the executive chamber is working on a
24 FOIL request that they would know if we said, hey,

1 we don't normally release these documents, they
2 should know that. Are they controlled by that,
3 absolutely not.

4 Q. Is that your testimony that --

5 A. That is my speculation.

6 Q. Under your speculation if there were a
7 request by the executive chamber to release -- for
8 the State police to provide documents to be
9 released to the media that the State Police would
10 not directly itself release to the media, the
11 State Police would inform the executive chamber is
12 doing something inconsistent with what the State
13 Police itself would do?

14 A. We probably should, yes, just so there is
15 consistency. But it would be their ultimate call.

16 Q. Bear with me one second. (Pause) There is a
17 question on page 62 of Superintendent Felton's
18 testimony that he gave to the Attorney General --
19 there was a question asked by Linda Lacewell on
20 line 12, "You still were careful to go to Mr.
21 Valle and ask him: Should we be sending this?"
22 This is referencing the materials that were shown
23 to you.

24 A. Right. That's not what he said to me. He

1 didn't say to me, "Should we be sending this?"

2 Q. That's Lacewell's words. And Felton's
3 answer is "Yep." (Y-e-p)

4 Are you saying that you feel that his
5 answering Ms. Lacewell's question in the
6 affirmative indicates to you that what he was
7 doing when he went to you was asking whether
8 releasing these documents is simply consistent
9 with past procedures of the State Police, or was
10 he asking you: Advise me as to whether we should
11 be releasing this to the executive chamber.

12 A. I can answer that unequivocally. I think
13 there is no issue at all whether we should be
14 giving this to the executive chamber. I think the
15 question in my mind -- I can't speak for him --
16 was phrased that if the executive chamber releases
17 this, I think, clearly, I interpreted the question
18 if the executive chamber releases it, is this
19 something that would be inconsistent with our
20 policies. And I think, quite frankly, this was
21 the thinking. Again, I don't want to speak for
22 him. It's unfair, especially to speak for his
23 thought process. But if I said no, we have a
24 history that we don't release these, he would

1 probably say to Bill Howard, "You know, Bill, we
2 don't generally release these." And if Bill
3 Howard said: Let me take a look at them, I think
4 he would have probably sent them and I think he
5 should have sent them to Bill Howard.

6 Q. I want to probe your perception a little
7 further. On pages 29 and 30 of Superintendent
8 Felton's testimony starting on line 24 page 29,
9 Lacewell asks, "Right. And was it your idea to
10 speak to Mr. Valle about it or did Mr. Howard
11 suggest it?"

12 Now, Felton replies, "No. I spoke to Mr.
13 Valle about it. He is my counsel. He's not Mr.
14 Howard's counsel."

15 Lacewell: "All right. And what did you
16 ask Mr. Valle?"

17 Felton: "If it was something that we
18 would have to give up under the FOIL, the FOIL
19 request."

20 Lacewell: "Okay. And what was your
21 thinking in answering that question?"

22 Felton: "To make sure we were on legal
23 ground to give the documentation up."

24 Now, given what I have just read to you,

1 isn't it fair to say that Felton, as he testified,
2 came to you to solicit your advice as to whether
3 the documentation had to be given up to the
4 executive chamber?

5 A. No.

6 Q. You don't read it this way?

7 A. No, I don't. And I will say I can't speak
8 to that. I did read the Attorney General's
9 transcripts. There were a lot of errors in my
10 opinion in that there was a lot of attribution and
11 stuff that was inappropriate. And I'm not saying
12 that was wrong.

13 Q. You are not saying there are errors in the
14 transcription?

15 A. No, I'm not saying there is an error in the
16 transcription. There is a lot of colloquialisms
17 used. No, there is no question of -- he knows
18 that the executive chamber approves these flights;
19 that at least part of these records are maintained
20 by the executive chamber and have them at any
21 point. The only record that the executive chamber
22 doesn't have would be the actual trip tickets,
23 that actual manifest itself. Because, as I said
24 earlier, the request is an executive chamber

1 record. There is a letter that goes back to the
2 executive chamber that I think they keep a copy.
3 And there is the actual manifest itself which they
4 don't maintain. But I did subsequently find out
5 that aviation records on a monthly basis have been
6 transmitted to the executive chamber since
7 approximately the year 2000. So, they, in
8 essence, unbeknownst to them, or at least
9 unbeknownst to Bill Howard, had these very records
10 or a good part of these records for a number of
11 years, probably six or seven years. Remember, we
12 provide -- this is our helicopter. It's the
13 executive chamber that controls the use and
14 approval of these flights for non-state police
15 purposes. We just happen to fly the aircraft.
16 It's their game; it's the executive chamber's
17 game. If the executive chamber decided that Bruno
18 can't fly anymore, that's it. He doesn't fly
19 anymore. So, these are records -- they have one
20 foot in the executive chamber and they have one
21 foot in State Police. They aren't wholly State
22 Police records. They emanate -- they come to us
23 originally from the executive chamber. They are
24 mutual records because of these flights. These

1 aren't criminal investigation records that the
2 executive chamber has no involvement in. They are
3 an actual party to these records. Their names and
4 signatures appear on some of these very records.

5 Q. I just want to confirm something that
6 puzzles me. Ms. Toohar read to you these
7 quotations from three separate chief executives of
8 the State Police spanning, I think, more than
9 thirty years.

10 A. Twenty.

11 Q. Twenty years. Would you agree with me that
12 those quotations indicate a consistency in that
13 these superintendents would not have released the
14 materials that we are questioning you about?
15 Would you agree with that, from the quotes that
16 you got?

17 A. I don't recollect exactly what each one of
18 them said, but I think there is a difference
19 between release to the executive chamber and
20 release through FOIL. I think it is fair to say
21 that there can be legitimate FOIL questions with
22 regards to these documents, and that may involve
23 security. I think that has been put into play,
24 and I think under the circumstances there could

1 be, if released in advance, less likely if it's an
2 after-the-fact trip. But it is arguable that
3 there could be a security concern but not
4 vis-a-vis the executive chamber.

5 Q. I want you to assume with me that these
6 three Superintendents, the past three
7 Superintendents took the position that it would be
8 inappropriate to release these materials to
9 anybody. And one of them, I want you to assume,
10 gave testimony that if he were requested by the
11 executive chamber he would go to the Governor
12 about it. Now, assume that. Based on that
13 assumption does that give you pause to rethink
14 your position about these materials being given to
15 the executive chamber?

16 A. No, absolutely not. Absolutely not. But on
17 the same token, if a Superintendent -- and, again,
18 all three of those individuals are fine
19 individuals who I maintain still a very close
20 contact with them. One of them was at my
21 daughter's wedding two months ago. They were all
22 invited. Two came; two were invited. Two
23 couldn't make it. So, they are all excellent
24 individuals.

1 Q. If one of those individuals had a concern
2 that maybe this was being misused would it be
3 legitimate for that superintendent to go to the
4 Governor if he wants? Absolutely. I'm not saying
5 that that would be wrong. But I'm also saying
6 that the superintendent, any superintendent, would
7 have a presumption of regularity; that if he is
8 being asked to give records that reflect the use
9 of state resources, of State Police resources --
10 especially if that superintendent is under the
11 impression that, hey, it's a FOIL request for
12 these aviation flights again; the press is out
13 there trying to see whether Senator Bruno is
14 misusing the aircraft it's entirely -- entirely
15 reasonable to, upon request, supply information
16 relating to those very same flights. There was no
17 ground itinerary without a flight and we have
18 established that. So, does the executive chamber
19 have a right to this? Absolutely not.

20 If any of the superintendents called me
21 into the office and said, hey, I have got a
22 request for ground itineraries. Do I have to give
23 them over to them, my answer would be yeah, you
24 have to give them to the executive chamber. What

1 are you going to tell the executive chamber; that
2 we're not going to account for our activities? We
3 are under an obligation to. To the extent if they
4 smell something fishy -- and, again, depending on
5 the person who is calling, if the Superintendent
6 got a call from a person in the Governor's office
7 totally unrelated to the operations aspect and not
8 basically his supervisor that may raise some
9 issues. I'm not saying that any Superintendent --
10 it is untoward depending on the circumstances,
11 depending on where the call comes from, who the
12 call comes from, and in what context the call
13 comes from to have antennae go up, or hair on the
14 back of your head and say, Gee, what's going on.
15 But if a Superintendent -- if it's not coming from
16 a political "operative" of the Governor or
17 campaign chairman, if it's coming from an
18 operations person that this particular
19 Superintendent has worked for a number of years,
20 has a direct operational liaison with the State
21 Police, it's not unreasonable, if I were sitting
22 in that office, to feel that this is a legitimate
23 request. There isn't any sort of hanky-panky up
24 here. And, again, it is information based on --

1 it's either actual documents or information based
2 on documents that were supplied by the individual
3 himself. It was not gathered anyplace else.
4 There is a very valid question, sir, as to whether
5 Mr. Bruno should have a State Police taxicab
6 driver. Nobody gets this. We don't provide
7 security. So, there could be an issue. We were
8 told, from my understanding in the Pataki
9 administration: Don't give the Senator two
10 drivers anymore. That is excessive. We want to
11 cut down to one. There is ultimate control over
12 the use of State Police resources. And one could
13 very well argue: Why does this individual, when
14 he goes down to New York City get a fully trained
15 police officer/detective to literally drive him
16 around from stop to stop and wait outside a
17 restaurant for two hours while he is having dinner
18 and having a meeting? Why isn't there a driver
19 that the Senate has, or a car down there?

20 BY MR. TEITELBAUM:

21 Q. With regards to fishiness of the request, if
22 a request was made not by Bill Howard but by
23 Darren Dopp, would that be fishy to you?

24 A. I don't know because, again, I don't know

1 Darren Dopp.

2 Q. You know what he does --

3 A. I didn't know what he does.

4 Q. -- that he became communications director?

5 A. I don't know that "communications" --

6 because, again, communications sort of has one

7 foot in FOIL, too. There was an incident. I

8 wasn't aware of it at the time. But probably the

9 individual who testified before me, our press

10 officer -- the two press offices were saying:

11 Give us the documents, and what these are are

12 aviation documents, not these -- or maybe they are

13 similar aviation documents, or the very same

14 aviation documents in March when we had gotten a

15 request for aviation documents, the press officer

16 said, hey, we have to file a FOIL request. The

17 reporter said "It's nonsense. Spitzer

18 administration; open government. I am going to

19 follow it up with something like that. And our

20 press officer called his counterpart in the

21 Governor's Office and was told: Okay, well, you

22 don't have to give them out if you don't want.

23 Just follow the FOIL but send them to us. I don't

24 know what. They just said: Send them to us. And

1 I think he, in fact, did. I think these are very
2 much because of the involvement of the executive
3 chamber and the authorization of these flights.
4 There is an absolute right for the Governor's
5 office to obtain this information. I don't think
6 it's reasonable to believe that our Governor or
7 the people that work for him are going to make
8 misuse of information. And I would question --
9 what I did say to the Senate is: How do you smear
10 somebody when you are merely reporting on what
11 they actually did? A person who has come to us
12 and said: Would you supply a driver for me on
13 this particular day. I don't see how. So, the
14 information itself should be pure, should be open
15 to some extent, or to a large extent, or to a
16 complete extent to public accountability;
17 certainly, executive accountability. I
18 strenuously feel that way, and I think that
19 Preston Felton, having a long history of dealing
20 with Bill Howard who, by all accounts and from my
21 experience Bill Howard is a top-flight operations
22 person. And there shouldn't be the paranoia or
23 suspicion that there is going to be some sort of
24 hanky-panky with these actual records of just what

1 our people did. I think the executive chamber has
2 every right to say: How were you utilizing your
3 resources? Because what if the executive chamber
4 was asked: Well, why is there a State Police
5 driver driving this individual at seventy dollars
6 an hour? You are not providing security; you are
7 sitting outside for two or three hours. Why
8 doesn't he hail a cab.

9 BY MS. TOOHER:

10 Q. The State police was asked other information
11 concerning Senator Bruno concerning his security
12 threat assessment of Senator Bruno; is that
13 correct?

14 A. I think what you are referring to is when --

15 Q. After the article came out.

16 A. I think what you are referring to is was a
17 security assessment ever done on Senator Bruno.

18 Q. Correct.

19 A. Yes, correct.

20 Q. And the release of information concerning
21 threat assessments, is that information considered
22 confidential?

23 A. Yes, absolutely. Let's lean back a bit.

24 I've been leaning forward for awhile. Absolutely.

1 Threat assessment information would generally be
2 almost entirely confidential.

3 Q. And the determination as to whether or not a
4 threat assessment had been done, would that be
5 considered confidential?

6 A. Well, again, let's say confidential to whom?

7 Q. To the media.

8 A. Whether a threat assessment was done, no.
9 It wouldn't be the case. We would most likely say
10 yes, a threat assessment was done and there was a
11 need for security. I think it was the Ethics
12 Commission that started the whole entire threat
13 assessments in the first place. We never did
14 them. They are not an operation need of the State
15 Police. They have only done them on a handful of
16 occasions. The first one was done more or less at
17 the encouragement of your former Ethics Commission
18 Persona with Comptroller Hevesi. He was asked to
19 go to I think a State agency and get a threat
20 assessment. And we did it with regard to his
21 wife, I believe.

22 A second one was done with regard to
23 former Governor Pataki when he had asked that
24 there be an extension of security for like 30 days

1 or so after he left office. And he thought it was
2 a good idea to get a threat assessment, and he
3 asked us to do one and we did.

4 Comptroller DiNapoli asked for one as
5 soon as he took office. And, then with Senator
6 Bruno, we attempted to do one because we were more
7 or less, I think, asked by the executive chamber.
8 But he declined, so we didn't do it.

9 Q. So, you would be willing to discuss a threat
10 assessment with the media?

11 A. The fact that one was done. So, for
12 instance, say the former Governor Pataki case, and
13 the media said: Why is he getting some reduced
14 security two weeks after he has left office? I
15 think we would say -- and it may not be a FOIL
16 request; it just may be a public information
17 request that we do a threat assessment. And based
18 on the threat assessment we think there is an
19 entitlement to a reduced level of security for 30
20 days.

21 Q. But you would not be willing to discuss the
22 nature of the threat assessment?

23 A. We wouldn't go into the details. It
24 involved looking at the person's house,

1 vulnerability, his car, license plate, stuff like
2 that. It could be very personal, confidential
3 information.

4 Q. And, so, looking to prior incidents
5 concerning someone's personal safety in the
6 context of a threat assessment, would that be
7 discussed with the media?

8 A. Prior incidents -- it's possible. I mean,
9 you know, we wouldn't necessarily give details,
10 but we would possibly say that this individual has
11 been subjected to a number of threats, you know,
12 over the years, or the person was a target of a
13 number of threatening phone calls or arrests. Or
14 we would maybe in general terms discuss it,
15 because I think there is a public right to know if
16 you are providing security to an individual; what
17 is the basis for it. Why is this person getting
18 security all of a sudden. But we may not give the
19 details. I mean we have on a regular basis from
20 time to time provided security to elected
21 officials for a period of time when they have been
22 the target of some particular event.

23 Q. So, during actual incident?

24 A. Right. But we don't do a threat assessment.

1 Basically, it's a reaction to a particular event.
2 Threat assessments in our view aren't particularly
3 valuable. We are not a fan of them.

4 BY MS. SULLIVAN:

5 Q. You mentioned earlier you disagreed with
6 portions of the Attorney General's report. In
7 reading the Attorney General's report they say
8 "the State Police's unprecedented recordkeeping"
9 -- and you disagree with that?

10 A. Absolutely. It was not "unprecedented." We
11 keep the itineraries for years.

12 Q. You mentioned Kevin Smith routinely kept his
13 records in either the original form received by
14 Senator Bruno's office or in a document.

15 A. Right, in whatever form we had --

16 Q. Created?

17 A. Right.

18 Q. Did the Attorney General have those records
19 when they issued the report?

20 A. No. We never had a formal turnover of
21 documents. They wrapped up their investigation
22 before we were able to provide them officially
23 with a single document. And I would be happy to
24 elaborate, if you are interested, on the points in

1 the Attorney General's report that I think are
2 incorrect.

3 BY MR. TEITELBAUM:

4 Q. Did you ever provide the documentation to
5 the Attorney General?

6 A. No. The only documentation that the
7 Attorney General got which I believe I submitted
8 to you initially about a month ago at least, at
9 our first meeting, that was a very informal
10 transfer of documents that were being actually
11 carried by witnesses at their testimony. That was
12 a very, very rushed investigation. The
13 Superintendent was speaking to them within
14 twenty-four hours of their call. Major Kopy was
15 actually asked like noon of one day whether he
16 could appear at 3:00. This was like one of the
17 Attorney General's investigation, so they just
18 sort grabbed stuff. Like I just mentioned, I
19 think there is probably about five fundamental
20 either incorrect statements in the Attorney
21 General's report or it's really misleading. If
22 you like, I would be happy to comment.

23 Q. I think we have gotten a submission from the
24 Superintendent in connection with that.

1 A. Okay, I wasn't there. Okay.

2 MS. TOOHER: I think that's it.

3 BY MR. TEITELBAUM:

4 Q. Had you had conversations about this matter
5 with the executive chamber personally after the
6 July 1st article hit?

7 A. Conversations about this matter?

8 Q. Yes.

9 A. Yeah, from time to time.

10 Q. With whom?

11 A. David Nocenti, just to advise him that these
12 investigations are going on. I have never
13 discussed my testimony or anybody's testimony.

14 Q. Are you aware either firsthand or from what
15 you have been told or read that Superintendent
16 Felton expressed to members of the executive
17 chamber distress at what happened to the documents
18 that were submitted to the executive chamber by
19 him?

20 A. Yes.

21 Q. Can you elaborate on that?

22 A. I think he testified -- I know he testified
23 that he had a conversation, I guess subsequently.
24 He was annoyed and -- angry probably is a better

1 word -- that these documents -- when I say "these
2 documents" I mean the documents in (Exhibits) 1
3 through 5, the documents that were the State
4 Police documents as opposed to the Bruno
5 documents. The itineraries that were put together
6 based on the information or the recollection of
7 the investigators, which is --

8 MS. TOOHER: 1, 2, 3, and 4.

9 MR. TEITELBAUM: Okay.

10 INTERVIEWEE: I think he was extremely
11 annoyed that these documents appeared in the Times
12 Union article as documents that made it appear as
13 though they were -- and this is a gray area --
14 official State Police documents. When you create
15 a document --

16 BY MR. TEITELBAUM:

17 Q. I'm just asking you now about what you know
18 about the Superintendent's reaction after the July
19 1st article and whether he expressed himself to
20 members of the executive chamber about the July
21 1st article.

22 A. The only individual that I am aware of to
23 whom he expressed dismay or annoyance or anger
24 would be Bill Howard. I don't know if he spoke to

1 anybody else in the executive chamber. I was not
2 present when he spoke with Bill Howard. But the
3 gist of it was that these documents were not
4 supposed to be turned over as FOIL documents.
5 These were just information for your purposes and
6 not just interchangeable with these actual
7 itineraries. These were synopses. They were
8 supposed to be synopses of what our people did,
9 not purport to be what people did.

10 Q. Did you learn or hear of Bill Howard's
11 response to that?

12 A. No. I seem to recollect Preston Felton
13 saying he didn't even listen or something. He was
14 so angry that he was more or less like talking and
15 not listening. But he would have to answer that
16 question.

17 Q. Other than David Nocenti, have you spoken to
18 anyone else in the executive chamber concerning
19 this matter?

20 A. I spoke to Peter Pope.

21 Q. What was the conversation with Peter Pope?

22 A. Just, again, did I have an investigation
23 with the D.A. I was told to cooperate. I was told
24 to bring papers. In fact, I was told to bring --

1 I think I was told to bring initial paperwork to
2 you and to cooperate. And that's when I think I
3 came down with my initial package of paperwork. I
4 was told to cooperate with the D.A. Again, we are
5 part of an Executive Department and they have a
6 right, especially if I say I got a subpoena from
7 the Senate or something, I would say, okay, we are
8 an executive agency. There is a separation here.
9 I am just letting you know. They asked me to
10 bring the documents that I had to you and to the
11 District Attorney. And, that's when I came down
12 here to bring the documents, I think, what, the
13 end of July, when we first met.

14 Q. Another question. I think in the New York
15 State Police Administrative Manual it says in 8.6
16 which is NYCRR 483.6: All requests to inspect a
17 company's records shall be made in writing and
18 directed to the Records Access Officer at Division
19 Headquarters. All requests to inspect or copy a
20 record shall be permitted for FOIL requests. Is
21 there anything in the provisions that I just read
22 to you that indicates to you it is not applicable
23 to a request by the executive chamber?

24 A. Sure. I answered your oral request for

1 documents. You mean --

2 Q. I mean in this provision as you read it.

3 A. No, absolutely not. It has no applicability
4 to the executive chamber.

5 Q. Why is that?

6 A. It's a governmental entity. We don't follow
7 that at all with regards to any governmental
8 entity. It's like if you ask me for documents,
9 your agency, I would provide them. I would
10 provide them on a telephone call as I did last
11 night. We don't require a FOIL request or
12 something in writing to provide documents to
13 another agency, certainly the least of which would
14 be the executive chamber which, again, we are part
15 of. We are a division within the Executive
16 Department. We are part of the Executive
17 Department, and that's why I categorically --
18 categorically state that there was an absolute
19 right to this information by the Executive
20 Department. Now, if anybody in the Executive
21 Department abused that -- I have no opinion, as I
22 have no knowledge as to whether or not there was a
23 legitimate need for this information or not. I
24 have no knowledge whether there was a FOIL request

1 or not, they had it, they didn't have it or they
2 dreamt about it one night and woke up in the
3 morning and forgot it was a dream. I have no
4 idea. The question is simply: Is this
5 information that the executive chamber is entitled
6 to. And I would say unequivocally yes because,
7 number one, the fact is there is an entitlement
8 generally to know what are the State police doing
9 with our resources. But, number two, because of
10 the significant interest and the significant
11 involvement that the executive chamber has in the
12 authorization of flights and driving connected to
13 those flights, they have the right to check on
14 that information, period.

15 Q. Would your answer be the same if you knew
16 the reason the documents were being requested was
17 to furnish it to Mr. Odatto for publication? I'm
18 not saying that you did know.

19 A. No, I didn't know it. I had not idea.

20 Q. But if you had known it, would what you just
21 said change as to the legitimacy of the request?

22 A. I guess your question is: Is it
23 inappropriate for a governmental entity to
24 disclose information to the public or to the media

1 that would normally be FOILable to the media and
2 that they have a right to come into possession of?
3 I don't know. I can't answer that. Would they
4 have violated a law, ethical question?

5 Q. I'm not asking that.

6 A. Then, was it right or wrong?

7 Q. (By Mr. Teitelbaum) You said it was a
8 perfectly legitimate request on their part since
9 they have control over the allocation of aircraft
10 to state officials, so they have a right, as I
11 understand your testimony, to the information that
12 was provided by the State Police?

13 A. Correct. I agree with that.

14 Q. But if you knew that, in fact, that the
15 information was being obtained by the executive
16 chamber for purposes of assisting a reporter in
17 writing an article, would your answer change as to
18 the legitimacy of the purpose?

19 A. I guess it would depend on were they
20 responding to a request by Mr. Odatto, were they
21 feeding it to Mr. Odatto. I guess maybe my answer
22 would change depending on that. If they had an
23 oral request and they wanted to honor that, then
24 other than that, I don't know that I would see

1 anything inherently wrong if it is based on an
2 inquiry from the media. Does it become a little
3 greyer when you are generating the information
4 with no media request? Well, then, I guess maybe
5 it's more political in nature.

6 Q. Did it concern you or, if you know, did it
7 concern the Superintendent that he was not told,
8 at least as he reports it and as you report it,
9 that this was going to be furnished to a news
10 reporter, the information that was being gathered?

11 A. I'm sorry. Would you repeat it?

12 Q. Would your view change -- withdrawn. Does
13 it concern you that when the request was made for
14 documentation it was not disclosed, at least
15 according to the Superintendent, and according to
16 yourself, that the reason the documents were being
17 requested was to furnish them to a news reporter?

18 A. I think, yes.

19 Q. You were not told, as you say it; right?

20 A. Look, I would be extremely upset if I was
21 misled. I don't know that I would necessarily
22 have to be told. I don't know necessarily that I
23 would always ask. If somebody said: We have a
24 FOIL request, can you give us these records and,

1 in fact, it was not a FOIL request, I would be
2 quite upset because I expect people to deal with
3 me the way I deal with them, open and honestly and
4 not pull any punches.

5 Q. Do you know now if there was a FOIL request?
6 Have you learned that since?

7 A. It would appear that perhaps there wasn't.
8 I read the Attorney General's report. I read the
9 District Attorney's report. I just don't know
10 what they had. I really don't know. And I think
11 from our perspective it's not necessarily
12 material. I think Preston Felton was acting in
13 response to a legitimate request. And I think he
14 has also made it clear that he wasn't even sure
15 that these were subject to FOIL; that this maybe
16 had something to do with the FOIL request
17 regarding the aviation records that there was
18 scrutiny now with aviation records and Bill Howard
19 was calling for this as backup to put together
20 with the aviation record. Obviously, I can't
21 testify or speak for him. But I think there is --
22 I think when you do speak to him you may see that
23 there is an issue.

24 BY MS. TOOHER:

1 Q. That these records were created as an effort
2 to clarify aviation records?

3 A. That these records were furnished in
4 connection with the aviation records. As to
5 whether or not they were just needed to help
6 supplement the aviation records, clarify as to
7 aviation records, I think he will say -- and,
8 again, it's dangerous to speak for somebody --
9 that it was not clear. And he wasn't continuously
10 told: I need this for FOIL, this for FOIL. The
11 name "FOIL" didn't continually appear. His
12 assumption was because there were aviation records
13 that were clearly the subject of a FOIL request,
14 these particular ground itineraries were being
15 requested in conjunction with those aviation
16 records but not necessarily for release in and of
17 themselves, or not necessarily that these ground
18 itineraries were, in fact, the subject of a FOIL
19 request. I hope that's clear.

20 MR. TEITELBAUM: I understand.

21 INTERVIEWEE: It's related, again, the
22 one transaction.

23 MR. TEITELBAUM: The only thing
24 concerning this interview, we are going to be

1 getting additional documents from others, so we
2 are hopeful that we don't have to call you back.
3 But we just want to alert you, depending on what
4 the documents show.

5 INTERVIEWEE: I hope I have been helpful
6 to you.

7 MR. TEITELBAUM: And we very much
8 appreciate it.

9 MS. TOOHER: Thank you.

10 (The interview was concluded.)

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