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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

Friday, August 24, 2007
1:00 p.m.

STENOGRAPHIC RECORD of an Investigative
Interview under oath conducted on this
date pursuant to notice.

INTERVIEWEE: THOMAS A. CONSTANTINE
Superintendent, NY State Police (Retired)
Box 9051, Niskayuna Station
Niskayuna, New York 12309-0051

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

PRESENT: H. J. CAMPBELL
ROBERT SHEA
(Investigators, NYS Ethics Commission)

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

1 P R O C E E D I N G S

2 MS. TOOHER: Mr. Constantine, you know
3 the reason we are here today and the basic subject
4 matter I would like to speak to you about, that we
5 will go on the record and speak to you about a few
6 minutes. I don't think the Attorney General held
7 you for very long when he spoke to you?

8 MR. CONSTANTINE: Not a long time, no.

9 MS. TOOHER: I don't think we will
10 either.

11 T H O M A S A . C O N S T A N T I N E,
12 called as a witness before the Commission, and
13 being duly sworn by the notary public, was
14 examined and testified as follows:

15 THE WITNESS: I do swear.

16 EXAMINATION BY MS. TOOHER:

17 Q. Would you state your full name for the
18 record, please.

19 A. Thomas A. Constantine.

20 Q. Are you employed at this time?

21 A. Yes, I am.

22 Q. Where are you employed?

23 A. I am a Public Service Professor at the State
24 University College at Albany. And I was recently

1 appointed to the Senior Advisory Group for the
2 U.S. Director of National Intelligence. So, I
3 will be, I guess, spending frequent time down in
4 Washington D.C. also. But it's a part-time
5 advisory group.

6 Q. And where were you employed prior to that?

7 A. My last employment prior to that was, I was
8 the Oversight Commissioner for Police Reform in
9 Northern Ireland which is an institution developed
10 out of the Good Friday peace process.

11 Previous to that I was Administrator of
12 the U.S. Drug Enforcement Administration from 1994
13 to 1999.

14 Previous to that, I was with New York
15 State Police from January of 1962 until March of
16 1994.

17 Q. If we can just go back for a moment to the
18 Oversight for Police Reform in Northern Ireland.
19 Do you have a time frame for that?

20 A. May of 2000 to April of 2004.

21 Q. And, during your tenure with the New York
22 State Police what was the last position you held?

23 A. Superintendent of New York State Police from
24 1987 until March of 1994. January 2nd was the

1 effective date, 1987.

2 Q. And in your capacity as Superintendent were
3 you familiar with the Freedom of Information Law?

4 A. I had a limited knowledge of it; I knew it
5 existed. From time to time I was made aware of
6 certain Freedom of Information requests. But, in
7 all reality, it was handled at a much lower level
8 within the agency.

9 Q. Was there a designated person at the agency
10 that handled FOIL requests?

11 A. There was a section -- I can't remember. It
12 was the Records Section. I believe when I was
13 there it was a Sergeant Jim Gannon. I'm
14 stretching my memory on this. So, given the fact
15 that he would be in the Records Section, any
16 request for State Police records would go to him.
17 When there were FOIL requests or subpoenas, or
18 whatever it might be so, he would be the
19 individual that would have been nominally in
20 charge of all of that.

21 Q. You indicated that you might be apprised of
22 certain sensitive requests. Could you please
23 explain that?

24 A. I'm talking about -- and this is the one

1 that seemed to come up most frequently. When we
2 had a disciplinary matter involving a trooper or
3 an incident that occurred either on duty or off
4 duty that had gained a great deal of public
5 attention, the newspapers would like the
6 information on the disciplinary process. But we
7 were, in essence, embargoed by a Civil Rights Law
8 that prohibited us from providing personnel
9 records or information on employees. And, so, it
10 also placed us -- I felt I was always in a
11 difficult position because we would deny access
12 which would leave people, unfortunately, with a
13 belief that somehow the discipline had been
14 inappropriate or there had been no discipline.
15 Those are the ones I remember the most. I can't
16 remember any big issues other than that, so I
17 can't provide information on that.

18 Q. Do you have any recollection of ever being
19 involved directly in FOIL request issues?

20 A. No.

21 Q. Do you have any recollection of FOIL
22 requests coming to your office, coming from any
23 other agencies to your office?

24 A. I never saw one. I didn't know what it

1 looked like. I assume the secretary saw it come
2 through. The stuff was addressed to -- you know,
3 in most of the lawsuits whoever would be named at
4 the beginning of the lawsuit. And that would
5 generally be the commander.

6 Q. Did you ever receive any oral requests for
7 records?

8 A. No.

9 Q. And did you ever receive requests from the
10 executive chamber for records of a FOIL nature?

11 A. I never recall that.

12 Q. Did you ever have any requests from the
13 executive chamber for records that were outside of
14 police business?

15 A. Not that I recall. The Director of Criminal
16 Justice would have been in the normal protocol,
17 and I don't recall them asking for anything like
18 that.

19 Q. I'm going to ask you about a hypothetical
20 and, to the extent you feel comfortable answering,
21 if you would. Do you have any opinion on what you
22 would have done had you received a FOIL request
23 from the executive chamber?

24 A. I really don't. It would depend a lot on

1 what the issues were. Even though, obviously, the
2 question is hypothetical, I have to answer it in
3 the context of all of this that is going on right
4 now. So, this won't be a hypothetical answer.
5 If, as Superintendent, I had ever received a
6 request like that, I would absolutely deny it and
7 ask for a personal meeting with the Governor to
8 explain the situation. If I was ever forced to
9 give anything like that, I would probably resign
10 my position as Superintendent.

11 Q. When you say "like that," could you explain
12 the documents you are referring to? I just want
13 to be sure I understand.

14 A. The only thing I know is what was in the
15 paper on a subsequent Attorney General report, so
16 I know some of the information like that. Again,
17 if I were ever forced in a situation like that --
18 and I never was; I'm thankful that I never have
19 been -- I would deny that type of information for
20 several reasons. And that would have been the
21 decision if someone were to try to force me to
22 give that information or try to intimidate me to
23 give that information or any documents like that.
24 There's no way. You could talk to my wife or talk

1 to my friends. There's no way I would have done
2 that. I would have given my resignation and left.

3 Q. Your reputation is well known, Mr.
4 Constantine.

5 A. I'm not trying to be pompous. Those are the
6 standards I grew up with that are in the State
7 Police. I love the State Police. It's one of the
8 greatest institutions I have seen in the world,
9 and I would hope that I would never do anything to
10 damage it.

11 Q. And, again, for purposes of clarification,
12 when you say "documents like that," can you define
13 that for the record?

14 A. The documents that I have read about -- and
15 I have never seen them -- that are in the
16 newspapers, which are records involving an
17 individual who is a protected principal; in this
18 case, a New York State Senator -- regarding the
19 daily kinds of activities as to what they were
20 doing at certain times on certain days under the
21 context that it was given up supposedly under the
22 FOIL request which means it is now going out in
23 the general atmosphere. I couldn't tell you if
24 they did file a FOIL request, that would be the

1 context in which I would give you my answer. I
2 can't give if you a hypothetical because I have
3 never faced it. I can give you in the context of
4 what you have read about and having seen the
5 documents presently on this issue.

6 MR. SHEA: Have you read the Attorney
7 General's report?

8 THE WITNESS: Yes.

9 Q. I am going to show you four documents, and I
10 will identify them for the record. I would like
11 you to take a moment and look at them. Commission
12 Exhibit 1 is the transportation assignment for
13 Senator Joseph Bruno of May 3rd and 4, 2007.
14 Commission Exhibit 2 is the transportation
15 assignment for Senator Joseph Bruno May 17, 2007.
16 Commission 3 is the transportation assignment for
17 Senator Joseph Bruno May 24, 2007, and Exhibit 4
18 is the ground transportation of June 27, 2007.
19 Have you ever seen those documents before, sir?

20 A. No, I have not.

21 Q. During the time that you were with the State
22 Police had you ever seen documents similar to
23 this?

24 A. Not from my experience. In all likelihood,

1 I wouldn't anyway. 4,000 people run around doing
2 different things. I wouldn't have seen them, and
3 I have never seen that.

4 Q. You were speaking just a few moments ago
5 about the type of documents that you would not
6 provide. I am going to ask you in particular as
7 to these documents, do those documents present --
8 are these the types of documents that you would
9 release if requested?

10 A. No, I wouldn't. I wouldn't release those in
11 an FYI request from that newspaper. In my
12 experience, when I first read the article in the
13 paper on July 1st -- it was a Sunday -- I saw that
14 they were talking about the State Police keeping
15 records on people. And, number one, that kind of
16 surprised me because no one ever kept records like
17 that. We usually kept an advance itinerary a day
18 ahead of time. The purpose of that would be so
19 that the driver and anybody on security who
20 pre-reviewed the places where they were going to
21 be for directions, for parking, for exits, for the
22 potential of harm in this case. That's generally
23 the protocol.

24 The second thing is anything that deals

1 with the security of a principal, we always took
2 the position in the State Police that those things
3 were absolutely sacrosanct. We would never give
4 that information. You not only would be giving up
5 information of how we provided security in the
6 past and as to where the individual traveled to,
7 but this really has to do with the kinds of
8 sources and methods which may result in
9 vulnerability when you do that. And if you have
10 given up one thing, they will say: The next thing
11 I want to know is where is the Governor going to
12 be exactly tomorrow? How many people are on the
13 Governor's detail? Who is the driver? And you
14 can't make people vulnerable, so that was one
15 thing that was definitely not available to anyone.
16 But I have never seen anything like that before.
17 I don't know what they were doing.

18 Q. Again, I realize this is a hypothetical.
19 But, if asked to provide these types of documents
20 in your capacity as Superintendent would you have
21 done so?

22 A. This is the type of thing that you would
23 have to meet personally with the Governor trying
24 to find out what this is all about. The hair

1 would go up on the back of your neck. You would
2 say: What's this all about? It would be
3 automatic to say that. Usually, what I would do
4 is to try to be diplomatic. I would call the
5 individual requesting that information and say:
6 This is unusual. I have never done this before; I
7 am uncomfortable with it. I would like your
8 permission, if you want to do it, to first just
9 speak with the Governor about it. And, usually,
10 what I would find in Russia or in Northern Ireland
11 or some places in Albany, is that all of a sudden
12 the issue disappears quickly.

13 Q. Is it safe to say you had never received
14 requests to release those types of documents to
15 the executive chamber?

16 A. No, I had not.

17 Q. In terms of this type of document, the
18 transportation assignment document, would this be
19 considered a confidential document?

20 A. I think it would be because it involves the
21 security of an individual in this case. When I
22 was at the State Police very rarely did we ever
23 provide any services to elected legislative
24 officials. But now that you do it, once that's

1 done, then you have the responsibility for keeping
2 that information confidential. So, I just can't
3 answer this in a vacuum either because I have read
4 the report. And a lot of these documents were
5 created retrospectively from the issue.

6 Q. We'll get to that.

7 A. It's the type of thing that would cause me
8 concern. And I would be asking: What's this all
9 about? Why is the State Police involved in all of
10 this? And I would be looking for an answer. I
11 would be diplomatic, but at the same time there's
12 a certain firmness as to what we could or couldn't
13 do.

14 Q. Can you conceive of a situation where it
15 would be acceptable to release these types of
16 documents?

17 A. Well, it depends. If you are providing
18 security to someone where that is part of your
19 role I don't think you can provide those
20 documents. If, down the road, the Senator's
21 office themselves called and said: Look, we need
22 something for travel expenses. Would you provide
23 us with a report on what we did on that particular
24 day? So, if one was available, I can't -- It's

1 difficult to answer that in a hypothetical as to
2 something that never happened, to my knowledge,
3 when I was Superintendent.

4 Q. But the creation of documents that you just
5 spoke of, there you used the Senator's office
6 asking you to put together an itinerary for
7 purposes of --

8 A. If they lost their itinerary and need this
9 for their expenses, or whatever. Well, that would
10 mean that the Senator knew where he was on those
11 days, and it wouldn't cause them a security
12 problem because that's all the issue is and he
13 would probably say the same things. But it is so
14 difficult to answer a question like that for me
15 because it just, number one, never happened and it
16 doesn't make sense to me.

17 Q. When you say "it doesn't make sense to me,"
18 you mean the creation of documents after the fact?

19 A. Yes. For something like this I would like
20 to be pristine, but it is in the context of a
21 political issue. You have got two different
22 parties, two different branches of government.
23 And I think that's where it got very complicated.

24 Q. And, do you believe the State Police has a

1 role in political issues, sir?

2 A. Absolutely not. I can't tell you how much I
3 -- it took me from where I was in life at a steel
4 plant and it gave me a profession that I fell in
5 love with and had a great experience with. And I
6 watched it, and it's of great value. You were
7 told as a trooper that it doesn't make a
8 difference who you write a ticket to. Some
9 departments don't have that. And anybody who
10 trusts you, any party that trusts you -- any
11 individual -- I have told people, you know, it
12 doesn't make a difference; that the job is to
13 serve the person that has been elected. So, yes,
14 I took a very strong stand on those things
15 personally. And whatever leadership, I was taught
16 that the only political involvement you could have
17 as a member of the State Police was to vote. You
18 couldn't have a sign on your lawn. You couldn't
19 go to a campaign event. That's just the way it
20 was.

21 Q. So, in your experience with the State Police
22 was there ever occasion to create documents after
23 the fact?

24 A. No.

1 Q. And, can you conceive of a situation where
2 you would be creating documents after the fact?

3 A. If all the original documents had been lost
4 and if some important issue developed and they
5 asked us to reconstruct it, I can see that
6 internally within the State Police, such as an
7 investigation; that we have done all of the things
8 you are supposed to do and the next thing you
9 know, somebody threw it into the shredder, so you
10 get everybody back to reconstruct the facts. I
11 can see that.

12 Q. But, as far as releasing documents to the
13 public or to an outside entity, can you see that
14 there would ever be a need to create documents of
15 that nature?

16 A. I mean I was not even familiar with that, to
17 tell you the truth. In the law and the opinions,
18 if there were requests to create documents it
19 happened someplace else. But it makes a lot of
20 sense that you don't recreate them.

21 Q. Have you had any contact with Superintendent
22 Felton in this matter?

23 A. No. The last time I saw him was at a
24 wedding in SUNY where he and his wife sat at the

1 same table with my wife and me.

2 Q. Have you had contact with executive
3 chambers?

4 A. No, I have not.

5 Q. Have you spoken with Dan Wiese formerly of
6 the State Police?

7 A. The last time I spoke with Dan was the last
8 time I came back from North Carolina for the
9 Brinkerhoff funeral. That is the last time I saw
10 him. And I have probably seen him once in five
11 years.

12 Q. Beyond your contact with the A.G.'s Office,
13 in the course of your interview for their report
14 have you been in contact with anyone else
15 concerning these issues?

16 A. Jim McMahon, former Superintendent. He and
17 I talk frequently for several reasons. One is we
18 are friends. And I have got to Washington the day
19 after Labor Day. And in the position I am in, I
20 read a lot of material so we are getting a lot of
21 reports from Washington, so I can read and prepare
22 for it. We both have a great love for the State
23 Police, and we are very concerned about the impact
24 of this on the State Police. And I think the

1 damage is of a significant nature.

2 Q. I am very sensitive to that, sir. And I am
3 going to ask you when you say the "damage," could
4 you define what you mean by that?

5 A. I think the value that I saw in the State
6 Police is that you serve everybody and that you
7 use your authority and resources and your power in
8 a fair and judicious manner to the best you can.
9 We are not perfect; we make mistakes. But once
10 the State Police is depicted as being involved in
11 partisan politics for any party, for any interest
12 group or personal interest, then with all of that
13 power, when you enforce the law the person on the
14 other end of that who is being investigated, being
15 surveilled, whose telephone records are being
16 subpoenaed and analyzed, whose phone conversations
17 are being listened to through a court authorized
18 wiretap, that person may be led to believe that it
19 is for less than objective purpose. And that is
20 my concern.

21 Q. You mentioned a couple of times now
22 political implications of the actions here. Can
23 you tell me where you draw that implication from?

24 A. I draw it from the news report, the original

1 news report. I have a concerns about two issues.
2 One is keeping the records. And, second of all,
3 when we release the record to someone who is a
4 protected principal -- It jumped out at me. And I
5 said, well, maybe things have changed, but this is
6 unusual. As I started following the subsequent
7 newspaper articles, the different renditions of
8 why it happened and what happened, it just
9 increased my concern. And when I read the
10 Attorney General's report -- I mean you have
11 people in the executive branch of government
12 asking -- in my opinion, asking the State Police
13 to do things they shouldn't do. And the State
14 Police did things they shouldn't do. It was
15 obviously intended to be a part of the newspaper
16 articles, and the information in the newspaper
17 article -- and this is obviously political. I say
18 that, and I'm very honest. I don't want to cross
19 the line. Politically, it wouldn't make a
20 difference to me which party was involved or what
21 people are involved. And that's why I say that.

22 Q. When you say that, obviously, this is just
23 your opinion -- but we value that opinion here.
24 When you say "it's obviously political" what makes

1 you draw that conclusion?

2 A. When you have two different political
3 parties, you know, you have got the executive and
4 legislative branch, and the leader of the State
5 Senate, you have got -- all of a sudden you have
6 people wanting these records and wanting this
7 information and dealing with the Senate Majority
8 Leader saying it's a Freedom of Information Law
9 request -- I didn't realize the differences. They
10 have been saying it's a FOIL request. And there
11 is no FOIL request, number one. And, secondly, it
12 now shows up in the newspaper on July 1st. And
13 people gave the newspapers stuff that wasn't even
14 in the FOIL request. I mean you would have to
15 fall off the Christmas tree not to see what's
16 happening here. It's obvious that it is
17 political. And, I think --

18 Q. If there had been a FOIL request would that
19 remove the imprimatur?

20 A. Not really. Because, number one, you would
21 have somebody develop new records. And, probably
22 more important, you are dealing with State police
23 protection and transportation of an individual.
24 And, that should never be released.

1 MS. TOOHER: I think that's all. The
2 interview is concluded.

3 THE WITNESS: Thank you very much. I
4 wish you all good luck. You have a tough job.

5 (The proceeding in the above-entitled
6 matter was concluded at approximately
7 1:30 p.m.)

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10 INDEX TO EXHIBITS

11	Commission	Description	Id.
12	1	Transportation assignment (premarked) for May 3-4, 2005	
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14	2	Transportation assignment May 17, 2007	
15	3	May 24, 2007 transportation assignment	
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17	4	Transportation assignment June 27, 2007	

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1 STATE OF NEW YORK)
) SS:
2 COUNTY OF ALBANY)

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4 I, BETH S. GOLDMAN, Certified
5 Shorthand Reporter, Registered Professional
6 Reporter and Notary Public in and for the County
7 of Albany and the State of New York, hereby
8 certify that the interview of Thomas A.
Constantine as recorded hereinabove was recorded
9 stenographically by me and reduced to computer-
10 generated transcription.

11

12 I FURTHER CERTIFY that the foregoing
13 transcript of said proceedings is a true and
14 correct transcript stenographically recorded at
15 the time and place specified hereinbefore.

16

17 I FURTHER CERTIFY that I am not a relative
18 or employee, attorney or counsel of any of the
19 parties, nor a relative or employee of such
20 attorney or counsel, or financially interested
21 directly or indirectly in this action.

22

23 IN WITNESS WHEREOF, I have hereunto set
24 my hand this 24th day of August, 2007.

25

26

27

28 BETH S. GOLDMAN
29 Certified Shorthand Reporter
30 Registered Professional Reporter
31 Notary Public

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