STATE OF NEW YORK
STATE ETHICS COMMISSION

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

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
called as a witness before the Commission, and being duly sworn/affirmed by the Notary Public, was examined and testified as follows:

EXAMINATION BY MS. TOOHER:

Q. State your name for the record.
A. Glenn Valle.

Q. And what is your position?
A. Chief Counsel to the New York State Police.

Q. How long have you been in that position?
A. I have been Chief Counsel for 18 years.

Prior to that I served as a First Assistant Counsel for a little over a year and, prior to that, Assistant Counsel for three -- about three years in the Attorney General's office. So, I have been with that office for over twenty-two years.

Q. And, in your capacity as Chief Counsel are you involved with FOIL at the State Police at all?
A. In a tangential manner, in the sense that quite often our Records Access Officer will consult with my office with regard to any legal questions as far as interpreting the actual Public
Officers Law section and how it may applicable to the question at hand or the documents we have. We receive probably -- I think we receive roughly a thousand FOIL requests per year. The vast majority we have no knowledge of -- when I say "we," my office. It's hard to say how many a year we may be consulted with, but it's not infrequent at all. Our Records Access Officer is a frequent customer, so to speak, but it's a little more difficult recently because they actually physically moved the records section to an entirely different building in the Washington Avenue Extension. So, she has actually a little bit of a trip. And, quite generally speaking on my staff we have nine attorneys in the office. I have a Deputy Counsel and Assistant Counsel who specifically deal with the day-to-day FOIL legal requests. Occasionally, then, if they have a question they will come to me as Chief Counsel to get my input.

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

A. Generally, one of two Deputy Counsels; Darren O'Connor, and the other individual would be
an Assistant Counsel by the name of Julie Mortati, M-o-r-t-a-t-i. So, they would be the persons that, generally -- One of those two individuals would be the person that our Records Access Officer would make initial contact with.

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

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

Q. And, who makes a determination on redaction
or withholding?

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

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

A. Well, let me clarify that. There may be an -- let's say it would depend on the type of information. It might be information that field command may have. See, many of our FOIL requests are for like accident reports or criminal investigation reports. So, there could be questions with regard to information contained, say, in an investigation that we as counsel may not know whether there is an issue involved with redaction. For instance, does it impact on an ongoing law enforcement investigation, we may not know and our field people may know. So, our Records Access Officer could determine if a particular record which was compiled for law enforcement purposes could jeopardize a criminal investigation or disclose a confidential informant
or something like that. As to whether or not there was a necessity to redact that information that may be made by an operational person. We would give more of a legal, if there is an operational need or a privacy need if it is supportable by the statute, so to speak. Is that clear?

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

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

Q. And, where is that?
A. I believe it's 50 NYCRR.
Q. Under that process are requests required to
Q. And, is it the policy of the State Police to require FOIL requests in writing?
A. Generally speaking. And a FOIL request should be in writing. It's generally not difficult to get something in writing, and I guess there was recent legislation that opened up the ability to file for a request by e-mail. So in this day and age, I believe it's not really difficult to request a FOIL -- that a FOIL request be in writing. But sometimes information is given -- You know, there's FOIL and then there is a dissemination of information. So, if -- you know, quite often we may have a Troop Commander answering questions, say, from the press giving information out on a particular case. You may get it on any given day on the news at night if there's a high profile case by either a press officer or major, troop commander, captain, whatever, giving information. But a request that requires the actual gathering of records, material, we generally, if not exclusively, would consider it then a FOIL request and require that
it's to our agency in writing.

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

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

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

Q. Do you receive oral requests for documents?

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

Q. If you were to try and articulate the policy of the State police concerning release of documents --
A. Generally speaking, overwhelmingly -- overwhelmingly. But, of course, we may have subpoenas requesting documents. There's all sorts of processes that may request documents; it's not just under FOIL. Generally speaking, with few exemptions, document release would be controlled under the provisions of FOIL and would be governed by our regulations which would, in fact, require a written request. And, generally speaking, for most media requests that relate to documents, I would be of the opinion that it would require an FOIL request. I know of instances that it has been. In particular: Are you familiar with the aviation records? I know of instances that it has been with regard to aviation records.

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

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

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

A. I don't know that I cam to him or he came to
me. We consult each other frequently. He comes
to our office; I go to his office. And he did
bring up -- he said that, as I recollect, he said
the executive chamber or "second floor" in common
parlance -- I don't know what he said -- the
Governor's Office, one of those three, is working
or has a FOIL request for our aviation records
relating to travel, executive travel, travel of
the Governor, Bruno, and, you know, basically
identifying travel outside of State Police travel.
And is that something -- are those records we
would normally give up? And I said, "Yeah. Just
let me see the documents, again, just what
documents you are talking about." And at some
point I got the documents. He gave -- he sent
them over to me. I got them and I looked at them.
And, they were clearly, in my opinion, something
that we would release under FOIL.
Q. What were the documents?
A. They were the basic aviation documents.
There's like three parts I consider to the
document that I saw. Then I found out that
there's actually more. We have got the blotters
or something that the aviation people keep. I
didn't even know they existed. But the documents that I recollect looking at are like three parts. Number one would be this request that was sent to the Governor's office by the requester seeking use of the State Police aircraft. And it would just have a very brief description of what, when, generally the purpose, which was very brief, and that was approved somewhere on that sheet by the representative of the executive chamber. That was part one.

Then, there was a document that was sent by our aviation unit to the executive chamber that would reflect, after approval, the information contained as to where and when and how. And it is my understanding -- it became my understanding over the last few months that the way this process works is that someone requests from the Governor's office. If that is approved, the Governor's office -- not the requester, the Governor's office sends that to our aviation unit in Albany. And it shows that this person wants to be transported on this date to such-and-such a location at this time. And that generates then, one, the approval. Our aviation unit knows that that is an approved
flight; that they can do it. Then, they take that
information, sort of type up in a little more
detail the itinerary and send it back to the
executive chamber somehow or through our Executive
Service Detail whatever, which is more or less --
okay, this is how we understand it. This is what
we have.

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

The third document is the trip ticket.
I think they call it the manifest. That's
actually like in the glove compartment of the
aircraft or the helicopter. That is done by the
fight crew. It's a contemporaneous document which
actually reflects when the aircraft took off, who
was actually on it, all sorts of data. Some of it
is required by the FAA if it's an instrument
flight. And that is signed and filled out by the
pilot. And at the return to the terminal in
Albany they hand it in; that that is what really
happened and the list of passengers. And there's
all sorts of technical instrument data, how many
hours were on the engine, such like that. A lot
of it is required for maintenance purposes, FAA or
whatever. But a lot of those documents will
change. If you look at sometimes who's supposed
to fly and who actually flew -- I guess I should
say flew -- it could differ. But I think the
accurate one is the pilot's check as we are doing
this; it's you and you and you. So, there are
three parts to those documents I'm talking about.

Q. Those are the documents that the
superintendent brought to you in mid May?
A. Yes. It wasn't like a whole pile. It was
like representative; like this one, this one.

Q. The documents that the Superintendent
brought to you in mid May to your recollection
were limited to these types of aviation documents?
A. Absolutely. And I think limited to being --
like this one flight like a representative flight.

Q. So, it was only an example of the aviation
documents?
A. Yes. It wasn't duplicative but every flight
has the same documents. I didn't review twenty
flights. I reviewed one flight.

Q. Did you know what he was providing to the
executive chamber?
A. No.

Q. So, you don't know if he provided you with
the one flight and that was what was being
provided?
A. I don't know what -- I have no idea. I
don't know what particular flight it was.

Q. I don't mean a particular flight. Did he
provide the chamber with documents for more than
one flight?
A. That's my understanding based on subsequent
review of this entire incident. But, at that
point I didn't know how many flights, how many
months, how many weeks were involved.

Q. So, he showed you a sample?
A. Correct. And that's basically all I asked
for. I didn't ask to see the entire batch or the
entire subject. I didn't know what it really was.

There's a FOIL request that the executive chamber
is working on for aviation manifest. Do we --
generally, this would be a document we generally
would send out. And I would believe so, but, "Let me just see it." I don't like to answer the question unless I know -- it could be a document I didn't know existed. I don't work with aviation generally. So I said, "Let me see the document."

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

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

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

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

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

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

Q. Are there any security issues that can arise
as a consequence of the manifests?

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

Q. These types of records --

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

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

A. No. Absolutely not, no.

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

A. Not "we have," no. He said the Governor's
office -- or whatever was the term that was used
-- has a request, is working on a FOIL request
with regards to aviation records for executive
travel.

Q. And did he say anything else?
A. No, other than, "Do we normally release
those" or "would we normally release these
records?" "Are those records subject to FOIL?" I
forget exactly what it was.

Q. And you responded that, yes, they were?
A. I responded at first yes, generally
speaking, but let me see a document, or let me see
what you are talking about and I will give you a
definitive.

Q. Had the Superintendent come to you on FOIL
requests before?
A. This particular Superintendent, no.

Q. Are you aware as to what his familiarity
might be with FOIL?
A. I don't have any personal knowledge of what
he knows about FOIL, no. I don't know whether he
has read the Public Officers Law or not. My
understanding is that he has never been in any
position to oversee as a Records Access Officer.
But everybody throughout the agency at some point
can be involved in FOIL.
Q. Have prior Superintendents come to you about FOIL requests?
A. Yeah, I'm sure they have.
Q. Do you recall the nature of those requests?
A. No, I don't.
Q. Do you ever remember the prior superintendents coming to you concerning document requests from the executive chamber?
A. No.
Q. So, this was the first time you had ever received that type of inquiry?
A. This is the first time that I recollect sort of a rendering a comment with regard to an executive chamber FOIL request as opposed to a State Police FOIL request.
Q. So that in your experience as counsel with the State Police you had not had to opine on document requests from the executive chamber before?
A. I can't recollect one, but that is to the best of my recollection. I have been there twenty-two years and, you know, I have handled thousands and thousands of legal questions and issues.
Q. I understand.

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

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

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

Q. Did you discuss that issue with the Superintendent when he asked you about the
manifests, the possibility of adverse publicity?

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

These were going out. I looked at them and said there is a right for the public to know when we are flying aircraft at $1,000 an hour.

Q. And did you have any subsequent inquiries from the Superintendent concerning release of documents?

A. Subsequent inquiries --

Q. Did he come to you again concerning providing documents to the executive chamber?

A. During the course of this, no. But I do want to make clear, you know, that it wouldn't be unusual for the Superintendent and I to discuss FOIL. We have been in the Times Union regularly just within the last couple of months for not releasing the names of witnesses in a case, you know, the Times Union, Bob Friedman.

Q. I have no issue with your discussing FOIL with the Superintendent.

A. I want it clear that that has happened. It may have been in connection with the Governor's Office; an e-mail and say that we have got a FOIL request and we have assessed it. And, just to let
you know, when someone doesn't get an answer, no matter what the administration, if someone isn't happy with the State Police they go to the Governor's office and say the State Police are not being nice to us. So, we sometimes as a courtesy our press office may call the Governor's press office to give a heads up.

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

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

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

A. No.

Q. Did he ever indicate to you that there had been a request for these documents to the PIO directly and that the chamber had stepped in and
1 requested them?
2     A. No. I don't have any recollection of that, no. I mean I subsequently heard from my press
3 officer that in March there was a flurry. I don't remember contemporaneously having any information
4 about that. But it's possible, you know. My
5 press officer, I meet him in the hall sometimes or
6 in the bathroom. And he says, "Oh, you know, I
7 got a call from Fred Dicker." And I told him that
8 -- and I say, you know, I'm fine. It doesn't
9 register necessarily on my hard drive.
10     Q. Do you have any recollection of the
11 Superintendent coming back to you on additional
12 documents for the executive chamber?
13     A. No. That, I am certain about. No.
14     Q. And are you aware that the executive chamber
15 did at some point receive ground itineraries on
16 Senator Bruno's schedules?
17     A. I am now.
18     Q. Did the Superintendent ever discuss with you
19 those ground itineraries?
20     A. No.
21     Q. And did he ever discuss with you the
22 creation of documents reflecting what had happened
as part of those ground itineraries?

A. No.

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

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

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

A. Generally speaking, no, because the ground itineraries, as I understand them here -- and we should narrow it because there's only one person that ground itineraries deal with, and that is Senator Joseph Bruno. That's what I have discovered. And we don't provide him ground transportation on a regular basis or even on an irregular basis unconnected with an aviation flight. For instance, when he wants to go home at night when he's at the capital we don't take him home. The only ground transportation, as I understand it, I think that this was the case -- that it was provided to Senator Bruno was in
direct connection with an air flight. So, I always see this as one continuous transaction. I have also analogized it to a connecting flight. You go to the hub and then you take the next little thing. They are all one continuous event. Now, they are interrelated for two reasons in my opinion. And it would be subject to FOIL for two reasons. The request, whether it's granted or not by the executive chamber -- and I think it's clear, hopefully -- the State Police doesn't determine whether or not a flight is official business and justified. It's the representation of an individual. I have business to do. Therefore, I need a plane or helicopter. Therefore, it is granted. The ground portion, the ground leg is reflective of what was supposedly represented in making the request for transportation, so it's one continual transaction: Flight, ground transportation, back to the heliport and back up, one continual loop. So, the underlying reason for compilation of this is -- I think the Ethics Commission recently came out with an opinion regarding FOIL and eligibility for this would certainly be one and the same. There is
really nothing different between using aviation resources or using ground resources. Maybe not quite as expensive, but relatively expensive when we are talking about having an investigator driving someone around. Whether it's expensive or not expensive it is using state resources.

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

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

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

Q. What about security issues?

A. Well, security -- I mean I wouldn't see security as an issue if it's after the fact, first
of all. And I don't know that I would see a
security -- I wouldn't see a security issue after
the fact, okay. That's number one.
Q. So, you would see no issue with releasing
the ground itineraries?
A. Generally not. Again, if you are talking an
total category, you would have to necessarily see
a particular document. From what I have seen of
most of these ground itineraries that I have
looked at, basically it says like: Sheraton
Hotel, city hall, this restaurant, another
building, another hotel. So, I guess with ground
itineraries you could be talking in terms of the
abstract -- the universe. Could a ground
itinerary contain something? Conceivably.
Q. You have seen the ground itineraries of
Senator Bruno that were in the press and provided
to the executive chamber?
A. Yeah. I think we provided them.
Q. When you say "we provided them" --
A. This agency, my agency.
Q. Had you seen them prior to the time they
were provided to the executive chamber?
A. No.
Q. Were you aware of their existence prior to the time they were provided?
A. I had no idea we had them, no idea about this entire process. I didn't know we drove the
guy around.
Q. So you had no knowledge that Senator Bruno was being provided transportation?
A. No, not until very late this spring. Actually, I found out for the first time from Senator Bruno's office himself. That's when I found out that we were driving him.
Q. And, when were you first aware of the itineraries?
A. Subsequent to the press article which I think was what, July 1st or June 30th.
Q. July 1st. So, the July 1st article in the Times Union was the first time that you had become aware that these documents exist?
A. Correct.
Q. I am going to show you what was previously identified as Commission 1 through 5. I will just give you a moment to look at those documents.
A. I'm familiar with them.
Q. Can you identify those documents for the
A. These supposedly -- and, again, I have no personal knowledge at all. But from speaking to individuals in the State Police, I believe these documents reflect documents that were sent by the State Police to the executive chamber reflective of ground itineraries or ground travel, whatever you want to call them, with regards to Senator Bruno and would be the documents subject to the conversations between Bill Howard and the Superintendent.

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

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

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

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

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

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

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

Does that in any way impact on your opinion?

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

Q. Let me give you just a little bit more information because we asked him why he would not release these documents to the public in this instance. And I am speaking of Superintendent Bennett. He said, "Because it does jeopardize security, you know. For instance, if I lay all four of those out here and start coming up with a pattern in his travel, certain locations repeatedly, or all travel is done for example at certain hours of the day, like every one of them indicating they are arriving at the Downtown Heliport, those are the types of things that, if I were looking to cause harm to somebody, those are the things I would like to know because of concerns as to the arrival plans, things like that."
Do you think those are legitimate security concerns?
A. No, I don't.
Q. And, why is that?
A. Because -- read that back to me again and I can comment on it in a little more detail.
MS. TOOHER: "Because it jeopardizes the security, you know. For instance, if I lay all four of these out here and start coming up with a pattern in his travel, certain locations repeatedly, or that all travel is done, for example, at certain hours of the day like every one of them indicating they are arriving at the Downtown Heliport, those are the types of things that, if I were looking to cause harm to somebody, these are the types of things that I would like to know because of concerns as to the arrival plans, things like that."
A. I would disagree with that. In my personal opinion there would not be an ability to articulate a valid security concern with the generic type of information. These are not regular flights. There is not a complete pattern. We have Senator Bruno, and he is quite often the
subject of press conferences. He may make appearances across the state. We don't provide security to Senator Bruno. We provide him merely transportation. He is someone who is out in the public giving press conferences. He's out and about and he's not the type of individual that has a position in government that we provide security. I don't see this as jeopardizing security at all.

Q. But Senator Bruno has --

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

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

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

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

A. I think based on these, no.

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

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

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

A. Travel patterns --

Q. Of a public official as contained on documents of the sort which are before you now, could it implicate security concerns?
(Pause taken)

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

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

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

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

A. If somebody -- it's not generally my job to make recommendations with regards to security. It would be my job to determine whether or not under the law we could legally withhold certain information. So, I mean I certainly would want to see them if somebody had a security concern, yes, because I could assist them to -- you know, assist them in articulating a legal reason one way or the other. But I'm not the security officer for the State Police. I'm not trying to get around your question. I would expect people, if they had a
security issue -- or operational people -- to come
to me if they had a security question to see
whether their security concern is legally
justified.
Q. Would you have wanted somebody to review
those sorts of documents in State Police to assess
whether there was a security concern; whoever was
the person charged with the responsibility of
making those assessments in State Police before
they went out to the executive chamber?
A. It wouldn't be a bad idea for someone to
look at them, certainly.
Q. Would it not be inappropriate?
A. It would be inappropriate.
Q. From your perspective would it be necessary
to have that kind of policy in place?
A. I don't know that I can answer that. I
don't know that I could answer if it would be
necessary.
MR. TEITELBAUM: Sorry to interrupt.
BY MS. TOOHER:
Q. But, with your experience, in your
experience with the State police you had never
seen documents like this?
A. I had never seen any of those documents.
Q. Had you seen documents similar to this before?
    A. No.
Q. Are you aware of how these documents came into being?
    A. I am now. My understanding is this document --
    Q. Commission 5?
    A. -- number 5, that was a document supplied originally by Senator Bruno's office to,
    presumably, someone in our New York City office. That represents a trip of May 17th and May 18th.
    So, this document I think was faxed by Senator Bruno's office to the State Police.
    Q. Do you know how it got from the State Police to the executive chamber?
    A. I believe that was faxed based on my examination of the records and hearing the individuals speak about this, I believe that document was faxed. I believe it would have to be because I don't believe we had it electronically.
    Q. You know who faxed it?
    A. No, I don't. And it could have been brought
Q. And the remainder of the documents?
A. The remainder of the documents I believe were documents that were subsequently drawn up by State Police personnel in New York City and sent up to the Superintendent's office. And these, in fact, were either electronically or physically brought down to the second floor, the executive chamber.

Q. And are these original documents or documents constructed after the fact?
A. These are not -- they are not contemporaneous documents. They were constructed based on the recollections of investigators who did the actual driving.

Q. And in your experience with the State Police have you ever seen these types of documents constructed after the fact before?
A. These types of documents, no, I haven't. But I have never seen these types of documents before.

Q. I believe you testified before the Senate that these were normal documents. And they asked you concerning these documents if these were
1 normal documents of the state Police.
2 A. I don't recollect saying these were "normal
documents." I really don't. I mean they are
3 State Police documents. I mean State Police
documents are not non-state police documents.
4 There has been an issue here with regard to
5 questions back and forth: Are these actual
6 documents? Well, once you create something it's a
document. I mean it's a record of the State
7 Police once it's created. Was it a
8 contemporaneous record, no. Is it a record --
9 it's a record at the moment it's created.
10 Q. So, at this juncture in time you would
11 consider these records of the State Police?
12 A. They are, once they are compiled. But the
13 second question would be: Do they purport to be,
14 you know -- are they fakes in a sense. Are they
15 -- what is the term of art when a painting
16 is duplicated, the term that painters use?
17 Q. A replica?
18 A. They are not phony documents in the sense
19 that they don't purport to be contemporaneous
20 documents. I don't know if that's clear. What I
21 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
itineraries. And the individual in New York City, Senior Investigator Kevin Smith who handled the scheduling of these trips and these drivers in 2004 through, I think, the better part of 2006, made a habit of retaining these documents in a file.

Q. When you say "these documents" --
A. These types of ground itineraries.
Q. The original itineraries provided by Senator Bruno's office?
A. Yes, or -- Let's step back a second. My understanding is that when Senator Bruno would be transported a ground itinerary at some point was created. It was either, if time permitted, sent by Senator Bruno's office to the Senior Investigator or, if time didn't permit or if it wasn't ready, it would be telephonically communicated to the Senior Investigator. This is what the Senator needs. This is the time of pickup, this is the time of drop-off. And, then, that would generally be reduced to an e-mail, perhaps, and then sent to the investigator for use. So there was a mix. Some of them were 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
ground itinerary. I know we get requests -- have
gotten requests from time to time. Frankly,
generally, from what I recollect most of the
aviation FOIL requests would be directed at
flights taken by the Governor. I don't recall
specifically any FOIL request relating to aviation
records of Senator Bruno. I'm not saying it
didn't exist. It may have been all executive
travel. I'm just really not sure.

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

A. I don't know because I didn't deal with it.

Q. What is your understanding?

A. My understanding was that there were two
basic requests for aviation documents made by Bill
Howard to Acting Superintendent Felton. The first
was for a period of a couple of months, and then
the second was for the remaining couple of months.
So, I believe, as Acting Superintendent Felton may
have testified, it was almost from the first of
the year to the present. That is his
recollected, as I understand it; that there were
two requests for aviation records relating to the
Governor and Senator Bruno at a few months
interval in batches of a couple of months
separated maybe by a few weeks, not by a couple of
months.

Q. And the request for itineraries, do you know
if that was limited in time or scope?
A. My knowledge of the itinerary request,
basically, is reflected in the e-mails that you
have. I think there was, as memory serves me, a
request for this original trip May 17th. I think
that was sometime around May 25th or something
like that. I am going to have my notes with me if
you'd like me to check that out. And then, there
was a request for three trips sometime later. One
of the trips is duplicative of a trip that was
already provided. And, then, I think at the very
beginning of July there is a fourth. I think
there are basically three requests for ground
information, and then there is one request for a
trip that is supposed to be the next day or
something like that. That is in reference to a
request by acting Superintendent Felton as to
whether or not it was appropriate to continue with
this travel.

Q. Now, would that change the release of
information if it were being given in advance of a
trip? Would it raise security issues if the
information was released in advance of a trip?
A. It could possibly. It would depend on how
soon in advance, how much in advance it was. It
would depend, once again, on what was involved,
what was contained in the itinerary.

Q. Given these itineraries, if we look at the
may 17th --
A. You see, you would have to take a look at
the big picture here. Obviously, any individual
-- if somebody wanted information with regards to
anybody, yeah. If there is somebody out to get
that person, any information, yes. But if you
were challenged with regard to security
information, if, say Senator Bruno himself, his
office -- the Governor, for instance, we provide
security 24/7 to the Governor. My understanding
is that his press office releases every day his
itinerary: The Governor is going to appear in
Battery Park in the City.
Senator Bruno's office, press office, may release an itinerary. These are public officials. They have a very public presence so it's not a simple question, does it involve -- the fact that the Senator is going to appear at city hall, if that is the subject of a press release, there is no security interest.

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

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

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

A. No -- no.

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

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

Q. Correct.

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

Q. What about a day in advance? If you are
providing this information again to the executive
chamber is there a State Police basis for
providing that information to the executive
chamber?
A. Absolutely, there could be. If the executive chamber asks for it, that is a State Police basis. Now, there is a need for the State Police to do it, no. But if the emanation is from the executive chamber then it could be. There is nothing -- no, there's nothing that should be speculative about this information to the executive chamber. We are part of the Executive Department, so I would say that if the executive chamber wanted to know certain information with regards to an itinerary that was in our possession, I see no basis to deny that whatsoever, especially under the circumstances where the ground itinerary is reflective of the aviation. Again, we are talking only in terms of when ground itineraries connected with authorized State Police flights. Really, we are not discussing ground itineraries of Senator Bruno on a day to day basis. We are only discussing itineraries of Senator Bruno when he is in a State Police car with a State police driver. So, there is a big distinction as to day-to-day whereabouts or where Senator Bruno is. We don't drive him generally. For instance, if the "second floor,"
as a check, wanted to say, hey, we got a request. This individuals says: I need the helicopter for legislative purposes, we would like to check what does he say he's doing the next day. Is the wool being pulled over our eyes or is the ground itinerary supportive. Because if there are FOIL requests and if there are accusations that there is a misuse of state resources, the executive who is indeed the entity approving it could also be called on the carpet as well as the person who may be abusing it. And I'm not saying anybody abused anything here, but I think the analogy may be that I gave that you brought up the Senate testimony or that if you loan my teenaged son a car and he says: I am going to do this, that, or the other thing, and I say: May I check to see if this was the case. It's like a cross-check or something. It's not like the executive chamber is asking for details of a criminal investigation or surveillance. The executive chamber can't get on the back of a former Superintendent head. If they say: We understand you are doing an investigation against a certain individual. We would like to see details. This is approved. This is approval
of state resources, flights, and drivers. The FOIL requests that you raise, some of them are valid, some of them. And the quotations from some of the former Superintendents state what we are talking about here. This was not a FOIL request of the State Police. As far as I'm concerned, the executive chamber in my legal opinion is entitled to any of this information. What they do with it or whether they release it under FOIL or whether they have a responsibility to look at some of this, it is the responsibility of the person who is releasing it under FOIL to make these determinations. So, in answer so some of your questions, Mr. Teitelbaum, if we were involved in a FOIL request and my agency was the recipient of that request, I would have a greater interest in being involved in the release of that information. But the transfer of information within government entities is somewhat different.

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

A. Even if you are aware it is being released to the media, if there is an issue that jumps out 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,
we don't normally release these documents, they
should know that. Are they controlled by that,
absolutely not.

Q. Is that your testimony that --
A. That is my speculation.

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

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

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

This is referencing the materials that were shown
to you.

A. Right. That's not what he said to me. He
didn't say to me, "Should we be sending this?"
Q. That's Lacewell's words. And Felton's
answer is "Yep." (Y-e-p)
Are you saying that you feel that his
answering Ms. Lacewell's question in the
affirmative indicates to you that what he was
doing when he went to you was asking whether
releasing these documents is simply consistent
with past procedures of the State Police, or was
he asking you: Advise me as to whether we should
be releasing this to the executive chamber.
A. I can answer that unequivocally. I think
there is no issue at all whether we should be
giving this to the executive chamber. I think the
question in my mind -- I can't speak for him --
was phrased that if the executive chamber releases
this, I think, clearly, I interpreted the question
if the executive chamber releases it, is this
something that would be inconsistent with our
policies. And I think, quite frankly, this was
the thinking. Again, I don't want to speak for
him. It's unfair, especially to speak for his
thought process. But if I said no, we have a
history that we don't release these, he would
probably say to Bill Howard, "You know, Bill, we
don't generally release these." And if Bill
Howard said: Let me take a look at them, I think
he would have probably sent them and I think he
should have sent them to Bill Howard.
Q. I want to probe your perception a little
further. On pages 29 and 30 of Superintendent
Felton's testimony starting on line 24 page 29,
Lacewell asks, "Right. And was it your idea to
speak to Mr. Valle about it or did Mr. Howard
suggest it?"
Now, Felton replies, "No. I spoke to Mr.
Valle about it. He is my counsel. He's not Mr.
Howard's counsel."
Lacewell: "All right. And what did you
ask Mr. Valle?"
Felton: "If it was something that we
would have to give up under the FOIL, the FOIL
request."
Lacewell: "Okay. And what was your
thinking in answering that question?"
Felton: "To make sure we were on legal
ground to give the documentation up."
Now, given what I have just read to you,
isn't it fair to say that Felton, as he testified, came to you to solicit your advice as to whether the documentation had to be given up to the executive chamber?

A. No.

Q. You don't read it this way?

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

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

A. No, I'm not saying there is an error in the transcription. There is a lot of colloquialisms used. No, there is no question of -- he knows that the executive chamber approves these flights; that at least part of these records are maintained by the executive chamber and have them at any point. The only record that the executive chamber doesn't have would be the actual trip tickets, that actual manifest itself. Because, as I said earlier, the request is an executive chamber
record. There is a letter that goes back to the executive chamber that I think they keep a copy. And there is the actual manifest itself which they don't maintain. But I did subsequently find out that aviation records on a monthly basis have been transmitted to the executive chamber since approximately the year 2000. So, they, in essence, unbeknownst to them, or at least unbeknownst to Bill Howard, had these very records or a good part of these records for a number of years, probably six or seven years. Remember, we provide -- this is our helicopter. It's the executive chamber that controls the use and approval of these flights for non-state police purposes. We just happen to fly the aircraft. It's their game; it's the executive chamber's game. If the executive chamber decided that Bruno can't fly anymore, that's it. He doesn't fly anymore. So, these are records -- they have one foot in the executive chamber and they have one foot in State Police. They aren't wholly State Police records. They emanate -- they come to us originally from the executive chamber. They are mutual records because of these flights. These
aren't criminal investigation records that the executive chamber has no involvement in. They are an actual party to these records. Their names and signatures appear on some of these very records.

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

A. Twenty.

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

A. I don't recollect exactly what each one of them said, but I think there is a difference between release to the executive chamber and release through FOIL. I think it is fair to say that there can be legitimate FOIL questions with regards to these documents, and that may involve security. I think that has been put into play, and I think under the circumstances there could
be, if released in advance, less likely if it's an
after-the-fact trip. But it is arguable that
there could be a security concern but not
vis-a-vis the executive chamber.
Q. I want you to assume with me that these
three Superintendents, the past three
Superintendents took the position that it would be
inappropriate to release these materials to
anybody. And one of them, I want you to assume,
gave testimony that if he were requested by the
executive chamber he would go to the Governor
about it. Now, assume that. Based on that
assumption does that give you pause to rethink
your position about these materials being given to
the executive chamber?
A. No, absolutely not. Absolutely not. But on
the same token, if a Superintendent -- and, again,
all three of those individuals are fine
individuals who I maintain still a very close
contact with them. One of them was at my
daughter's wedding two months ago. They were all
invited. Two came; two were invited. Two
couldn't make it. So, they are all excellent
individuals.
Q. If one of those individuals had a concern
that maybe this was being misused would it be
legitimate for that superintendent to go to the
Governor if he wants? Absolutely. I'm not saying
that that would be wrong. But I'm also saying
that the superintendent, any superintendent, would
have a presumption of regularity; that if he is
being asked to give records that reflect the use
of state resources, of State Police resources --
especially if that superintendent is under the
impression that, hey, it's a FOIL request for
these aviation flights again; the press is out
there trying to see whether Senator Bruno is
misusing the aircraft it's entirely -- entirely
reasonable to, upon request, supply information
relating to those very same flights. There was no
ground itinerary without a flight and we have
established that. So, does the executive chamber
have a right to this? Absolutely not.

If any of the superintendents called me
into the office and said, hey, I have got a
request for ground itineraries. Do I have to give
them over to them, my answer would be yeah, you
have to give them to the executive chamber. What
are you going to tell the executive chamber; that we're not going to account for our activities? We are under an obligation to. To the extent if they smell something fishy -- and, again, depending on the person who is calling, if the Superintendent got a call from a person in the Governor's office totally unrelated to the operations aspect and not basically his supervisor that may raise some issues. I'm not saying that any Superintendent -- it is untoward depending on the circumstances, depending on where the call comes from, who the call comes from, and in what context the call comes from to have antennae go up, or hair on the back of your head and say, Gee, what's going on. But if a Superintendent -- if it's not coming from a political "operative" of the Governor or campaign chairman, if it's coming from an operations person that this particular Superintendent has worked for a number of years, has a direct operational liaison with the State Police, it's not unreasonable, if I were sitting in that office, to feel that this is a legitimate request. There isn't any sort of hanky-panky up here. And, again, it is information based on --
it's either actual documents or information based on documents that were supplied by the individual himself. It was not gathered anyplace else. There is a very valid question, sir, as to whether Mr. Bruno should have a State Police taxicab driver. Nobody gets this. We don't provide security. So, there could be an issue. We were told, from my understanding in the Pataki administration: Don't give the Senator two drivers anymore. That is excessive. We want to cut down to one. There is ultimate control over the use of State Police resources. And one could very well argue: Why does this individual, when he goes down to New York City get a fully trained police officer/detective to literally drive him around from stop to stop and wait outside a restaurant for two hours while he is having dinner and having a meeting? Why isn't there a driver that the Senate has, or a car down there?

BY MR. TEITELBAUM:

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

A. I don't know because, again, I don't know
Q. You know what he does --
A. I didn't know what he does.
Q. -- that he became communications director?
A. I don't know that "communications" --
because, again, communications sort of has one
foot in FOIL, too. There was an incident. I
wasn't aware of it at the time. But probably the
individual who testified before me, our press
officer -- the two press offices were saying:
Give us the documents, and what these are are
aviation documents, not these -- or maybe they are
similar aviation documents, or the very same
aviation documents in March when we had gotten a
request for aviation documents, the press officer
said, hey, we have to file a FOIL request. The
reporter said "It's nonsense. Spitzer
administration; open government. I am going to
follow it up with something like that. And our
press officer called his counterpart in the
Governor's Office and was told: Okay, well, you
don't have to give them out if you don't want.
Just follow the FOIL but send them to us. I don't
know what. They just said: Send them to us. And
I think he, in fact, did. I think these are very much because of the involvement of the executive chamber and the authorization of these flights. There is an absolute right for the Governor's office to obtain this information. I don't think it's reasonable to believe that our Governor or the people that work for him are going to make misuse of information. And I would question -- what I did say to the Senate is: How do you smear somebody when you are merely reporting on what they actually did? A person who has come to us and said: Would you supply a driver for me on this particular day. I don't see how. So, the information itself should be pure, should be open to some extent, or to a large extent, or to a complete extent to public accountability; certainly, executive accountability. I strenuously feel that way, and I think that Preston Felton, having a long history of dealing with Bill Howard who, by all accounts and from my experience Bill Howard is a top-flight operations person. And there shouldn't be the paranoia or suspicion that there is going to be some sort of hanky-panky with these actual records of just what
our people did. I think the executive chamber has every right to say: How were you utilizing your resources? Because what if the executive chamber was asked: Well, why is there a State Police driver driving this individual at seventy dollars an hour? You are not providing security; you are sitting outside for two or three hours. Why doesn't he hail a cab.

BY MS. TOOHER:

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

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

Q. After the article came out.

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

Q. Correct.

A. Yes, correct.

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

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

I've been leaning forward for awhile. Absolutely.
Threat assessment information would generally be almost entirely confidential.

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

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

Q. To the media.

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

A second one was done with regard to former Governor Pataki when he had asked that there be an extension of security for like 30 days
or so after he left office. And he thought it was a good idea to get a threat assessment, and he asked us to do one and we did.

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

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

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

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

A. We wouldn't go into the details. It involved looking at the person's house,
vulnerability, his car, license plate, stuff like that. It could be very personal, confidential information.

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

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

Q. So, during actual incident?

A. Right. But we don't do a threat assessment.
Basically, it's a reaction to a particular event. Threat assessments in our view aren't particularly valuable. We are not a fan of them.

BY MS. SULLIVAN:

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

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

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

A. Right, in whatever form we had --

Q. Created?

A. Right.

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

A. No. We never had a formal turnover of documents. They wrapped up their investigation before we were able to provide them officially with a single document. And I would be happy to elaborate, if you are interested, on the points in
the Attorney General's report that I think are
incorrect.

BY MR. TEITELBAUM:

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

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

Q. I think we have gotten a submission from the
Superintendent in connection with that.
A. Okay, I wasn't there. Okay.

MS. TOOHER: I think that's it.

BY MR. TEITELBAUM:

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

A. Conversations about this matter?

Q. Yes.

A. Yeah, from time to time.

Q. With whom?

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

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

A. Yes.

Q. Can you elaborate on that?

A. I think he testified -- I know he testified that he had a conversation, I guess subsequently. He was annoyed and -- angry probably is a better
word -- that these documents -- when I say "these documents" I mean the documents in (Exhibits) 1 through 5, the documents that were the State Police documents as opposed to the Bruno documents. The itineraries that were put together based on the information or the recollection of the investigators, which is --

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

MR. TEITELBAUM: Okay.

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

BY MR. TEITELBAUM:

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

A. The only individual that I am aware of to whom he expressed dismay or annoyance or anger would be Bill Howard. I don't know if he spoke to
anybody else in the executive chamber. I was not present when he spoke with Bill Howard. But the gist of it was that these documents were not supposed to be turned over as FOIL documents. These were just information for your purposes and not just interchangeable with these actual itineraries. These were synopses. They were supposed to be synopses of what our people did, not purport to be what people did.

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

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

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

A. I spoke to Peter Pope.

Q. What was the conversation with Peter Pope?

A. Just, again, did I have an investigation with the D.A. I was told to cooperate. I was told to bring papers. In fact, I was told to bring --
I think I was told to bring initial paperwork to you and to cooperate. And that's when I think I came down with my initial package of paperwork. I was told to cooperate with the D.A. Again, we are part of an Executive Department and they have a right, especially if I say I got a subpoena from the Senate or something, I would say, okay, we are an executive agency. There is a separation here. I am just letting you know. They asked me to bring the documents that I had to you and to the District Attorney. And, that's when I came down here to bring the documents, I think, what, the end of July, when we first met.

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

A. Sure. I answered your oral request for
documents. You mean --

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

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

Q. Why is that?

A. It's a governmental entity. We don't follow that at all with regards to any governmental entity. It's like if you ask me for documents, your agency, I would provide them. I would provide them on a telephone call as I did last night. We don't require a FOIL request or something in writing to provide documents to another agency, certainly the least of which would be the executive chamber which, again, we are part of. We are a division within the Executive Department. We are part of the Executive Department, and that's why I categorically -- categorically state that there was an absolute right to this information by the Executive Department. Now, if anybody in the Executive Department abused that -- I have no opinion, as I have no knowledge as to whether or not there was a legitimate need for this information or not. I have no knowledge whether there was a FOIL request
or not, they had it, they didn't have it or they
dreamt about it one night and woke up in the
morning and forgot it was a dream. I have no
idea. The question is simply: Is this
information that the executive chamber is entitled
to. And I would say unequivocally yes because,
number one, the fact is there is an entitlement
generally to know what are the State police doing
with our resources. But, number two, because of
the significant interest and the significant
involvement that the executive chamber has in the
authorization of flights and driving connected to
those flights, they have the right to check on
that information, period.

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

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

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

A. I guess your question is: Is it
inappropriate for a governmental entity to
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. Odato, were they
21 feeding it to Mr. Odato. 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,
In fact, it was not a FOIL request, I would be quite upset because I expect people to deal with me the way I deal with them, open and honestly and not pull any punches.

Q. Do you know now if there was a FOIL request? Have you learned that since?
A. It would appear that perhaps there wasn't. I read the Attorney General's report. I read the District Attorney's report. I just don't know what they had. I really don't know. And I think from our perspective it's not necessarily material. I think Preston Felton was acting in response to a legitimate request. And I think he has also made it clear that he wasn't even sure that these were subject to FOIL; that this maybe had something to do with the FOIL request regarding the aviation records that there was scrutiny now with aviation records and Bill Howard was calling for this as backup to put together with the aviation record. Obviously, I can't testify or speak for him. But I think there is -- I think when you do speak to him you may see that there is an issue.

BY MS. TOOHER:
Q. That these records were created as an effort
to clarify aviation records?
A. That these records were furnished in
connection with the aviation records. As to
whether or not they were just needed to help
supplement the aviation records, clarify as to
aviation records, I think he will say -- and,
again, it's dangerous to speak for somebody --
that it was not clear. And he wasn't continuously
told: I need this for FOIL, this for FOIL. The
name "FOIL" didn't continually appear. His
assumption was because there were aviation records
that were clearly the subject of a FOIL request,
these particular ground itineraries were being
requested in conjunction with those aviation
records but not necessarily for release in and of
themselves, or not necessarily that these ground
itineraries were, in fact, the subject of a FOIL
request. I hope that's clear.

MR. TEITELBAUM: I understand.

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

MR. TEITELBAUM: The only thing
concerning this interview, we are going to be
getting additional documents from others, so we
are hopeful that we don't have to call you back.
But we just want to alert you, depending on what
the documents show.

INTERVIEWEE: I hope I have been helpful
to you.

MR. TEITELBAUM: And we very much
appreciate it.

MS. TOOHER: Thank you.

(The interview was concluded.)
STATE OF NEW YORK )
     SS:
COUNTY OF ALBANY )

I, BETH S. GOLDMAN, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the County of Albany and the State of New York, hereby certify that the proceedings recorded hereinabove were recorded by me and reduced to computer generated transcription.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand.

BETH S. GOLDMAN
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public