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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

Thursday, August 23, 2007
8:30 a.m.

STENOGRAPHIC RECORD of an Investigative
Interview under oath conducted via
telephone pursuant to notice.

INTERVIEWEE: JAMES McMAHON, Deputy Executive Director,
Chief of staff, Assn. of chiefs of Police
515 North Washington Street
Alexandria, Virginia 22314

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

PRESENT: H. J. CAMPBELL, Investigator
ROBERT SHEA, Investigator
LARRY MORELLO, Investigator

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

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

2 PRELIMINARY DISCUSSION

3 MS. TOOHER, Mr. McMahon, I have you on
4 speaker phone.

5 MR. McMAHON: And we do, the same.

6 MS. TOOHER: I am here with the court
7 reporter and our Investigators H. J. Campbell, Bob
8 Shea, and Larry Morello.

9 I want to confirm with you that you have
10 received the documents that I sent you yesterday,
11 my cover letter and Exhibits 1 through 5.

12 MR. McMAHON: I didn't get those. They
13 may be in a sealed envelope. I ran out yesterday;
14 I had something to do. Let me double-check on
15 that.

16 MS. TOOHER: Okay. If you need to, I
17 can refax them to you.

18 (Pause taken)

19 MR. McMAHON: Here it is.

20 MS. TOOHER: Do you have it?

21 MR. McMAHON: Yes, I have it with your
22 cover letter on it.

23 MS. TOOHER: Yes. And, there should be
24 five exhibits attached to that.

1 MR. McMAHON: Yes, I've got them.

2 MS. TOOHER: Great. If you don't have
3 any other questions, I think we are ready to
4 begin. Are you all set?

5 I have to caution you about the
6 speakerphone. You need to be really careful about
7 speaking directly into the phone. We don't have a
8 very sophisticated system here and it won't pick
9 it up. It also makes it virtually impossible for
10 two people to speak at the same time. So, please
11 wait until I finish the question, and I will wait
12 until you complete your answer in full.

13 Is someone with you to swear you?

14 MR. McMAHON: I sent the material. I
15 sent her notary information to you yesterday, a
16 Virginia notary commission.

17 MS. TOOHER: If you can just give us her
18 full name for the record.

19 MR. McMAHON: Lucinda C. Scott,
20 S-c-o-t-t.

21 MS. TOOHER: Ms. Scott, will you swear
22 the witness, please.

23 J A M E S W. M c M A H O N,
24 called as a witness by counsel for the Commission,

1 and being duly sworn by the notary public, was
2 examined and testified as follows:

3 EXAMINATION BY MS. TOOHER:

4 Q. Could you please state your full name for
5 the record, Mr. McMahon.

6 THE WITNESS: You don't need Lucinda
7 anymore; right?

8 MS. TOOHER: No. Her work here is done.

9 (The notary public was excused.)

10 A. James W. McMahon, M-c-M-A-H-O-N.

11 Q. And, where are you currently employed?

12 A. The Association of Chiefs of Police in
13 Alexandria, Virginia.

14 Q. That is where you are located at this time?

15 A. Correct.

16 Q. And, how long have you been with the
17 Association of Chiefs of Police?

18 A. November of 2006.

19 MS. TOOHER: You are cutting off a
20 little bit at the beginning, so just try and speak
21 up. I think it is our problem on our end.

22 THE WITNESS: I'm sitting in front of
23 the phone. But it's November, 2006.

24 Q. Are where were you prior to that?

1 A. New York State.

2 Q. Where were you employed?

3 A. The Office of Homeland Security.

4 Q. And what was your tenure at the Office of
5 Homeland Security?

6 A. August of 2003 until October of 2006.

7 Q. And where were you before August of 2003?

8 A. New York State Police.

9 Q. What was your position with the New York
10 State Police?

11 A. My last position with the New York State
12 Police was Superintendent.

13 Q. How long did you hold that position?

14 A. Over nine years.

15 Q. And the time frame?

16 A. 1994 to 2003.

17 Q. How long were you with the State police in
18 total?

19 A. For 37 years.

20 Q. And, during your tenure as Superintendent
21 are you familiar with the Freedom of Information
22 Law?

23 A. Yes.

24 Q. And had you ever seen Freedom of Information

1 Law requests at the State Police?

2 A. I don't think I ever had one -- saw an
3 official one. I can't say that somewhere one of
4 the attorneys didn't show me one at some time, but
5 I can't recall that.

6 Q. Do you recall what the practice was
7 concerning what I am going to call FOIL requests
8 at the State police?

9 A. We had a Freedom of Records Access Officer
10 for Freedom of Information. They would handle the
11 requests.

12 Q. Would they ever contact you in your position
13 as Superintendent about a FOIL request?

14 A. I never had a discussion with the Records
15 Access Officer on a Freedom of Information
16 request. Now, division counsel may have.

17 Q. What was your understanding as to counsel's
18 role in the FOIL process?

19 A. He would advise the Records Access Officer
20 on the FOIL Law. The Records Access Officer
21 wasn't an attorney.

22 Q. During your tenure with the State Police, as
23 Superintendent did you ever receive a request from
24 the executive chamber concerning a FOIL request?

1 A. I don't recall ever receiving a request from
2 the executive chamber.

3 Q. For a FOIL request?

4 A. For a FOIL request.

5 Q. Did you ever receive a request from the
6 executive chamber for documents or information
7 from the State Police? I'm sorry. Limit that to
8 documents.

9 A. Documents?

10 Q. Yes.

11 A. I don't recall. I mean certainly not from a
12 FOIL request. But there is routine business done
13 with the chamber on issues and I may have given
14 them a report on, you know, an incident or
15 something like that documenting what our response
16 was. For information purposes, normally those
17 would go to the Director of Criminal Justice for a
18 summary of -- if we had an incident it would be
19 documenting how we handled the incident. It had
20 nothing to do with -- I mean it was routine police
21 type business, you know, response to a national
22 disaster or something like that.

23 Q. So, would it be appropriate to classify your
24 communication with the executive chamber as

1 limited to police business?

2 A. Police business, yes.

3 Q. Can you recall other reasons you might have
4 been in contact with the executive chamber in your
5 capacity as Superintendent?

6 A. Well, the State Police was involved in a lot
7 of police issues and things like that. I can't
8 tell you there wasn't a lot of calls that would
9 deal with issues that we were dealing with.
10 Normally, it had to do with State Police
11 operations.

12 Q. Can I ask you a hypothetical? If you had
13 received a FOIL request from the chamber, how
14 would that have been handled?

15 A. I would have sent it to division counsel.

16 Q. And, if you had received a document request
17 from the chamber for records of the State Police
18 -- and I can be fairly specific here --
19 transportation records of the State Police, can
20 you tell me how you would have handled that?

21 A. Well, we never got those. But I probably
22 would have had our counsel talking with the
23 counsel in the chamber why they wanted these.
24 That's unusual but, again, that's a hypothetical.

1 I have never received one, so it's in hindsight
2 what I think I might have done.

3 Q. I understand that.

4 A. It's a difficult question because I never
5 had one. When you get those you think -- and I'm
6 thinking out loud here -- I probably would have
7 counsel go down and talk to their counsel to find
8 out what reasons they wanted that for.

9 Q. Sure. You indicated that you didn't have
10 any experience with FOIL while you were at the
11 State Police; that was not your role as
12 Superintendent. Were you familiar at all with any
13 practice in the State Police concerning the
14 recreation of documents after the fact?

15 A. One thing we knew, not being a FOIL expert,
16 is that we didn't have to recreate documents.
17 FOIL was time consuming enough as it is, without
18 trying to make work out of it. And that part, we
19 did know for sure.

20 Q. And what about in other capacities? Did you
21 ever have occasion to have to create a document in
22 response to an agency request or a chamber
23 request, anything like that?

24 A. No.

1 Q. No?

2 A. No.

3 Q. And, again, a hypothetical -- and I know
4 these are difficult to answer. Had you been asked
5 to create such a document do you know how you
6 would have handled it?

7 A. I would not recreate documents.

8 Q. You would not create documents; is that what
9 you said? I apologize.

10 A. I said that I would not recreate documents.

11 Q. Why is that?

12 A. To recreate documents, you know, recreating
13 documents, there's a chance there is not going to
14 be an accurate accounting. It's not the normal
15 business to recreate documents.

16 Q. Are there documents within the State Police
17 records that are considered confidential?

18 A. Yes, sure.

19 Q. What type of documents would those be?

20 A. Open investigations, you know, things that
21 would deal with security issues, things that would
22 deal with undercovers, things dealing with
23 fictitious identifications. I know there's a long
24 list of things.

1 Q. And, as Superintendent are you aware of
2 which documents are considered confidential?

3 A. The whole menu? No. There's a lot of
4 documents that are considered confidential. If
5 there's a question on whether they -- no, I don't
6 know every document that would be considered
7 confidential. Unless the occasion arose and was
8 part of a conversation dealing with them -- and,
9 usually, counsel would be involved then if you are
10 talking about a FOIL request. But the general
11 rule, the ones that I know, they deal with the
12 safety and security of individuals and,
13 especially, State Police members, they are
14 confidential. If they are open investigations
15 they are protected. Sexual victims and such, they
16 are confidential for good reasons. Safety,
17 security, you know.

18 Q. I'm not trying to be difficult.

19 A. It sounds like it, to be perfectly honest.

20 Q. How do you make a determination that a
21 particular document is confidential?

22 A. I don't usually make a "determination," as
23 you put it.

24 Q. Who would make that determination?

1 A. Tell me what you are referring to. Is it a
2 FOIL request? Normal course of business?

3 Q. Well, in this instance -- and maybe this can
4 help. If we look at the documents that I provided
5 to you -- and for the sake of the court reporter I
6 am going to identify them for the record. The
7 first four documents, Commission's Exhibits 1
8 through 4 --

9 A. Yes.

10 Q. -- these are: Transportation Assignment for
11 Senator Joseph Bruno. Commission Exhibit 1 is May
12 3 and 4, 2007. Commission 2 is May 17, 2007.
13 Commission 3 is May 24, 2007, and Commission 4 is
14 June 27, 2007. That is captioned: Ground
15 Transportation.

16 A. It's right here.

17 Q. As you look at these documents, would there
18 be any reason that these documents would be
19 confidential?

20 A. If there has been some kind of security
21 issue with Senator Bruno I would say they would
22 be. It shows locations that he goes to that he
23 could return to, things like that. So, it shows,
24 you know, transportation on those days. I would

1 not, you know -- but then again, it would be based
2 on: Is there a security threat or something like
3 that. But I have never seen documents like this.

4 Q. You have never seen documents like this at
5 the State Police?

6 A. (Inaudible)

7 Q. Sir?

8 A. No. I'm sorry. I said no, Meave.

9 Q. And, would it make a difference in terms of
10 release of documents like this if it was in
11 advance of the transportation being provided?

12 A. That would be a security issue.

13 Q. In terms of releasing an itinerary prior to
14 the time it occurs?

15 A. Yes. I mean you are giving up your route,
16 potentially giving up your route of travel, a
17 location someone is going to be at.

18 Q. And I am going to direct your attention now
19 to Commission Exhibit 5.

20 A. I have it.

21 Q. This relates to a trip to New York City on
22 Thursday, May 17th and Friday, May 18 2007.

23 A. I have it.

24 Q. Have you seen documents like this at the

1 State Police?

2 A. No.

3 Q. In your estimate, would the release of a
4 document like this raise security issues from the
5 State Police perspective?

6 A. It gives the location that somebody is going
7 to be at. And if there has been some level of
8 security or if there has been any kinds of
9 threats, definitely. But probably we would not
10 release information like that.

11 Q. What if there had not been a threat? In
12 other words, what if you are not aware of a
13 particularized security issue with regard to, in
14 this instance, Senator Bruno?

15 A. Normally, we didn't release it that I am
16 aware of for the Governor, Lieutenant Governor,
17 anybody's particular complete travel itinerary,
18 because, again, that can be a security concern.
19 So, it's kind of -- you can't kind of go back and
20 forth; do it this way one time and do it this way
21 another time.

22 Q. Can you conceive of circumstances where it
23 would be okay to release this kind of information?
24 And I know I'm asking you a hypothetical.

1 A. I think the only way would be if it was a
2 FOIL request and we were, on a review, ordered to
3 do it after we declined it. And so, you know, if
4 the court ordered us to release it, that would be
5 the only way.

6 Q. And, in general, information concerning
7 public officials, how was that handled by the
8 State Police?

9 A. Do you mean -- when you say "information"
10 you mean travel information?

11 Q. Yes.

12 A. Normally, for the Governor and Lieutenant
13 Governor. And we didn't release that information.

14 Q. And, would you typically have information on
15 Senator Bruno?

16 A. I don't remember ever having any
17 information. You know, we didn't keep any
18 information at State Police headquarters on
19 travel. It would be the aviation records. The
20 security detail would get the itineraries about
21 where they were going for the day. But there was
22 no official record that we kept at division
23 headquarters.

24 Q. To your knowledge, were records kept

1 elsewhere?

2 A. I don't think that there was any records
3 made of individual -- I think the troopers that
4 was doing the driving may have had an itinerary.
5 Obviously, he had to. But it was not an official
6 record that I ever saw.

7 Q. Do you know if those itineraries were kept
8 or maintained anywhere?

9 A. If they were, they would have been at the
10 security detail. Like I said, I never saw them.

11 Q. So, you were not involved in transportation
12 issues at the State Police?

13 A. That would be the person that commanded the
14 security detail which would be, you know -- It was
15 a fairly substantial detail.

16 Q. Mr. McMahon, you were asked similar
17 questions in this regard by the Office of the
18 Attorney General; is that correct?

19 A. Yes. Three questions, I think.

20 Q. Do you recall the approximate date when they
21 spoke with you?

22 A. I can go back and find it. I don't know
23 that they made a record of it. It was sometime
24 before the report was released. I don't know the

1 exact date. I could look in my calendar. But it
2 was -- I think they just called me, so I don't
3 think I would even have a calendar record of it.

4 Q. Does sometime in mid or late July sound --

5 A. That sounds right. While we are talking I
6 will look at my calendar and see if I have
7 anything, but I doubt it. I'm looking at my
8 things, but I don't think I have anything on my
9 calendar because I think a woman -- I think her
10 name was Love -- I can't remember her name. She
11 called me from the Eastern U.S. Attorney's Office
12 in the Eastern District. I remember talking with
13 her about that.

14 Q. And since that phone call have you had
15 conversations with anyone else about this subject
16 matter?

17 A. Yes.

18 Q. Who would that be?

19 A. After I got interviewed Tom Constantine was
20 interviewed. We had a conversation afterwards,
21 and we were basically asked the same questions.
22 We talked about the word "Troopergate." I worked
23 with him for years, and we both spent lengthy
24 careers with the State Police, so we do talk

1 occasionally.

2 Q. Have you had any conversations with Preston
3 Felton about this subject matter?

4 A. No.

5 Q. Have you had any conversations with anyone
6 from the executive chamber concerning this?

7 A. No. Now, I did talk to Preston Felton to
8 see how he was doing because he sent me an e-mail
9 about using me for a reference about something.
10 But it had nothing to do with the case.

11 Q. Was that before this Attorney General report
12 was issued or after?

13 A. After. I talked to people about what I said
14 -- or before the report, I did not talk to anybody
15 about the report before it was issued. I talked
16 to no one in the chamber about it.

17 Q. Have you had conversations with Dan Wiese --

18 A. Yes.

19 Q. -- about the incidents contained in the
20 report and this information?

21 A. My conversations I think were -- no, it was
22 not about the report so much. It was more dealing
23 with, you know, if he knew how Preston Felton was
24 doing, if he knew, and things like that. He feels

1 bad about it. But I did have a couple of
2 conversations with Dan Wiese.

3 Q. Do you know if Dan Wiese has been in contact
4 with Mr. Felton?

5 A. I don't know that.

6 Q. Your conversation with the Attorney
7 General's Office, to your knowledge, that wasn't
8 under oath or recorded?

9 A. I don't know if it was recorded. They
10 didn't say if they were tape recording it. But it
11 wasn't under oath.

12 Q. And you indicated it consisted of three or
13 so questions; it wasn't a long, extensive
14 interview?

15 A. Probably five to ten minutes.

16 MS. TOOHER: I think that's all we need
17 at this time. I really appreciate your taking the
18 time to speak with us.

19 THE WITNESS: That's great. And you
20 have got my numbers if you need anything, okay.

21 MS. TOOHER: Great. Thank you very
22 much.

23 THE WITNESS: Take care, now.

24 MS. TOOHER: That concludes the

1 interview.

2 THE WITNESS: Okay. Have a nice day.

3 (The interview was concluded at
4 approximately 8:50 a.m.)

5

6 I N D E X T O E X H I B I T S

7 Commission Description Id.

8 (1-5 premarked)

- 9 1 Transportation assignment for
10 Senator Bruno, 5/03/07, 5/04/07
- 11 2 Transportation re J. Bruno, 5/17/07
- 12 3 Transportation re J. Bruno, 5/24/07
- 13 4 Ground Transportation 6/2/07
- 14 5 Trip to NYC, 5/17/07, 5/18/07

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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 proceedings recorded hereinabove
9 were recorded stenographically by me and reduced
10 to computer-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 my
24 hand this 23rd day of August, 2007.

25

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27

28

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

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