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STATE OF NEW YORK
STATE ETHICS COMMISSION

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In the matter of

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

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

Friday, August 24, 2007
10:00 a.m.

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

INTERVIEWEE: WILLIAM WAYNE BENNETT

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

PRESENT: H. J. CAMPBELL, Commission Investigator
ROBERT SHEA, commission 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: I think you know what we
4 are here to talk to you about, and it shouldn't
5 take very long. I understand it your conversation
6 with the Attorney General's Office wasn't too
7 extensive?

8 MR. BENNETT: Not really.

9 MS. TOOHER: What we are looking to do
10 is cover the same territory and take your
11 statement under oath.

12 W I L L I A M W. B E N N E T T,
13 called as a witness before the Ethics Commission,
14 and being duly sworn/affirmed by the notary public
15 was examined and testified as follows:

16 THE WITNESS: I do so swear.

17 EXAMINATION BY MS. TOOHER:

18 Q. Could you state your full name for the
19 record, please.

20 A. It's William Wayne, W-a-y-n-e, Bennett,
21 B-e-n-n-e-t-t.

22 Q. Where are you currently employed?

23 A. The City of Schenectady Public Safety
24 Commission.

1 Q. And how long have you been there?

2 A. May 7th of this year.

3 Q. Where were you employed prior to that time?

4 A. New York State Police.

5 Q. What was your position there?

6 A. My last position was the Superintendent.

7 Q. What period did you serve in that capacity?

8 A. September 16th of 2003 I was confirmed by
9 that Senate. My last work day was February 26,
10 2007, and my retirement date is May 6, 2007.

11 Q. How long were you with the State Police?

12 A. Since October 14, 1968, 38 and a half years.

13 Q. Most of the questions that I'm asking you
14 today concern the time period that you served as
15 Superintendent.

16 A. Okay, fine.

17 Q. And, from that perspective, I will be asking
18 you a number of questions that are hypotheticals.

19 And I understand I'm asking you to answer
20 questions as to something that you may not have
21 actually experienced, but that is of value to us
22 here.

23 A. I understand.

24 Q. In your experience as Superintendent did you

1 ever deal with requests under the FOIL Law?

2 A. Personally?

3 Q. Yes.

4 A. No. If I could just clarify something,
5 though. If there was a sensitive one, high
6 profile person -- We used to get actors,
7 actresses, politicians, and that would certainly
8 be brought to my attention. But as far as the
9 mechanics of addressing the requests for
10 information, we have a Records Access Officer,
11 Captain Laurie Wagner. She is the individual that
12 handles all of that. She also has available to
13 her an Assistant Counsel in our legal bureau to
14 assist her with any issues, questions, decisions
15 that she may have regarding a release or
16 redacting, that type of thing.

17 Q. My understanding is that Captain Wagner is
18 still the Records Access Officer at the State
19 Police.

20 A. Yes.

21 Q. Was she the Records Access Officer during
22 your entire tenure?

23 A. Yes.

24 Q. Do you know the assistant counsel she dealt

1 with while you were there?

2 A. Yes. It would have been Darren O'Connor.

3 Q. If she had questions concerning a FOIL, it
4 was your understanding she would go to him if it
5 was a legal issue?

6 A. Correct.

7 Q. You indicated if it was a sensitive matter
8 you might be notified of that?

9 A. Yes.

10 Q. What would be the nature of that
11 notification?

12 A. They would just tell me: Look, we have a
13 request for Freedom of Information documents
14 regarding a particular case. It could be one of
15 two formats. It could be something that had
16 notoriety for whatever reason, or it could be a
17 case that down the line may lead to embarrassment
18 of the agency or a requirement for us to address
19 issues that, you know, would not be easy to
20 address, that type of thing.

21 Q. And what sort of notification would you
22 receive?

23 A. Verbal.

24 Q. Did you take any notes of that or keep any

1 records that you had received that notification?

2 A. No.

3 Q. It was just put on your radar screen?

4 A. Yes. It didn't happen very often, so you
5 tend to remember them.

6 Q. Do you recall ever receiving requests from
7 the executive chamber for FOIL documents
8 personally?

9 A. Never.

10 Q. Did you ever receive requests from the
11 executive chamber for documents concerning things
12 other than police work?

13 A. No. I mean anything, you know, that
14 required documentation between I and they would
15 have already been in the form of some type of
16 executive memorandum to the Governor's Office.

17 Q. You would prepare those memoranda?

18 A. Or my counsel. It might be my counsel would
19 do it with her counsel.

20 Q. In your experience as Superintendent you
21 don't recall ever receiving a request of a FOIL
22 nature from the executive chamber?

23 A. No. That would have been completely
24 unusual. The reason being, first of all, if they

1 are going to ask for documents under what was
2 alleged to be a FOIL request that they have, I am
3 going to want to see that. First, you send me the
4 FOIL for our records, if nothing else. And, as
5 you know, FOIL gets served on the agency that has
6 the records, which wouldn't be the executive
7 branch. It would be the state agency.

8 Now, the State Police are part of the
9 executive branch but, still, I never, ever recall
10 anything coming through the Governor's Office as
11 far as them needing a FOIL. I don't ever remember
12 such a case.

13 Q. As far as them needing a FOIL, it is my
14 understanding that the State Police has
15 regulations concerning FOIL. Are you aware of
16 those?

17 A. Yes, I am.

18 Q. Are you familiar with them?

19 A. Yes.

20 Q. And, this is the New York State Police
21 Administrative Manual Rule 8, and it is dated
22 March 1998. This was provided to us by the State
23 Police and it is the provision covering FOIL. I
24 am just going to ask you, are there requirements

1 that a FOIL request be in writing --

2 A. Correct.

3 Q. -- to the State Police. Is that your
4 understanding --

5 A. Yes, Ma'am. It is.

6 Q. -- of the records?

7 A. Yes.

8 Q. I am going to direct your attention to 8.6
9 which is 9NYCRR 43.6. I have a provision
10 highlighted indicating: "No oral request will be
11 accepted."

12 A. Right.

13 Q. To your knowledge, was that practice
14 followed at the State Police?

15 A. Yes, to much aggravation of people in the
16 news media.

17 Q. Why do you say that?

18 A. They are in the business of information, and
19 timeliness is everything to them. They would call
20 up and just say, "Can't you just tell me?" Or,
21 "Why don't you tell me now and I will file a FOIL
22 request." And we wouldn't adhere to that, which
23 frustrated them immensely. That was our business
24 practice. That was our practice, and we didn't

1 make any exceptions.

2 Q. Did you ever discuss that practice with
3 counsel at the State Police?

4 A. Never had to.

5 Q. It was understood that that was the practice
6 of the State Police?

7 A. Yes. The only person that would tell me
8 about those things would be the Public Information
9 Officer because he is the one that gets the call
10 from the news media. And he would mention: Oh,
11 yes. I got a verbal from so-and-so today and I
12 told them no and he's angry. And if he calls and
13 you get a complaint, that's what it's about.

14 Q. Who was your Public Information Officer?

15 A. At the time when I was Superintendent it was
16 Lieutenant Glenn Miner.

17 Q. Thank you. During your experience as
18 Superintendent did anyone under your command ever
19 have occasion to create documents after the fact
20 in response to a FOIL request?

21 A. Not to my knowledge.

22 Q. And are you aware of whether or not there
23 was any policy or practice at the State Police
24 concerning the creation of documents in response

1 to a FOIL request?

2 A. I don't believe there is any written policy,
3 but I can tell you that everybody had a clear
4 understanding that we are not in the business of
5 creating documents that didn't otherwise exist. I
6 mean there are business records kept in the normal
7 course of business for the State Police and we all
8 know that. I never heard of such a request.
9 Certainly, I would have never endorsed it had it
10 come to my attention or my counsel's, because FOIL
11 strictly covers documents that exist, not ones you
12 might want to exist or might want to create. It's
13 what they are at the time the request is received.

14 Q. Let's step outside of FOIL for a moment.
15 Did you ever receive a request from the executive
16 chamber to create a document?

17 A. Other than just normal business, you know,
18 we might have conversations about some particular
19 matter. They would say verbally initially: What
20 are your viewpoints on this, that type of thing.
21 And, they would say, well, just memorialize it in
22 a memorandum to us.

23 Q. As to records of the State Police, did you
24 ever receive any --

1 A. No.

2 Q. -- any sort of request from the executive
3 chamber to create a document?

4 A. No, I did not.

5 Q. Are there documents of the State Police that
6 are considered confidential?

7 A. Sure.

8 Q. What types of documents would those be?

9 A. There would be a variety of them:
10 Confidential informant records, security, high
11 security, high security profile assessments, that
12 type of thing, on individuals in public life in
13 particular. There could be a variety of things.
14 Certainly, criminal investigations would be
15 considered confidential.

16 Q. And, when you say "confidential" what does
17 that mean within the State Police?

18 A. There is a regulation in the State Police
19 that you don't have the authority to discuss any
20 kind of investigation with anybody other than a
21 U.S. Attorney, District Attorney, that type of
22 thing. So, there are different levels of
23 confidentiality, if you would. There may be the
24 super-sensitive investigations that perhaps only a

1 few of us would know about, and there would be
2 others of a routine, confidential nature. But
3 they would be cases or records about incidents
4 that, you know, for one reason or another --
5 particularly the fact that it may be ongoing --
6 were kept confidential.

7 Q. You indicated that ongoing investigations
8 might be one reason something might be
9 confidential.

10 A. Right.

11 Q. What are the other types of reasons that
12 documents would be considered confidential?

13 A. Not for purposes of FOIL?

14 Q. Well, for the purposes of FOIL and for the
15 purposes of turning over documents, say, to
16 another agency.

17 A. Again, we might, you know, have a request
18 from the prosecutor saying he doesn't want these
19 things released to anyone, that type of situation.
20 We used to get cases where, say, a U.S. Attorney
21 may be prosecuting as well as the local D.A. And,
22 of course, it becomes a little bit of a turf
23 battle. And they tell you very quickly whether or
24 not they want to share any of those records with

1 anybody else, that type of thing.

2 Certainly, within the parameters of FOIL
3 -- I will give you an example. With domestic
4 relations complaints, okay, our policy in the
5 State Police was that if there was no arrest made
6 we would not disclose the documents, okay. We
7 were sued twice, once in western New York and once
8 in eastern New York by people who were involved in
9 cases like that and wanted these documents for
10 divorce proceedings. And the judges in both cases
11 upheld our policy that: No arrest, no disclosure.
12 So, that would be certainly something that is kept
13 confidential as well.

14 Q. What about security interests?

15 A. Absolutely.

16 Q. What do you consider security interests
17 within the parameters of the State police?

18 A. It could be a variety of different things.
19 It could be the security of our own building,
20 security of prisoners, the security of
21 confidential informants' files, money, narcotics.
22 There is a host of things that we may consider to
23 be confidential.

24 Q. What about the security interests of public

1 officials?

2 A. I'm not sure I understand. What would be an
3 example of what you are referring to?

4 Q. Well, I can give you a very narrow example.

5 A. Please do.

6 Q. Travel itineraries of public officials,
7 would you consider those documents to have
8 security interests attached to them?

9 A. Yes, unless, you know, they were publicized.
10 I mean the Governor's Office routinely publicizes
11 the Governor's daily schedule. Certainly, that's
12 different. But, generally, there is an absence of
13 public disclosure by the officials themselves and,
14 so, we would not disclose that for security
15 reasons.

16 Q. What would be the security reasons?

17 A. Well, the fact that if you were to disclose
18 that before the fact, certainly, you know, people
19 would know exactly where that official is going to
20 be and the approximate time frame. And,
21 obviously, it increases the risk for safety when
22 people know that. We just simply wouldn't do it.

23 Q. Have you ever had a request for travel
24 itineraries concerning public officials?

1 A. Never.

2 Q. Have you ever had a request from the
3 executive chamber for travel itineraries of public
4 officials?

5 A. No, I have not.

6 Q. I will ask you to take a look at four
7 documents marked as Commission Exhibits 1 through
8 4. Commission Exhibit 1 is the transportation
9 assignment for Senator Joseph Bruno for May 3,
10 2007 and May 4, 2007.

11 Commission 2 is the transportation
12 assignment for Senator Joseph Bruno May 17, 2007.

13 Commission 3 is the transportation
14 assignment for Senator Joseph Bruno for May 24,
15 2007.

16 And, Commission 4 is captioned: Ground
17 transportation June 27, 2007.

18 Q. Have you ever seen these documents before
19 today?

20 A. No. This is the first time.

21 Q. In your experience with the State Police
22 have you seen documents similar to this?

23 A. Never.

24 Q. Take a moment.

1 A. Nor would I need to see them.

2 Q. And, why is that?

3 A. Because they are -- you know, what is
4 portrayed here is really in-house, you know,
5 information, there is no reason for me to know
6 about that. Would I know where Senator Bruno is,
7 perhaps, on a particular day, sure. Beyond that,
8 this has no value to the agency or to myself.

9 Q. To your knowledge, were those types of
10 records kept at the State Police?

11 A. Not to my knowledge.

12 Q. If these types of records were kept at the
13 State Police, do you know where they might have
14 been kept?

15 A. Well, we certainly would have no need for
16 them at the headquarters level in Albany, no need
17 at all. So, if they were to be kept even
18 informally without my knowledge or to our
19 knowledge at headquarters, I would presume that it
20 would be a local issue, if you will, and be kept
21 by the office in New York City in this particular
22 case.

23 Q. That would be the office providing the
24 transportation?

1 A. Yes.

2 Q. This type of information contained in these
3 documents, would that be considered security
4 information?

5 A. Yes.

6 Q. Is this the type of document that you would
7 release to the public?

8 A. No, Ma'am.

9 Q. And why is that?

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

21 Q. I am obviously asking you to hypothesize
22 here. If you receive a request to disclose these
23 documents to the media, do you know what your
24 response would be?

1 A. "No."

2 Q. If you received a request to disclose these
3 documents to the media in your capacity as
4 Superintendent would you do so?

5 A. No. First of all, let's go back to what we
6 just said. First of all, it would have to be a
7 written request. And, second of all, I would
8 recheck with my counsel, I'm sure. And I know he
9 would agree with me that we are not going to
10 disclose this.

11 MR. SHEA: That would be a written
12 request to the State Police?

13 THE WITNESS: Absolutely, because I am
14 not going to accept anybody else's FOIL. If you
15 want a FOIL of State Police records, it has to
16 come to us in the way it's supposed to be done.
17 We are the keepers of the records.

18 Q. I am going to show you what has been marked
19 as Commission Exhibit 5, captioned, "Trip to New
20 York City, Thursday, May 17th, and Friday, May 18,
21 2007. And I will ask you if you have seen those
22 documents before today.

23 A. No, Ma'am.

24 Q. In your capacity as Superintendent with the

1 State Police, did you ever see documents of this
2 sort?

3 A. No. The only thing that would even closely
4 resemble this that I do know exists, although I
5 wouldn't have any reason to see them, is the
6 flight manifest kept by aviation which is a
7 requirement by FAA.

8 Q. Again, look at this document. Would this be
9 a document that would have security interests
10 attached to it?

11 A. Absolutely. It's the same situation here.
12 I have got a pattern of where he is arriving,
13 where he is landing. For this particular case, I
14 know that he had people with him. You know, if
15 you had enough of these logs, this would be
16 information that I would like to know if I was
17 seeking to, you know, do something here, whether
18 it be causing harm to the individual or harassing
19 them, or whatever.

20 Q. So, in your experience, you would not turn
21 documents of that sort over to the public?

22 A. Absolutely not.

23 Q. Can you conceive of a circumstance in which
24 you would be willing to release this type of

1 information concerning public officials?

2 A. Again, the only way I think we would even
3 look at that possibility is, let's say Senator
4 Bruno or whoever, called and said, you know: I
5 have a problem. Would you release these
6 documents? Our answer to him would be: We are
7 not going to release them. This is your
8 itinerary. This is your information. You release
9 it.

10 Again, there is another issue here in
11 that there is more than one individual listed
12 here. So, if Joe Bruno wants to put out his
13 itinerary, go ahead, Senator. Do it. But we are
14 not going to release any information about other
15 people for the very same reasons.

16 Q. Are you familiar with William Howard?

17 A. Yes, very familiar.

18 Q. How do you know Mr. Howard?

19 A. I was the First Deputy Superintendent, which
20 is the number two person in the State Police, from
21 April of 1994 to the day I made Superintendent.
22 During that time period, more so in the latter
23 half, you know, I would on occasion deal with him
24 if the Superintendent, which was Jim McMahan,

1 happened to be out at the time, out of the office.
2 And, of course, as Superintendent he was my
3 contact person generally for all business in the
4 Governor's Office.

5 Q. What was Mr. Howard's position during that
6 time, if you know?

7 A. Well, let's see. They referred to him as a
8 couple of different things. I called him Deputy
9 Chief of Staff.

10 Q. And, in your relationship with Mr. Howard --
11 and you are now talking about the Pataki
12 administration --

13 A. Yes.

14 Q. -- did Mr. Howard ever request documents
15 from you?

16 A. Of this nature?

17 Q. Of that type.

18 A. No, never.

19 Q. Did he ever seek FOIL documents from you?

20 A. No, he didn't.

21 Q. Did you ever have a conversation with Mr.
22 Howard concerning the transportation of Senator
23 Bruno?

24 A. Oh, we had a couple, yes.

1 Q. Do you recall the sum and substance of those
2 conversations?

3 A. What was happening is, you know, Senator
4 Bruno's office wanted to use the helicopter. The
5 procedure in place is that they had to make the
6 request of the Governor's Office and the
7 Governor's Office would approve it or disapprove
8 it. And, generally, as the Superintendent I
9 didn't get involved in that at all. Senator
10 Bruno's Office would talk to the Governor's
11 security detail. They were the liaison, if you
12 will, to get it approved by the second floor.
13 And, generally, I wouldn't even know about it.
14 But, there was a period of time where Mr. Howard
15 felt that perhaps Mr. Bruno was using it a little
16 too often and, you know, was that really first of
17 all necessary and was it proper. And, you know,
18 my response to him would be: That is your
19 decision to make. And it always has been. These
20 ships were not med-evac equipped, so that was an
21 issue. It's always an issue at aviation. We
22 maintain a policy that you had to make sure those
23 ship were available for that purpose. It would be
24 a tremendous embarrassment if some politician had

1 that ship and someone needed it for medical
2 reasons. But, the ships that they were flying on
3 were not med-evac ships. But, generally, he
4 brought that up about -- Let's face it.
5 Politically, there are times when the Senator and
6 the Republican Senate were at odds with Governor
7 Pataki. That's a war waged at a much higher level
8 than mine, and I am glad it was. But I'm sure
9 that may have had something to do with it as well.

10 Q. Do you recall the time frame, roughly, when
11 you had these conversations?

12 A. It had to be when I was the Superintendent.
13 I would say that would have been perhaps early in
14 2006.

15 Q. And I understand that's an approximation on
16 your part.

17 A. It is.

18 Q. What was the outcome of those conversations?

19 A. Well, you know, for example, I remember one
20 particular instance that they were going to deny
21 the use of the ship and then that subsequently
22 changed. So, you know, again, the ball went right
23 back into their court. These are decisions they
24 would make and we would follow, if you will. So,

1 nothing would have changed as far as policy, but
2 he did express his concern that he thought perhaps
3 it was too frequent. And the issue was about
4 that.

5 Q. Did he ever direct you not to provide
6 transportation to Mr. Bruno?

7 A. I don't ever recall that, no. And,
8 certainly, if he had I would have done it. I mean
9 he was my boss. And I would have had to tell the
10 aviation people as well. But I don't recall that
11 happening ever.

12 Q. Let me ask you this. In Mr. Howard's
13 capacity as your boss, if he had asked you to
14 provide these types of documents would you have
15 done so?

16 A. No.

17 Q. Why is that?

18 A. Because, as I told you, first of all,
19 without a FOIL in hand I am not going to examine
20 things. Don't even go there. They all knew it.
21 I had a reputation of being kind of independent.
22 My mentor was Tom Constantine and he was extremely
23 strict. And he used to tell me that the ultimate
24 bottom line in a decision is to protect the

1 agency. So, had he ever requested anything like
2 that, the answer would have been: Sorry, Bill.
3 If you want to fire me, have at it. But it's not
4 going to be.

5 Q. Have you had any contact from anyone else
6 concerning these issues and the Attorney General's
7 inquiry?

8 A. No.

9 Q. Have you spoken with Superintendent Felton?

10 A. I have seen him. I have to go through there
11 periodically just to get the mail. And I would
12 say hello to him, but nothing beyond that.

13 Q. You have not discussed these issues?

14 A. No.

15 Q. Have you spoken with anyone from the
16 executive chamber?

17 A. No.

18 Q. Have you spoken with Dan Wiese at all
19 concerning these issues?

20 A. No.

21 Q. You have not spoken with anyone outside,
22 obviously, of this office concerning these issues
23 and the investigation in the Attorney General's
24 Office?

1 A. The only one I talked to is Jim McMahon who
 2 was my predecessor in the Superintendent's office.
 3 I had, you know, called him and said, "The
 4 Attorney General is trying to get in touch with
 5 you, and I provided them with your office
 6 information," that type of thing. And, then, he
 7 called me about a totally unrelated personal issue
 8 later on and made mention of the fact that, you
 9 know, that he, too, had been asked the same
 10 question. And he, too, never recalled any such
 11 type activities. But beyond that, no.

12 MS. TOOHER: Thank you. That concludes
 13 the interview. And I really appreciate your
 14 coming in. It's a big help to us.

15 (The interview was concluded at
 16 approximately 10:40 a.m.)

17

18 INDEX TO EXHIBITS

19	Commission	Description	(Premarked)
20	1	Transportation assignment re 5/3-4/07	
21	2	Transportation assignment re 5/27/07	
22	3	Transportation assignment re 5/17/07	
23	4	Transportation assignment re 5/24/07	
24	5	Re ground transportation re 5/18/07	

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

3

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
24 my hand this 24th day of August, 2007.

25

26

27

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

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35