

---

---

# ***Committee Meeting***

of

## ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

*“Testimony concerning activities of the Budget Efficiency Savings Team Commission; testimony concerning public access to individual State Trooper records; and testimony addressing regulations dealing with head injury victims”*

---

---

**LOCATION:** Committee Room 8  
State House Annex  
Trenton, New Jersey

**DATE:** March 11, 2002  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman William D. Payne, Chairman  
Assemblyman Joseph Cryan, Vice-Chairman  
Assemblywoman Nilsa Cruz-Perez  
Assemblywoman Connie Myers  
Assemblyman John E. Rooney



**ALSO PRESENT:**

James E. Vari  
Peter J. Kelly  
*Office of Legislative Services*  
*Committee Aides*

Gabby Mosquera  
*Assembly Majority*  
*Committee Aide*

Thea M. Sheridan  
*Assembly Republican*  
*Committee Aide*

*Meeting Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

---

---

## TABLE OF CONTENTS

	<u>Page</u>
Micahel R. Ferrara Assistant Director Budget and Resource Studies Rutgers University, and Member Budget Efficiency Savings Team Commission	3
Thomas J. Cafferty, Esq. General Counsel New Jersey Press Association	14
Guy T. Baehr Board Member New Jersey Chapter Society of Professional Journalists	22
Richard Gutman, Esq. Private Citizen	26
Ed Barocas, Esq. Legal Director American Civil Liberties Union of New Jersey	27
Ronald Miskoff Treasurer New Jersey Foundation for Open Government	39
Assemblyman Craig A. Stanley District 28	46
Richard G. Rivera Chief Investigator Police Complaint Center, and Third Vice President Human Civil Rights Association of New Jersey, and Member American Civil Liberties Union	48

## TABLE OF CONTENTS (continued)

	<b><u>Page</u></b>
Vito Albanese Sr. Parent of Traumatic Brain Injury Child	70
Sally Jankowski Parent of Traumatic Brain Injury Child	83
<b>APPENDIX:</b>	
Statement submitted by Thomas J. Cafferty, Esq.	1x
Testimony submitted by Guy T. Baehr	7x
Statement submitted by Richard Gutman, Esq.	9x
Statement submitted by Ronald Miskoff	14x
Excerpt New Jersey Police Complaint Review Project 2000 submitted by Richard G. Rivera	18x
Testimony, plus attachments submitted by Vito Albanese	103x
Testimony, plus attachments submitted by Sally Jankowski	180x

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Statement submitted by Roxanne Vivanco Organizer New Jersey Citizen Action Committee	215x
rs: 1-99	

**ASSEMBLYMAN WILLIAM D. PAYNE (Chairman):** Good morning, everyone. We're happy to have you here today at the meeting of the Assembly Regulatory Oversight Committee.

The purpose, of course, of our Committee is just to try to see to it that government is working, as far as we're concerned -- working to the best interest of the constituents of the State of New Jersey and to looking into those areas where, perhaps, there may be some shortcomings or weaknesses that might need some improvements.

So, before we start, I will take a roll call of our members.

MR. VARI (Committee Aide): Assemblyman Rooney. (no response)

Assemblywoman Myers. (no response)

Assemblywoman Cruz-Perez.

ASSEMBLYWOMAN CRUZ-PEREZ: Here.

MR. VARI: Vice-Chairman Cryan.

ASSEMBLYMAN CRYAN: Here.

MR. VARI: Chairman Payne.

ASSEMBLYMAN PAYNE: Here.

MR. VARI: We have a quorum.

ASSEMBLYMAN PAYNE: Good, we have a quorum.

As you know, the State of New Jersey, as it's been reported, is currently in a situation where there seems to be a budgetary crisis, that there seems to be a gap in the revenues and the expenditures in the State of New Jersey. And we have heard that many of the -- the gap that we see there is, perhaps, what caused a significant negative impact upon the services that we,

we, as a government, are able to provide for the citizens of the State of New Jersey.

The reason for having-- We've invited members of the BEST Commission to be here today. That's the Budget Efficiency Savings Team Commission, which was established by Governor McGreevey. As you know, it consists of top New Jersey business leaders and is working with the administration to identify and recommend ways to eliminate State government waste and mismanagement and maybe to find some innovative ways to bring about some savings in order for us to, number one, be more efficient in our delivery of services, and number two, as I said, do more with less.

We're here for a fact finding. This administration is just coming in. And as it's often said, a new broom sweeps clean. We're not indicating that there's anything that needs to be cleaned up. What we are saying is that we want to find out exactly what the situation is, factually. And then, perhaps, we can hear from the representatives of the BEST Commission to determine just what it is they found and what it is, so far, though it's embryonic in its stage right now-- We can see what kinds of suggestions that this Commission will have to try to remedy the waste and the shortcomings.

We do have a representative, Mike Ferrara, who will be speaking on behalf of the BEST Commission.

But before we do that, I'd like to introduce the Vice-Chair of this Committee, Assemblyman Cryan for a few comments.

ASSEMBLYMAN CRYAN: I look forward to hearing from Mr. Ferrara and all the opportunities that the BEST Commission puts forward. As everyone knows, this budget deficit that we're facing in the dissipation -- the

Governor's message on March 26 is of vital importance to this State and its economy.

And, quite frankly, Mr. Chairman, let's move forward with Mr. Ferrara.

ASSEMBLYMAN PAYNE: Thank you.

Any comments?

ASSEMBLYWOMAN CRUZ-PEREZ: I just want to echo what Assemblyman Cryan just said. We're here to find out what can be done and to tell us what they're going to be doing so we can solve this problem.

Thanks.

ASSEMBLYMAN PAYNE: Thank you very much.

Mr. Ferrara, give us your name, and state your position, etc., please.

**MICHAEL R. FERRARA:** Yes, I will.

Mr. Chairman and members of the Committee, my name is Michael Ferrara. I am the Assistant Director of Budget and Resource Studies at Rutgers University and a member of the University and a member of the Budget Efficiency Savings Team Commission, better known as the BEST Commission. I was asked to appear before you to brief you on the work of the Commission.

The Commission was created on January 17, when Governor McGreevey signed his second executive order. In that executive order, the Governor said that the Commission will work with the administration to identify and recommend ways to cut waste and to operate more effectively and efficiently.

The specific charge that Governor McGreevey issued to the BEST Commission was: one, to identify waste and mismanagement in the system,

including borrowing and refinancing practices and unnecessary programs and operations; two, to find efficiencies throughout State government to maximize services and minimize cost, including overlapping programs; and three, to recommend solutions. As business leaders, the Governor is looking to the group to develop innovative ways to tackle the challenges ahead.

The members of the Commission-- The Commission is chaired by Tony Coscia, a managing partner of the law firm of Windels, Marx, Lane, and Mittendorf.

The other members of the Commission come from many other private sector companies including PSE&G, New Jersey Resources Corporation, KPMG, Ernst and Young, Johnson and Johnson, McManimon and Scotland, PNC Bank, First Union National Bank, Fleet Bank, Dime Bancorporation, and Constellation Capital Corporation, among others.

The Commission is in the process of reviewing each department of State government and some specific crosscut issues. These crosscut issues include: energy and utility policy, space utilization, E-Government initiatives, procurement practices, tax remittance and debt collection, capital planning, vehicle maintenance, management training and professional development, and compensation and benefits.

Please recognize that the Commission has been in existence for less than two months so, much of the research needed to meet the charge of the Governor has yet to take place. The goal of the Commission is to issue an interim report at the end of this month and a final report in June.

I would be happy to answer any questions you might have.



But moving away from my prepared remarks, as this point in time, I'm not in a position to give you any of the findings of the Commission. The people have just recently moved out into the departments to begin the study that is necessary to identify those particular things that they will bring to the attention of the Governor.

I'd be happy to answer any questions.

ASSEMBLYMAN PAYNE: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thanks for your testimony.

Can you take me through the process? How are you coming in? What are you selecting? Are you doing it procedurally, via an audit? And how is the team selected? How is it all working?

MR. FERRARA: Okay.

Basically-- If you give me a second here, I've got--

The various organizations, private sector companies, have agreed to do particular State departments of the government. KPMG is doing the Department of Transportation. I won't give you all of them, but I'll give you-- Arthur Andersen is doing Health and Senior Services. Ernst and Young is doing the Department of Education.

On some of the specific issues, space utilization is being done by Elberon Investment Corporation. But these are private sector people that have expertise in these types of functions.

And I think the one term that we tend to -- we try to stress when we've had the meetings -- we've had three Commission meetings -- was that we would look for best practices. In other words, look at the way government's doing -- the way they do their work, whether it be looking at the prioritization

of programs to begin with-- What is it that State government does? If they are doing it, and it should be done, is it being done appropriately? Is it being done efficiently? Is it being done effectively? Is there a better way to do it?

Pretty much, that's-- The textbooks would define it as a performance audit or a management audit, but it's going in there and looking at the structure, also, of the organization. Is it structured properly? Are a proper number of workers per supervisor -- might be something that they would look at -- how they're getting the job done.

And then program -- whether the program is working. And I think that's one thing that government has tended to not put a lot of focus on, and that's the accomplishments of the program. Are we actually helping the people that we're trying to serve? And are we getting the results that are intended? If we're spending a lot of money but not accomplishing what we intend, then one has to question whether one, we should we be doing it, or two, should we be doing it differently.

ASSEMBLYMAN CRYAN: How's the cooperation so far among the State agencies?

MR. FERRARA: The departments have been very, very cooperative. The Governor pretty much said, "You will cooperate." (laughter)

ASSEMBLYMAN CRYAN: It's nice to have that enthusiasm.

MR. FERRARA: Even with that having been said, I believe they understand the crisis that the State is in, and they would be happy, whether they were told to or not, to participate.

ASSEMBLYMAN CRYAN: Can you help this Committee--

And if I may, Mr. Chairman. Regulations, in particular, have to be, just from my two months here in Trenton-- I'm flabbergasted at the amount of regulations and things that actually go in State government. It's more than I could possibly imagine.

Can you help this Committee later on in your process, and can you come back and, at least, inform us as to things or areas that you see that we can help improve on as a result?

MR. FERRARA: I'm sure that that will happen, whether it's me or someone else on the Commission. But feel free, whenever you want to hear from us, to invite us.

ASSEMBLYMAN CRYAN: Thank you, Michael.

MR. FERRARA: We'll be here.

ASSEMBLYMAN PAYNE: Assemblywoman.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you, Mr. Chairman.  
Just a question.

When you find-- If you find deficiencies within the different departments, is the Commission -- will be entitled to help them to structure-- What is the procedure?

MR. FERRARA: Sure.

ASSEMBLYWOMAN CRUZ-PEREZ: Okay.

MR. FERRARA: Clearly, there's findings and there's recommendations. The report will be, I think, in terms of format, very similar to past Commissions. You have findings, and you have recommendations. So the finding would be what is not being done the best way it could be done. And

the recommendation is how to change the way you do it to make it more efficient, more effective, to accomplish what's intended.

Clearly, it's not just, find a problem and run from it. No, that's not what they're going to be doing. It's, find a problem and recommend the corrections.

ASSEMBLYMAN PAYNE: Thank you.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: I apologize for being late. Route 1 was jammed again. And I will have some things to say to the Department of Transportation later today. (laughter) I cannot believe they have three lanes going into one because of construction. And there's a truck there trying to-- Oh, I can't-- (laughter) I don't even want to go there.

Pardon me for doing that.

I'm looking at your task list, and I commend you. You've got quite a lot of things. If I can be helpful in any way-- Items Number 1 and 3, energy and utility policy and procurement practices-- I, for one, have been trying to get the State to -- when they put out bids for anything -- any governmental facility or process--

I happen to be in the electrical industry. What I've always said is that they should always include in a bid, especially for large electrical equipment, not only the lowest cost but the lowest cost for energy over, at least, a three-year period.

When I was in my old days at the -- my old hat as a commissioner at the Utility Authority, we had one bid, and it was for some centrifuges. We had -- I think it was millions of dollars worth of equipment. And we had a bid

list that was one, two, and three, looking at first costs. And when you looked after three years of electrical costs, it became three, two, one because the best approach for us would have been to go with the more -- a little more expensive equipment. But over a course of years, the energy savings on it would have been tremendous -- absolutely tremendous.

So these are the kinds of things I've tried to put into law. And I've been thwarted at many-- So, maybe you can do that and make those suggestions. I keep putting the bills in, but they go nowhere. They don't want overregulation when you do contracts like that.

If there's anything I can do to help on the electrical end of the process, I would be very happy to work with you.

MR. FERRARA: Thank you.

ASSEMBLYMAN ROONEY: We need to trim government. There's no question about it. We've always needed it.

ASSEMBLYMAN PAYNE: Thank you, Mr. Rooney.

Mr. Ferrara, there have been, in the past prior years, other administrations, etc., which have come in also and have said that there's been waste in government -- there apparently has been a waste in government, etc.

Do you know-- Has there been-- Is there a precedent that's been set, really, for similar kinds of commissions, in the past, to try to ferret out waste and things like that?

MR. FERRARA: Generally, every Governor, when they come in, creates a commission to look at government. GMIP, I believe, was the name that was given to Tom Kean's commission; GMRC, Government Management

Review Commission was Governor Florio; and Government that Works was Governor Whitman's commission.

What's abnormal, I think, this year -- and I come from having worked in the State Budget Office for 28 years-- What's unusual is the size of the problem. And it's not easy. It's not going to be easy to solve the problem facing New Jersey.

And as Moody's said in a recent pronouncement, it's not going to happen in one year. It's going to take several years to correct the problem because the imbalance is so significant between revenues and expenditures.

ASSEMBLYMAN PAYNE: Since there have been similar kinds of efforts in the past, do you know whether or not these previous commissions found the waste and found ways to correct it?

MR. FERRARA: Certainly, they did. And one of the things that this Commission is doing is reviewing the previous reports and determining what recommendations were made that weren't implemented. And some of the findings may be to do some things that were recommended eight years ago, four years ago, that did not happen.

ASSEMBLYMAN PAYNE: Yes. One of the things that certainly concerns this Committee is the fact that there are recommendations that are not followed through in so many areas, that there are regulations that are supposed to be promulgated in a lot of areas and just simply haven't been done. And I'm just hoping that this is not going to be another exercise.

First of all, the leadership from the top -- from the Governor, who, so far, has indicated that he's a very aggressive person, that he's looking to solve problems, etc. It's my hope that with this Commission, we will have what the

leadership -- and I think that's always key -- how serious and how aggressive is the leadership that's giving the mandate. And I think that this Governor is showing that he's serious about this.

But we would need to come up, perhaps, with some kind of innovative ways to not only find the waste but also to implement those recommendations that are out there. And I think that we're off to a good start. I know it's very early, and I mentioned before, this is in the embryonic stages in your process, but -- and we will invite you back.

I did read, however, that the BEST Commission had already found some areas of waste. I read in the paper the other day that there was some areas that were glaring. And they had already found that there was some areas that might be able to be corrected rather shortly.

Do you recall what--

MR. FERRARA: I can only refer to those that I know were made public. There was some space that had been rented by the Department of Health on Spruce Street in Trenton -- in Ewing, actually, and it was sitting vacant.

There was a press conference about the borrowing that was done for the pension bonds, whereby the money was borrowed, and then the payments into the system were stopped for the next five years so that the \$2.8 billion that was borrowed, \$2.4 billion in payments weren't made. So we're really not ahead of the game except we have this huge debt out there. But they're the only two that I'm aware of that have been publicly announced. And I'm not in a position right now--

I would like to make a comment that the Commission, after it issues its final report, will not go out of business. The intent is that we will stay in business and follow up on those recommendations to determine which are implemented and which are not and to provide any assistance to the Governor that we can to implement those that should be implemented.

In fact, we already have meetings scheduled for September 12, 2002, December 12, 2002, March 13, '03, and June 12, '03. So we're going to meet quarterly after the report is issued to follow up on the findings.

ASSEMBLYMAN PAYNE: As Assemblyman Cryan mentioned, in government, State government, there's so many regulations and things that you just have a difficult time keeping up with.

I shake my head and I shuddered when I read the story about the space that was there, renovated, spent money on it, and not being used. It just seems to me so elementary that these kinds of things should be able to be noted and corrected. I just don't understand what happens. It's either one hand doesn't know what the other one is doing -- the left hand doesn't know what the right hand is doing.

But some of these things are so asinine and criminal, as a matter of fact. And I would certainly hope that-- I don't know whether it's within the purview of the BEST Commission or another commission, but I would certainly hope that when we find some of these areas of egregious waste and that some people may be guilty of some -- I don't -- whether criminal intent or what have you -- that we will go forward with eliminating these kinds of things. It just doesn't make any sense whatsoever.



And if, in fact, you've been in business for such a short period of time and found these very glaring kinds of problems, it's my hope that with the imagination and with going forward on this, that we're going to be able to find a lot of these areas that just make no sense whatsoever and correct them. It just annoys me a great deal. Perhaps, I'll let you know how I really feel about these things later on. (laughter)

But I have hope, and I'm confident that this young Governor that we have here now -- that nothing seems to stop him. I mean, on his crutches and all, he's everywhere.

But I certainly hope that the Commission -- that the BEST Commission will take its lead from him and will do something about this. And I will invite you back in several months or maybe in six months or so to see where you are, because we've heard these things over and over again. And we've heard these horror stories over and over again.

And I have confidence, as I said, that under the leadership of the Governor and the direction he's given this Commission, we will, in fact, be able to solve some of these problems, some of which seem so glaring to me. And I've often wondered why it is that we simply cannot resolve them.

I want to thank you.

I don't know, unless there are no other--

Please inform your Commission that we are very, very anxious, and we're looking very carefully at what they're doing, and we wish them luck.

MR. FERRARA: Very good. Thank you for having me.

ASSEMBLYMAN PAYNE: Thank you.

You've seen, from the agenda, that we will have two other fact finding hearings here. And that's what we're here for today, to gather facts about some of these items and these issues so that we can have a more educated response to them. And to the fact that if there's any need for legislation that will come out of this, we'll do that.

If you'll note, we have two other hearings that we want to entertain today. One has to do with the proposal made the former Attorney General, which would protect individual State Trooper records from the public.

The other is the-- We invited representatives from the Department of Human Services and the Division of Developmental Disabilities to testify, also.

So far, we have people who have signed up for the proposal by the former Attorney General, but I don't know. I'd like to ask now whether there are any people here who are here to testify for the developmental disabilities.

Is anyone here for that? (no response)

Okay. If not, then we will move forward on the proposal made by the former Attorney General, which would protect individual State Trooper records, including traffic stops, etc.

Do any of my colleagues have any comments to make before we move into this? (no response)

We'd like to have Mr. Thomas J. Cafferty, General Counsel to the New Jersey Press Association to come forward.

**T H O M A S J. C A F F E R T Y, E S Q.:** Good morning, Mr. Chairman and members of the Committee.

I represent the New Jersey Press Association. That Association is a not-for-profit corporation incorporated in 1857. And it includes all 19 daily newspapers in the State of New Jersey and over 170 weekly newspapers, as well as 4 college newspapers.

I have submitted to the Committee a written statement, which details some legal -- the legal basis for our concerns with this regulation. And we have submitted a similar statement through the regulatory process. And I will not burden you in my testimony with all of the legal reasons. What I'd like to do is just sum up some of our concerns with this regulation.

NJPA, which was vitally interested in the passage of the new Open Public Records Act, proposes -- or opposes, rather, these rules as contrary to the letter and spirit of the current Right to Know law, which remains the law in New Jersey until July 8 of this year, as well as the new laws of the Open Public Records Act, to become effective July 8, 2002.

We believe not only are these regulations contrary to those statutory rights to know but they are also over broad, ineffective, and at the end of the day, contrary to the public interest.

Among other pieces of information that this proposed regulation would exempt from access are: on-duty and off-duty criminal arrests and criminal charges involving troopers, civil suits involving alleged misconduct by State Troopers while on duty, civil suits in which a trooper is named as a party involving off-duty conduct that alleges racial bias, physical violence, or threats of violence, as well as training information.

Under both the current Right to Know law and the new Open Public Records Act, records may be exempted from public access by agency

regulation. However, under the current Right to Know law, that ability to exempt by regulation is not without boundaries, and we would expect that those boundaries that our courts have delineated under the existing law would continue to be the boundaries under the new Act.

Essentially, the cases have said that where an administrative regulation is contrary to a statutory provision in the Right to Know law, the mandates of the statute prevail. Further, our courts have specifically stated that an agency regulation limiting access must be reasonable and must be necessary for the protection of the public interest.

Indeed, when the original Right to Know law was first passed, then Governor Hughes, in reflecting upon the right to exempt records by agency regulation, cautioned that that authority, that power, must be exercised sparingly and only to the extent required by the public interest.

The current Right to Know law and the new statute exempts from disclosure only records of investigations in progress. However, the proposed rules would exempt all records of all motor vehicle stops, whether those stops involve investigations in progress or not.

We believe this prohibition would also run afoul of the new Open Public Records Act, which provides that certain information as to criminal investigations must be made available to the public within 24 hours of a request for such information. That rule of accessibility of certain information on criminal investigations and arrests currently resides in an executive order, Executive Order 69. The terms of that executive order have now been placed within the new Open Public Records Act and will become part of our statutory mandate, as well as an executive order.

We believe that closure of certain information on charges and arrests would then be contrary to that executive order today and contrary to the new law.

We also believe that in many ways proposed rules would be ineffective in as much as some of the information proposed to be declared confidential is available from other sources and would continue to be available from other sources.

In our view, all this rule -- or these rules would do is make access more difficult. For example, criminal arrests and charges against State Police personnel in civil suits involving State Police personnel would continue to be available from the agency making the charges or the arrests or from courts where records of those charges may be filed. The Open Public Records Act, the authority of an agency to exempt records from access pursuant to that act, do not cover our courts. And there is a rule of court, Rule 11 -- 1:1-2, which mandates that all court records are public. Thus, complaints, trial exhibits, testimony, and verdicts or settlements filed with a court in civil suits will continue to be available from the courts.

The only effect of adopting these rules, as we see it, is to frustrate access by denying access of one central point. Instead of obtaining the information from one point of access, a citizen must now search out the information in 21 counties' courts if this rule becomes effective and, if appropriate, in numerous municipal courts across the state. In short, the proposed rules cannot truly result in closed records but only in an obstruction of attempts to review records.

Finally, we believe the rules are over broad. The stated social impact of the proposed rule in the regulations sets forth the apparent reasoning for the exemption of these records. The proposed rules would purportedly protect information used in the words of the regulation and the social impact statement “to evaluate employee performance, determine training needs and, where necessary, impose discipline.”

The proposed rules, however, go far beyond securing employee evaluations: enclose any and all information related to an employees on-duty activities and off-duty contacts with the court system and with the public. The overbreadth of these proposed rules is contrary to the letter and spirit of New Jersey’s commitment to public access.

In summary then, the proposed rules exceed the authority of an agency to adopt regulations implementing the Right to Know law and the Open Public Records Act. They are ineffective, as much of the information is available from other sources. And the net effect of adoption of these rules is to simply make it more difficult to obtain information that is public under the law. They do not, in short, promote the public interest, the pole star for any rule exempting records from access.

Thank you, Mr. Chairman.

ASSEMBLYMAN PAYNE: Thank you very much, Mr. Cafferty.

Do any of my colleagues have any questions or comments? (no response)

MR. CAFFERTY: Thank you.

ASSEMBLYMAN PAYNE: Thank you.

Mr. Cafferty, could you-- I do have a question for you, if you don't mind.

MR. CAFFERTY: No problem.

ASSEMBLYMAN PAYNE: There are some who are concerned that by having the information that we're talking about now fully accessible to the public might have a bearing on -- or an impact on the conduct of a trooper on duty, you know, whether or not there would be a reluctance on the part of the trooper to carry out their duties, etc. and that the former Attorney General--

I must say that I was surprised that the former Attorney General proposed these -- made this proposal after -- and that it's going to have an impact on the future.

The question I have is whether or not, in your judgment -- do you think that the duty -- the performance of the duty of a State Trooper would be affected one way or the other by this proposal?

MR. CAFFERTY: Well, I think there may be legitimate areas that one could, by regulation, exempt from public access. We have to step back for a second, first, however, and recognize that the new Open Public Records Law specifically has a section in it protecting personnel information and indicating which areas of personnel information are public. That section also enshrines an executive order that exists today, Executive Order Number 11.

There may be other areas that would not fall within the personnel that might, legitimately, be subject to public -- subject to a regulation exempting it from public access.

The problem the Press Association has is these regulations go far beyond, in our opinion, anything that would legitimately be exempted from public access.

ASSEMBLYMAN PAYNE: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: So, what part of the law, if any, do you support and the regulations that it's proposing?

MR. CAFFERTY: Well, for example, there is some information that talks about interaction between superior and subordinate police officers in terms of personnel file notations and things like that. We have no problems with that. We think that's legitimate, nonpublic access and would not be here today objecting if that is as far as these regulations went.

ASSEMBLYMAN CRYAN: What about the videotapes?

MR. CAFFERTY: I think that's a more difficult question. I think one probably has to distinguish, in terms of the videotape, what we're talking about. If it's a videotape of an investigation in progress, in some way, clearly the law already protects that. There are exemptions for those kinds of materials in the new law, as well as the existing law.

One also has to look at it and say, even if you, by regulation, could exempt all video tapes, that doesn't necessarily mean that the public doesn't get access to those videotapes. Because in this state, there is a second means of accessing records: the common law right to know. And our courts have told us, even as to records that are exempt by regulation from statutory access, that regulation doesn't preclude common law access. The court considers the regulation in doing the balancing, but the regulation isn't dispositive.

ASSEMBLYMAN CRYAN: One more.



ASSEMBLYMAN PAYNE: Sure.

ASSEMBLYMAN CRYAN: So help me with something. I believe that we have the finest state police organization in all the country. I still believe that today, as I have for years, irregardless of the current issue with racial profiling and things like that.

Where, in your mind, do we draw this line where these folks have an ability to do their job, because I would imagine in any position anywhere, when someone's constantly on your shoulder -- I'm not talking about some oversight -- but constantly on your shoulder, that you can't perform to the best of your ability?

Can you help me reconcile that a little bit? Does the press-- I mean, access wise-- Where is that limit?

MR. CAFFERTY: I don't know that I'm the the person to ask where we would specifically draw the line with respect to State Troopers. I can tell you, as a general proposition, and this is the discussion that we had in connection with the new Open Public Records law, there is a line to be drawn where one must balance legitimate needs for confidentiality versus needs for access. I just suggest to you that these regulations don't appropriately draw that line. It doesn't serve anyone's interest, it seems to me, where effectively you say, when a trooper is involved in a court proceeding -- at least certain types of court proceedings -- that that information is shielded by these regulations.

What is the differentiation between that trooper, for example, and your regular municipal police officer who doesn't have that protection and, in my mind, shouldn't have that protection as any other citizen involved in a court

proceeding, where those -- in those proceedings, where public doesn't have that protection.

And that's my suggestion. I am not suggesting there is not a line to be drawn here, Assemblyman. But I am suggesting that where this regulation draws the line is inappropriate.

ASSEMBLYMAN CRYAN: Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

Our next witness is Guy Baehr, from the Society of Professional Journalists.

If you don't mind, state your name again and your organization.

**G U Y T. B A E H R:** Good morning.

My name is Guy Baehr. I have 29 years of experience as a daily newspaper reporter in New Jersey. I am also a member of the board of directors and former president of the New Jersey Chapter of the Society of Professional Journalists.

The society is the largest organization of professional journalists in the United States covering print, broadcast, and on-line media. The New Jersey Chapter, which was founded in 1960, is the largest organization of working journalists in New Jersey. We have more than 250 members.

Our consistent focus has been twofold: to improve the quality of journalism needed in a democratic society and to protect the free flow of information upon which a free press and a free society depends. To that end, we were active in the coalition of journalism and civic organizations, which helped gain passage earlier this year of the first major expansion of New Jersey Open Public Records Act in 38 years.

Imagine our disappointment when we learned of this breathtakingly broad proposal by the Attorney General's office to subvert the intent of the new law, even before it takes effect in July.

The proposal before you would bar from public inspection all routine records concerning individual traffic stops. It would hide from public view all items of information concerning the training, job performance, supervision, and discipline of individual troopers. It would even prevent disclosure of any misconduct investigations, including any resulting disciplinary actions. It would bar disclosure of any civilian complaints or reports of force used during traffic stops. It would prevent disclosure of civil suits involving both alleged misconduct on duty, as well as any suits in which troopers are charged with off-duty conduct involving racial bias, physical violence, or threats of violence.

Finally, it would bar the release of the audio visual tapes made of traffic stops by the automatic in-car video cameras. This expensive equipment is sold to the Legislature and taxpayers and welcomed by many troopers as a way to keep everyone honest when it comes to alleged abuses during traffic stops. These rules would negate that objective.

This blanket exemption of virtually all information about the performance or discipline of State Troopers goes far beyond what is practiced in other states, according to a review of state-by-state data gathered by the Reporters Committee for Freedom of the Press.

In some states, such as Tennessee and Nevada and Hawaii, records concerning job performance and discipline are open to the public. In many other states, including Florida, Georgia, California, Indiana, Kentucky,

Massachusetts, Minnesota, Michigan, Oklahoma, and Utah records of discipline investigations are open once the investigation has been completed and action taken.

Routine records of police activity, such as police blotters, are normally considered open public records in 34 states, but not New Jersey. 911 emergency tapes are generally available in 33 states.

The State Police in New Jersey say public disclosure of these kinds of records “would subject troopers and their families to unwarranted and unnecessary criticism.” That’s a stunning statement if you think about it. It reveals an insular and defensive mind-set that is a big part of the problem that has allowed racial profiling to continue in New Jersey.

The State Police brass are saying they don’t want or need anyone second-guessing their decisions on training and discipline of their troopers or even watching the videos of disputed traffic stops. They are saying, “Only we can see this information. Others might take it out of context. We are the only ones competent to judge our people. Trust us.”

This proposal puts us, as journalists trying to report on newsworthy incidents, say a shooting on the Turnpike or a seemingly credible complaint of abusive treatment by a trooper of a motorist -- we have to either accept, on faith, the official State Police version of events, or we have to raise uncomfortable questions about those events without any ability to independently check the records and report the facts that they contain.

Has the trooper accused of racial profiling had similar complaints filed against him in the past, or is this the first in a 20-year career? Are there civil suits alleging off-duty racial bias or violence, or is his record clean? If there

have been previous incidents, what kind of disciplinary actions did his superiors take, and what kind of training did he receive? Finally, what does the videotape show?

Such information is clearly newsworthy and important to our ability to accurately and fully report these stories. It's what the public needs to make sense of events and judge the performance of troopers and their supervisors. But it's also exactly the information that would be kept a secret under this proposal.

The New Jersey State Police is one of only 12 state police organizations that does not make any part of its internal disciplinary process public, including the disposition of civilian complaints against its troopers. It is hard to argue in the light of the State's sad record on racial profiling that this secrecy has served either the public or the State Police well.

In fact, just this weekend, we read that troopers on the New Jersey Turnpike are still pulling over black motorists at twice the rate of white drivers. Is this a case of a few bad apples or a systemwide management failure? There's no way to tell. The information is secret and, under this rule, will stay secret.

This wholly unwarranted proposal fails to give even a nod to the public's legitimate interest in this information. Instead, it seeks to perpetuate a failed culture of secrecy and unaccountability that has already hurt New Jersey and its citizens badly and lowered respect for its premier law enforcement agency.

As journalists trying to get to the bottom of this story and provide the public with the facts it needs to make good judgments, we ask you to reject this proposal entirely.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

Now we'll hear from Mr. Richard Gutman.

**RICHARD GUTMAN, ESQ.:** Good morning.

My name is Richard Gutman. I'm an attorney. And I have written two articles published on January 21 in the *New Jersey Lawyer* about the new amendments to the Open Records Act.

I'd like to thank the Committee for this opportunity to speak.

I filed a written statement, and I'm not going to repeat what's in the statement or what the previous speakers have said. I know you have a very full program today.

I would just like to attempt to direct myself at Assemblyperson Cryan's question, which was, where do you draw the line. This is a very basic question. And we have different interests in conflict here, the right of government officials and employees to privacy and the public's right to know.

We shouldn't forget that this Legislature spent many, many, many years writing these new amendments. In the process of writing these new amendments that were enacted on January 8, they balanced many different interests. And you may recall that in particular, the State Police -- that the bill was almost ready to be enacted by the Legislature.

The Attorney General felt that the State Police did not have sufficient coverage for criminal investigations. And, in fact, the Legislature agreed to the State Police restrictions for privacy regarding criminal investigations, so that now the New Jersey State Police has much more secrecy protection regarding criminal investigations than, for example, the Federal Bureau of Investigation has under the Federal Freedom Information Act.

So there's been a process in the Legislature. The Legislature has bent over backwards, I believe, regarding the legitimate privacy concerns of the State Police. And these new regulations are basically asking for things that the Legislature did not consider appropriate. And, I think, if you look at them, they really show a lack of balance. And under the new amendments that passed, there are numerous provisions to protect the legitimate concerns of the State Police.

There's exemption from personnel records, internal disciplinary investigations, deliberative material -- which is a lot of material -- criminal investigations, security measures, surveillance techniques. So that balance has really been made already in my opinion.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

All right. Mr. Ed Barocas, from the American Civil Liberties Union.

Thank you.

**ED BAROCAS, ESQ.:** I thank you all for the opportunity for me to be here, on behalf of the American Civil Liberties Union of New Jersey, to speak out against this proposal by former Attorney General John Farmer.

It was just two months ago that this Legislature passed the Open Records Act -- Public Records Act. It was a culmination of a great deal of work by organizations, by individuals, and by the legislators themselves. It embodied both the public's and this Legislature's demand for an open, accessible, and accountable government. And it was recognized that an open and accessible government is good policy. It's good policy because it engenders trust among

the citizens of the state. With it, the government can show the public that it has nothing to hide.

When government acts, however, under a shroud of secrecy and shields itself from public review, it does nothing but engender distrust and disdain from the citizens of the state.

This proposal would undo the work of the Legislature by exempting, from the Public Records Act, important information. And it's information in an area where, especially at this point in the State's history, engendering public trust is not only good policy, it's essential.

What this proposal would do would be to exempt law enforcement records from disclosure, not simply records of privacy information regarding certain individuals, not simply information of supervisory reports, but all stop data of motor vehicle stops, videotapes, audiotapes. It would even, as was mentioned by Mr. Cafferty, violate the current court discovery rules as it would place additional burdens on victims of police misconduct to obtain information to assist them in civil court proceedings.

What law enforcement is doing is shielding itself from public review. It is public review that is essential. And this shielding, this proposal, could not come at a worse time.

New Jersey is now trying to get out from under the stain of racial profiling. By having law enforcement act under a shroud of secrecy, there will simply be no way for law enforcement to work with the public and to engender the public trust that is essential to lift this dark cloud that we are trying to lift.

It was only three years ago that the Attorney General admitted that people were being stopped and searched and treated differently for no reason



other than the color of their skin. It was only two years ago when the Federal government sued the State Police because of these civil rights violations. And the result was that they required the State to institute reforms. Yet, we still see that minorities are stopped at a highly disparate rate to other drivers, even though there is evidence that, in fact, there is less likelihood of finding evidence of a crime in the cars of minorities when stopped in this manner.

There are still at least 16 lawsuits in the courts based on assaults or other civil rights violations by State Police. And it was only two months ago that Troopers Hogan and Kenna testified in their -- that they entered into their plea agreements.

Now, I won't speak to the appropriateness of the plea agreements. What I will speak to though is what they said. What they said was that racial profiling was taught, and it was institutionalized, that it was encouraged by supervisors. And interestingly, they admitted not only that they lied but that they and others tried to cover up the fact of racial profiling by giving false stop data. Now, this is the data that we're talking about that would be made confidential, that would be secret. This is the information that could have been uncovered that would have found this out before it went on so long.

Just last week, our own New Jersey State Supreme Court outlawed consent searches citing "widespread abuse" by law enforcement agencies under our existing law.

And just three days ago, a report was released by the Attorney General's office, and it showed that law enforcement is still stopping and arresting a disparate number of minorities.

First Assistant Attorney General Peter Harvey was quoted in the news article on this report that just came out Friday as saying that, "The Attorney General's office is working to ensure that State Troopers receive the support they need to do their jobs effectively." And I agree with him. State Troopers need support, both of higher ups and they need the support of the public to do the best job possible. But they can't do that through secrecy.

After all the abuses that we've had over the past years-- And it may only be a few bad apples, but they've come out. These abuses have come out. And after these abuses, law enforcement cannot simply say now to the public and to these minority groups that, "We're going to make things better, but you're just going to have to trust us." It's not going to fly. It doesn't work.

If New Jersey is serious of ridding the State of profiling, and I believe that they are, they should relish having open records because it's when the records are open that they can show the areas of improvement. They can show that, in fact, a number of allegations may, in fact, be false. They can show where the improvements have been, and they can show where the improvements are still needed. And they can work together with the public to work on it with the trust of the public to get improvement where improvement is still needed.

However, by shielding itself from public review and hiding behind a shroud of secrecy, the public will be well in its right and will believe that law enforcement, in fact, has something to hide.

It is, of course, as I believe, and I think we all do, time to move forward and to work together to put the stain of racial profiling behind us. To

do so requires openness and public trust. As this proposal runs contrary to those goals, it must be rejected.

Thank you.

ASSEMBLYMAN PAYNE: Thank you. I think we have some questions.

Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thanks.

Any part of this bill that the ACLU can support?

MR. BAROCAS: Well, ACLU also supports privacy rights of individuals. And the difference here is we're not talking about individual-- It says individualized trooper information, but we're not talking about private information -- home address information, things like that. Of course, things like that are protected.

Of course-- Well, I shouldn't say of course. As Mr. Cafferty said, there is information that can be protected. And one area that he spoke about, that I think is proper to speak about, is internal reviews and performance assessment and things like that. What this would do though is go well beyond that. And it doesn't talk about just in performance assessment ratings. It talks about any information that was relied upon, even meaning that raw information of stops. And that is why it goes -- is just extremely broad.

And again, I think that law enforcement should relish -- while they may have an interest in keeping certain information of their internal proceedings to themselves, I think they should relish having open public records so that--

As you said, we have a great law enforcement agency, and we should and could-- And there obviously needs to be improvements based on

what we've seen with racial profiling. And the only way to lift that is to be open.

And I think that since we do have a law enforcement that can and should and hopefully will get better and do well for the public, that it should be open and work with the public to do that.

ASSEMBLYMAN CRYAN: One more?

ASSEMBLYMAN PAYNE: Yes.

ASSEMBLYMAN CRYAN: Do videotapes cause you any problem -- open access to videotapes?

MR. BAROCAS: No. In fact, I think that some videotapes have been helpful on both sides. They've been helpful in showing when abuses do occur, but they also are helpful in showing when there are allegations that are unfounded.

And again, what we're talking about is not private actions but actions that are in the public domain, actions of troopers not in their private capacity but in their capacity as public servants.

ASSEMBLYMAN PAYNE: Assemblywoman Myers has come in and joined us. She has a question.

ASSEMBLYWOMAN MYERS: Sorry I'm late again, Mr. Chairman.

ASSEMBLYMAN PAYNE: It's all right.

ASSEMBLYWOMAN MYERS: And I've been catching up.

I'm not going to direct my comments to this particular witness because I'm still going back to Tom Cafferty's remarks.

I'd just like to make some general statements and a brief request. First of all, I'm concerned that possibly some of the witnesses have misread the regulations. They seem, to me, to be fairly discreet and simple.

I do not agree with Mr. Cafferty's testimony that the new rules render nondisclosable all "information concerning law enforcement activity." It seems to me that the proposed regulations are quite explicit in accepting only that material that is "used by division managers and supervisors to evaluate performance and determine training needs."

I'm just wondering if there isn't some middle ground here where amendments to these regulations could make that more clear, provide some avenues for the press to petition, perhaps, this council that I know we created as part of the Open Public Records law, to look into cases where the press feels they need more information. And perhaps these new rules might interfere.

The reason I think it's important that we look for a middle ground and not just say, "Let's adopt the regs or let's throw them out," is because I think that we are looking at adopting a really broad new standard for public employment.

I've served in both the executive and the legislative branches, and one of the differences is in the legislative branch, pretty much everything you do is open for public examination. And you expect that it can appear on the front page of the newspapers at any time. And you accept that when you file your petition to run for office.

When you join the executive branch, unless you are a commissioner, potentially -- even then -- I don't think there's any such burden assumed, particularly with civil service employees.

It seems to me there's a case to be made that public employees are still employees, and in order for there to be a good relationship between employees and employers that some personnel matters remain typically confidential until a threshold is reached.

I mean, certainly, if we have a very visible case that has already made the newspapers and highlights an issue like racial profiling, which is a public policy issue that everyone's grappling with, it's a different story. But to say that public employees -- all of their actions are open to public scrutiny by anyone at any time-- I don't see how I could operate under that burden in an effective matter.

And it makes me concerned. I think there's already a concern in the legislative branches at the Federal, State, and local levels, of not getting the best people to run, sometimes, because of this public scrutiny. And it just concerns me that this would also then be true in the executive branch.

So I'm just raising some issues that have been coming to my mind as I've been listening. And I didn't see any other theme being looked at here besides we've got to have open records because we've got to make sure that we get rid of racial profiling.

I think we need to look a little more carefully at the impact and consider-- I know there's been, recently, a raise in crime rates. Urban revitalization is something that everybody in New Jersey is working hard toward, I believe. But if our crime rates in the urban areas continue to be high, we're not going to be able to achieve that urban revitalization. It's not going to happen, because people don't want to live and work where the crime rate is high.

If too much scrutiny and too much criticism is attached to becoming a member of our law enforcement agencies, I fear that there may be a reluctance to enforce the laws, and that will impact the crime rate.

As I said, I just would encourage anyone else that is going to testify, including you, to recommend amendments to these regulations and to put them in writing and submit them to the Attorney General. I think this Committee would be interested, as well.

But that's my request, Mr. Chairman.

ASSEMBLYMAN PAYNE: Thank you very much.

MR. BAROCAS: I have a few responses to that if--

ASSEMBLYMAN PAYNE: Yes, by all means.

MR. BAROCAS: Number one, I think that the problem is where you read the definitions of what is individualized data and what is information related to that, because it's not just talking about internal -- the way things work internally. It's talking about the actual job, the actual public acts that are occurring of those, for example, motor vehicle stops. We're not talking about what's happening in the station house in discussions of issues or even discussions of personnel-type issues. We're talking about the stops that are occurring.

It would be as if saying, "What you do in your chambers, Assemblymen and women is--"

ASSEMBLYWOMAN MYERS: Mr. Chairman, can I just--

That's how I started out. I believe you're wrong. I don't read them that way. But if that's your objection-- If you could put that in writing and ask the Attorney General to make that clear that it's only related to the background,

truly personnel issues and not related to the functions of law enforcement, then perhaps that might be the middle ground. And I would really encourage you to do that.

I don't agree that I'm misreading.

MR. BAROCAS: Well, the second thing is that I don't think-- You mentioned, perhaps, higher crime. And I don't think having law enforcement act under secrecy -- being hidden from criticism -- is a way that will -- is a proper way to reduce crime. Again, I think this helps the law enforcement because it does show what they're doing right.

And, simply put, I think that-- You mentioned saying that if they're subject to this scrutiny, maybe only in these high profile cases-- Well, it's the fact that it was not uncovered all along the line that resulted in this explosion once the high profile case, namely, of course, the van shooting on the Turnpike, came to light. That's when we saw this explosion of the whole underbelly of what was happening. But if it was open to the public, then we could have nipped it in the bud and not created the stain of racial profiling that exists now.

ASSEMBLYMAN PAYNE: Thank you.

MR. BAROCAS: Thank you.

ASSEMBLYMAN PAYNE: Assemblywoman Cruz-Perez, please.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you, Mr. Chairman.  
I just have a few comments.

I agree with you 100 percent. I have very serious concern about this regulation. A couple of years ago, I was a member of the Black -- and I'm still a member of the Black and Latino Caucus. We had hearings all over the State of New Jersey. And we had horrible findings of police profiling. Some of the



cases-- It's more than a few. That's the only thing I don't agree with you. You say it was a few. It's more than a few.

Unfortunately, it wasn't enough evidence to bring those other cases forward. And the only reason we were able to bring the cases forward was because of the public record. Otherwise, we wouldn't have been able to do anything and actually prove that there was police profiling.

To me, this regulation will set us backwards, especially when-- Law enforcement officers-- I don't think they're any different than any politician or any legislator. My life is a public life. They are law enforcement officers. They enforce the law. We create the law, they enforce the law. Their records should be as open as mine. There will be no difference in there.

The public has the right to know. And the only way you're going to be able to do that is to keep public records open, especially if you have a precedent of police profiling.

Thank you, Mr. Speaker.

ASSEMBLYMAN PAYNE: Thank you. And thanks for the promotion. (laughter)

ASSEMBLYWOMAN CRUZ-PEREZ: Mr. Chairman. I don't want any problems with Albio. (laughter)

ASSEMBLYMAN PAYNE: My only observation on that is that we certainly don't want to have an increased crime rate in the urban areas. And I certainly don't want any regulation that would cause that -- that it would cause law enforcement people not to do their jobs because they are under scrutiny.

The fact is, though, that there are-- There seems to be crime rates in other areas, too. I mean, people -- Megan's Law -- I see those people who

violate the law there. Many of them seem to live out in suburbia and places like that. And then the other things.

So it's not-- We're not talking about rising crime rates in urban areas alone, but I think that there's crime wherever. And if we can have police enforcement under an open glass, I'm sure that we'll be able to impact on it and have a reduction of crime throughout the State of New Jersey.

This is not an urban area-- I just want to make it clear. This is not an issue between urban areas and suburban areas. This is an issue that impacts the entire State of New Jersey. And working together, we'll be able to resolve these problems. I want to make it clear that that's our position here.

Roxanne Vivanco, if you could come forward.

Is she here?

UNIDENTIFIED SPEAKER FROM AUDIENCE: She left her statement.

ASSEMBLYMAN PAYNE: Okay. Fine.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I can read the statement if you want.

ASSEMBLYMAN PAYNE: It's all right. We have it already. Thank you very much.

She's from the New Jersey Citizen Action. She's opposed to this proposal.

Our last testifier is Ron Miskoff of the New Jersey Foundation for Open Government, who's also opposed to this regulation.

**RONALD MISKOFF:** Good morning.

My name is Ronald Miskoff, and I am the Treasurer of the New Jersey Foundation for Open Government, which is known as New Jersey FOG, a tax exempt, nonprofit organization formed 14 months ago in New Jersey. It is affiliated with other State and national freedom of information groups. It is composed of activist citizens and groups who are interested in keeping New Jersey's government open.

Our member groups include New Jersey Citizen Action, the League of Women Voters, Common Cause, ACLU-New Jersey, NJ PERG, the Society of Professional Journalists, the New Jersey Broadcasters Association, VOICES, and concerned New Jersey residents who join as individuals. Although some of those other organizations have made statements today, I am speaking for New Jersey FOG as a whole. We and our members played a leading role in the passage of the Open Public Records Act that will take effect in July.

I am here today to ask you to reject proposed rule NJAC 13:87 because these changes will undermine the very basis of the Open Public Records Act and lead to serious mischief in an area that has been examined prior to the passage of the new law.

Although my testimony talks about various aspects of the proposed legislation, my feeling, and the feeling of New Jersey FOG is that this entire proposal should be rejected. We feel this is a bad proposal, which is an embarrassment to the Legislature and to Governor McGreevey, and I ask you to kill it outright.

At a time when we know that public scrutiny of the State Police is not just desired but required, in light of the events of the past two years, we find it amazing that this proposal would see the light of day, just two months after

the Legislature toiled to pass the Open Public Records Act. We did not agree with the legislative exemption, but we like the rest of the law. And we expect it will become a cornerstone of open government in the Garden State. This new proposal comes from a member of the former Governor Whitman administration, not the current Attorney General.

The whole thrust of this proposal is to prevent citizens from holding the State Police accountable for its actions in specific incidents of possible misconduct or for their supervision of individual officers. It also removes from the formula any input from the people who pay the bills and are governed by the decisions made by the officers. It fails to give the public a way to evaluate the performance of the State Police and therefore creates an atmosphere of mystery and mistrust. It causes serious breaches of public confidence, such as the racial profiling incidents, that lead to even more disruption of the State Police.

My feeling is that if the State Police considered the eventual ramifications of this proposal, they would seek to reject it themselves because it will lead to even greater suspicion and outright hostility toward the State Police.

In effect, these proposals before you today place the State Police completely above public scrutiny and, in effect, create a kind of secret police force, which would lead to a total disconnect between the public and the men and women who are sworn to protect them.

Although, in the short run, some officials of the State Police and the Attorney General's office might believe that this proposal aids in the management of the State Police, the long run would show that it would rapidly increase disrespect for the police, suspicion of police motives, and would

invariably lead to massive police corruption. Any public agency, police included, that fails to allow at least some public oversight is headed for dangerous territory, as we have seen over and over. Public oversight offers fresh air that, while sometimes painful, leads to better administration and more honesty.

I can imagine the thought that went into this proposal. It would certainly make the jobs of police management easier and would allow supervisors to run the department as they wish without public interference. But sooner or later, these same managers would be caught up in twisted decisions, cover-ups, and failures to give an account of their actions, because they would be based on secret and conspiratorial activity. Except for the trust that the State Police would be asking the citizens of New Jersey to place in them, the entire force would be under a cloud from day one.

They would rue the day these proposals were passed because even though public scrutiny is a bit of an annoyance at times, it does lead to a better functioning of a department where everyone knows that actions are being taken against guilty police, their fellow police officers included, and no one has a special deal because he or she is well-connected. In other words, they know somebody.

This proposal goes against any idea of transparency, which the public needs in its institutions so that high standards can be maintained.

The part of the proposal before you that removes from oversight some home telephone numbers of police, the names of their families, their personnel records, and the like are already protected under the provisions of the Open Public Records Act.

Yes, there will be some unwarranted and unnecessary criticism as the proposal says, but there is also a thing called constructive criticism. State Police, especially their supervisors, are savvy, experienced administrators. They can take some criticism. Individual State Troopers likewise are grown-ups and should be responsible for their actions where their contact with the public is concerned. We do not buy the argument that a State Trooper, who takes an oath to protect the public, should not be held accountable publicly to that oath.

True, these are fallible human beings who can and do make grievous errors. In fact, shouldn't they be held accountable for these actions? And if not, should the public simply roll with the punches and keep silent, shrugging off any untoward acts in favor of some annual report, which explains the actions of the State Police in a statistical account? How, in fact, does the Legislature expect the public to react to an open society policed by a closed bureaucracy?

The police are given tremendous responsibilities and powers, including the power of life and death. But along with that responsibility comes the need for a higher level of accountability, not a special shield which makes public oversight, as well as legislative oversight, difficult or impossible.

Police abuses are often attributed to a few bad apples. Sealing all records relating to individual troopers only protects those bad apples and those in management who fail to remove or discipline them. And even if it doesn't protect the bad apples and plenty of corrupt State Police are brought to justice, the knowledge that these proposals are codified into law will create an immediate appearance of a conflict of the State Police supervisors between the

people they manage and their desire to avoid unwarranted criticism, in their words. It's only natural.

This can happen in spite of their noblest intentions. It also prevents those in other parts of government, including the Legislature and its agencies, from evaluating or even being aware of problems and taking timely action to correct them. Many legislators get their news from the newspapers, radio, and TV. If these media are blocked from looking into the State Police, do they really expect that they will receive this information independently? This is as much a legislative and gubernatorial oversight issue as it is a public oversight issue.

If these proposals are put into effect as they are, not only will individual citizens be prevented from obtaining the records that affect them personally but they will be robbed of the opportunity of reading about other incidents and drawing conclusions on how the State Police are doing their job. These proposals absolutely fail any balancing test between the public's interest and the countervailing interest of the police. One should not preclude the other. These proposals make absolutely no concession to the public in knowing about these matters.

They are not in conformance with the existing public records law, the new OPRA, or even the New Jersey common law, all of which demand that any effort to close government records for either reasons of privacy or government effectiveness must be balanced against the public's legitimate interest in having such information. This proposal fails that test. The proposal doesn't say anywhere that the public must have some of this information. The

public isn't even acknowledged, except as a self-serving group designed only to embarrass or offer cynical comment.

It also fails to acknowledge the historic fact that government generally works best when it has informed public oversight, and that can only be accomplished if the public has access to as much factual information as possible, information that does not intrude into the private lives of police but does reveal how the men and women of our State Police do their jobs.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

ASSEMBLYMAN ROONEY: I've got one.

ASSEMBLYMAN PAYNE: Mr. Rooney.

ASSEMBLYMAN ROONEY: That was the last speaker, right?

ASSEMBLYMAN PAYNE: Yes.

ASSEMBLYMAN ROONEY: Okay, I just wanted to make sure that was-- Before I made my comment--

ASSEMBLYMAN PAYNE: Well, wait a minute then. You may want to hold up because Assemblyman Stanley would like to testify, as well. He was here a moment ago, and he will be right back.

But let me hear from Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thank you for your testimony.

Is there any part of this bill that you could live with or you agree with at all?

MR. MISKOFF: Well, just strictly private information about State Police, their home address, their phone number, their family. When a State Policeman takes the oath, I believe that he's on the job, and his acts are -- can't



be hidden. It's unfortunate. It's a hard job. It's not a job that I'd want to do, but it's a job that has to be done.

ASSEMBLYMAN CRYAN: And I have a comment to you on your testimony, which I appreciated and read through.

I don't like these regulations either, to be candid -- most of them. That's why I'm interested in hearing if anybody agrees with some things.

But I fundamentally disagree with you that if they were proposed, they would invariably lead to massive police corruption. And that's a statement in here. And I just have to go on the record and say that I fundamentally disagree with that. I believe our guys are honest, that they do a good job, and, inherently, the rules won't bend and therefore inherently, do something bad. So we disagree on that portion. I want to make that clear.

Thanks.

ASSEMBLYMAN PAYNE: Thank you.

I would just concur with Assemblyman Cryan. That's a rather strong statement. I don't think it would open up the door for that kind of behavior.

Assemblyman Stanley would like to comment on--

Is that correct?

**ASSEMBLYMAN CRAIG A. STANLEY:** Yes.

ASSEMBLYMAN PAYNE: All right. Fine. Come forward now.

And also, I'd like to acknowledge the presence of Assemblywoman Perez-Cinciarelli. She's present here -- back there.

Thank you very much for coming.

ASSEMBLYMAN STANLEY: Thank you very much, Mr. Chairman. Just bear with me for one moment.

Of course, I just want to commend you, Mr. Chairman, for bringing up this issue, with respect to some of the regulations recently proposed, with respect to access to information, with regard to traffic stops and some of the racial profiling information that may be obtained from video equipment and those issues.

As you know, the Black and Latino Caucus took a tremendous stand against racial profiling in the -- a few years ago. We actually conducted three hearings, which basically lead to a report being released by the Black and Latino Caucus on several incidences which occurred concerning minority motorists being profiled and actually situations of abuse of police power and police brutality.

These historic hearings lead to the Attorney General finally issuing a report, admitting, really, finally, that racial profiling existed in the State of New Jersey. Actually, prior to that, there was a denial of the fact that despite much of the statistical evidence produced during the Bellaran case that racial profiling was not a practice. But what we found was that it was and that it was something that was actually being trained because of the types of equipment and the types of procedures that we were using.

I think it's very important that for the reason of a perception of distrust by -- on the part of minority motorists, that we make as much information accessible as possible, that we not try to prohibit access of information that would allow the public to feel secure in the actual

administration of justice throughout our State highways. So, it's very important that these records, that this equipment, not be restricted.

Therefore, Mr. Chairman, I just want to first and foremost commend you for having this hearing, but secondly, state that it is our best interest, in the State of New Jersey, that we have this open -- as open as an access to these records and to this information as we possibly can and just to say that racial profiling is something that we cannot tolerate, not just as African-Americans, but as Americans. We have to understand that when we allow a person's religion or a person's color or a person's background to define our enemies, then we have become the enemy ourselves. We have become an enemy of democracy.

Thank you very much, Mr. Chairman -- and thank the members of the Committee.

ASSEMBLYMAN PAYNE: Thank you, Assemblyman Stanley.

Now, our last person who has signed up to testify--

Oh, yes. Assemblywoman Myers would like to reflect.

ASSEMBLYWOMAN MYERS: I think John was--

ASSEMBLYMAN PAYNE: Oh, I think you said you'd save yours until last.

ASSEMBLYMAN ROONEY: Well, to the last person.

ASSEMBLYMAN PAYNE: Well, no, no. We have--

ASSEMBLYMAN ROONEY: You have another-- I'll wait.

ASSEMBLYMAN PAYNE: We have Richard Rivera from the Police Complaints Center who'd like to testify, I suppose.

In favor or opposition, Mr. Rivera?

**RICHARD G. RIVERA:** In opposition--

ASSEMBLYMAN PAYNE: Okay. It's not indicated here.

MR. RIVERA: --in it's present--

ASSEMBLYMAN PAYNE: Okay.

MR. RIVERA: These are some handouts for the members of the Committee.

Thank you very much, Mr. Chairman, for affording me this opportunity and to share an experience -- an anecdote with you.

ASSEMBLYMAN PAYNE: Excuse me, Mr. Rivera. Would you please identify yourself?

MR. RIVERA: Yes. Absolutely. My name is Richard Rivera, and I'm a former police officer with the West New York Police Department. I was fired in '96 for reporting corruption. Since that time, I've been researching the causes and effects of police misconduct.

In the past, I've been the state coordinator for the National Institute of Ethics, the nation's largest provider of police ethics training. And I was the chief investigator for the Police Complaint Center, the largest national database for complaints against police officers initiated by citizens. We also conduct nationwide video investigations on police officers and videotaped more than 100 encounters of police officers. And I've personally been in custody twice in the Midwest. I've spoken nationally about these problems.

Currently, I'm a board member of the ACLU. I'm the third vice president of the Human and Civil Rights Association of New Jersey.

Back in 2000, I published the New Jersey Police Complaint Review Project, which could be accessed. It's free to the public on the Web site

policeintegrity.com, which has brought me here today after reading the proposed regulations.

As a police trainer, I needed to find out what our law enforcement officers in the state needed, as far as ethics training was concerned. And one of the best ways to do that was to compile data from the different county prosecutors and the Attorney General's office to find out exactly how many complaints there were against police officers.

Back in '91, the Attorney General mandated guidelines in an internal affairs policy for the entire State. And just briefly -- to tell you -- it made documents public for public viewing, which were an account of all of the complaints against police officers.

Well, here I was, nearly a decade later, and I fought an uphill battle trying to get these records because the county prosecutors were telling me that they weren't public documents. And we had to go tit for tat.

The responses that I received were provided to you today. And you can see some of the outlandish responses that I received from various county and State officials. And these were, per se, public documents.

So, anything that I could see on the part of law enforcement or unions, etc., saying, "Well, we're going to open up a can of worms here, and there are people who are going to come in droves to try and get this information," is not true because, in my estimation, I was probably the first person to try and look for these police internal affairs summary reports. And no one had done so before me -- previous -- almost a decade. Along those lines, also, was the fact that a lot of our county and State officials didn't know that this information should have been provided to the public.

To touch upon the proposed regulations-- As a former police officer, I would absolutely say that -- and my two brothers are police officers, by the way, also -- to safeguard identity, as far as their address is concerned and things of that nature -- telephone number, private pedigree is of utmost concern. Beyond that, when you take an oath, like the preceding gentleman had stated earlier, you really have no reasonable expectation of privacy. You put on a uniform. You're out there serving the public. They instill the trust upon you, and they expect something from you. In return, you really can't expect too much. You would like respect back from the community. You would like a lot of different things coming back, but oftentimes you're not going to see it in our society.

But you really don't have an expectation of privacy. Everything you do standing there on the roadside, as a police officer in uniform, is going to be scrutinized. It's just a fact.

I stated, before all the videotapes, that I have with encounters with police officers. At this day and age, you really don't -- there's nothing much left of us out there.

I mean, there's an upcoming ACLU event in April that's really going to outline what's left of our privacy. And if you look, it's scary in this day age, with the Internet and what have you, that there's not much left of it.

So, for police officers and the unions to go and say that there's going to be an increased scrutiny, I disagree with that. And I think these records need to be made public. There needs to be some accountability in place. There needs to be some checks and balances in place. There weren't for the internal affairs documents that I was looking at. And I really had no recourse because

the county prosecutors had this information. They're telling me to go see the State. The State in turn is saying, "Well, we don't have the information. Go back and see the county." In the meantime, while they're giving me the runaround, the State issues a memorandum to each county to say, "Don't give him any information that he's looking for because we already gave it to him." And those responses are in your hands.

So it was a complete runaround. There was no recourse that I saw. Looking at the regulation that you have, if it was even scaled back somewhat, there's no teeth to it, as far as, "Okay. Where do I turn to if I'm denied this information?"

I just wanted to bring some of those different things to your attention.

The report that I had written was unprecedented. It hadn't been done before. Unfortunately, it's old. There's four years left of data that I'd love to just get my hands on and do another report so you could all see what's taking place across the entire state.

There's almost one complaint for every two officers in this state, excluding the State Police. And that was mind boggling to me when I saw the amount of complaints. If you could analyze those complaints, you can make some real progress in trying to prevent future misconduct, future litigation, future scrutiny.

By passing something that says, "Well, you know, we're going to withhold this information from the public." The State Police could wash their own laundry, and they've done so in the past." It's just fallacy. It's not going to happen. We need to open the records up to the public, let them see what's

going on. And I can nearly guarantee you that there's not going to be a line of people outside standing to try and get all these records. It's not going to happen. It just-- You all know that from the different elected official positions that you've held. People just don't come looking for this information. Does the press? Yes. And do certain individuals like myself do so? Yes. And we need those accountability layers in place to keep the officials -- the police officers in line, because I've seen what happens with misconduct and corruption, and it's ugly.

And we've seen what's happened with racial profiling. I developed the nation's first class for police officers to prevent racial profiling. So I know what it could do. I've seen it firsthand on the roads, on the Turnpike. This regulation is not about profiling. It's about accountability.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much, Mr. Rivera.

Does anyone have any comments? (no response)

If not--

ASSEMBLYWOMAN MYERS: I do before we close the issue.

ASSEMBLYMAN ROONEY: Same.

ASSEMBLYWOMAN MYERS: Did you want--

ASSEMBLYMAN ROONEY: Actually, I was curious about-- You kind of skipped over this thing about your own personal thing. Could you elaborate on that a little bit?

MR. RIVERA: As far as the report that I had wrote?

ASSEMBLYMAN ROONEY: No, no. Your own personal experience.



MR. RIVERA: Getting arrested twice?

ASSEMBLYMAN ROONEY: No, I'm talking about the corruption thing, why you're no longer a policeman.

MR. RIVERA: I was fired for reporting corruption in Hudson County on the police force. And that led me into activism and actually searching and doing research on corruption, misconduct, and trying to prevent it. And that's why I do what I do now.

ASSEMBLYMAN ROONEY: Just curious.

On the entire question--

Number one, some people have referred to this as legislation. It's not legislation. It's basically regulations that have been proposed by an Attorney General who's no longer with us. And basically the Governor's Office would have the final say as to whether -- they could amend this. They could withdraw it. They could do pretty much whatever.

Having said that, I agree with Connie Myers's analysis that there's a lot in here that is being misinterpreted. I'm fearful with a lot of this.

I disagree with you personally. I think there will be people that will come in. I've seen it in my own community. I'm a Mayor of a little small town, and there's a lot of complaints. Someone gets a ticket, someone gets arrested, all of a sudden we have a complaint against the policeman. They're trying to threaten the policeman with this complaint. And yeah, we have to put it on the record. But I'm not about to let that go public for the simple reason that we've investigated internally. We've done the analysis, and we've found that it bears absolutely no semblance of truth in a lot of cases. So if that were then-- It's noted on the jacket. There's no question about it. It's there. I would

not want the press to come in and say, "This officer's had four complaints against him." It sounds like a lot, but that officer gives out the most tickets in our town. And yeah, you're going to get a lot of people that are going to complain that they don't like that. So that's one of the problems that I have.

MR. RIVERA: Four complaints is a lot though.

ASSEMBLYMAN ROONEY: Not if you've been on the job for 15 years. So four complaints in 15 years is really nothing.

Another thing that I'm very fearful of with this information is that if an officer is arrested or is accused of this, and it's a racial profiling issue, let's say, I don't want that person tried in the press.

One of the things I heard here was that the officers said that they were trained to do racial profiling. Now, whether that's true or not, if they were trained to do racial profiling, and that was their job-- And there is some indication that in the '90s, the profile was-- And you've got to understand, New Jersey is the highway to the big cities for the drug dealers. They're going to go along the Turnpike, and we're the last line of defense against a lot of these drug traffickers.

They were told by the Federal government, "This is your profile. These are the people who do it. The Colombians, the Dominicans, the Nigerians, African-Americans. These are the people." But there were other things that made it not racial profiling but criminal profiling. Sometimes it's a couple of males in a van. These are the types of things that were included. It's very difficult for a policeman to make that judgment. Okay. They stopped an inordinant amount of African-Americans and Hispanic-Americans.

That's the problem that we had. Do we stop criminal profiling? I don't really want to see it stopped. I always refer to something that-- I've been profiled twice in my life. I have to admit it.

When I was much younger, I used to get a tan as good as your's, Mr. Chairman. I was always out in the sun. We were coming back from the Bahamas, and I had a great tan. I was asked to go to the side. My entire luggage was pulled apart. I don't know what it was. Maybe it was the Mexican hat that I had on my head or whatever, but--

ASSEMBLYMAN PAYNE: Maybe it was the marijuana you were--  
(laughter)

ASSEMBLYMAN ROONEY: I can truthfully say that I've never tried it. I've never tried any unlawful drugs.

Another time, I just happened to be driving with a friend. We were on a convention out in Seattle. And we were driving up to Canada. And we were coming back, and I looked-- We-- I'm Italian-American descent, even though my name is Rooney. I'm half Italian. This fellow looked even more Italian-American than I do. We just happened to be driving a Lincoln Town Car. I think it was black. We're coming back from Canada, and we're going through customs. And we get pulled over to the side. We were asked to-- "Oh. Would you go inside and fill out these forms?" Sure enough, we went inside to fill out the forms. Now, meanwhile they tore the car apart. Absolutely tore it apart. They had the seats out. They had the trunk open. They were underneath. And then we handed the ID's in. I had my State legislators card at the time with a badge and everything. And he started laughing. And he said, "Well, we only pull over the best people." It was an inconvenience, but again,

they were doing their job. And the profile, I guess at that time back in the early '80s was Italian-Americans. They're importing or running drugs or whatever.

So I have the sympathy with that. It's happened to me a lot less than it's happened to you, Mr. Chairman. I know that for a fact. And it's wrong that anyone should be racially profiled. But criminal profiling is essential for us in New Jersey to stop the drug trafficking along our Turnpike.

The other thing with the press -- with these tapes-- And I refer to the Rodney King instance in this. And Rodney King was beaten unmercifully. Absolutely. But one of the things that made it even worse was that the press chose to do video bites and sound bites. In the video bytes, they never show what lead up to the drastic beating and the horrible beating that Mr. King got. They didn't show on that that he was really lashing out at the police. The police totally overstepped their bounds. But I'm afraid that that will happen. These little video bytes and sound bytes that go into the press-- The people being tried in the papers, the press, etc.-- I'm really afraid of that. If there's a situation-- And I believe that this will show that in most cases, the police will be vindicated on all these stops. It's an important tool for us -- for us in the State. I don't think those tapes should be out there.

If there is a situation where someone is tried for a crime. Absolutely. It goes out at that time. It shouldn't be out there prior to it. A person is innocent in this State and in the entire country until they're proven guilty. Give them the benefit of that. I don't want to see public records of policemen out there on the street in the press just because he's been accused of something. In my own community, I've seen it too often. They accused wrongfully.

That's my dissertation this afternoon -- or this morning, Mr. Chairman.

ASSEMBLYMAN PAYNE: Very insightful, Assemblyman Rooney. Very, very insightful.

Thank you very much.

ASSEMBLYMAN ROONEY: I appreciate it.

ASSEMBLYMAN PAYNE: Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: I want to relay a similar experience.

ASSEMBLYMAN PAYNE: Do you want to hear mine later on? We'll be here all day. (laughter)

ASSEMBLYWOMAN MYERS: Sure.

ASSEMBLYMAN PAYNE: I've got some good ones.

ASSEMBLYWOMAN MYERS: Yes. I did consider whether I needed to comment again, because Assemblyman Rooney really made the point that I was about to make.

But maybe I should, because I haven't read much in the press about other forms of profiling. And there are other forms of profiling besides racial profiling.

I was going to ask a couple of the people who testified, especially Assemblyman Stanley, if they believed that the State Police were racists as individuals.

Twenty years ago I had three small children. And my husband and I used to take the kids camping in the summer. And we had an orange van with no windows -- well, very small windows. And one night I was stopped by the

police. And when the policeman saw me at the wheel, you could just see his face was like, "Oh, my God. I never expected to see this woman in this orange van." Apparently, orange vans were suspect for running drugs or whatever. He laughed.

But I was offended. I mean, certainly not as much as someone who's been profiled by the color of their skin or their race, but this is America, and we do have the U.S. Constitution and the State Constitution, which protects us from being stopped or questioned unless there's a reasonable suspicion that we, individually, have these drugs or are doing something wrong.

So, I think it's been a tremendous benefit to the State and the country that we've identified profiling. I do not agree that we have to have profiling. I think that we need to find other ways to enforce the law because it tends to trample on peoples' rights.

So, in my defense of the Attorney General's regulations, I just wanted it to be very clear that I do not support racial profiling. And at the same time, I don't believe that the State Police were racists. I believe that, as has been stated, they were instructed by superiors to do this. And it's going to take some time to turn everything around.

But I think the Governor's hired someone to run the State Police, who's going to watch out for this. There's another individual in the Attorney General's office responsible for overseeing the State Police. And certainly, we're trying to provide that internal oversight until things are changed to everyone's satisfaction.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

ASSEMBLYWOMAN CRUZ-PEREZ: I just want to add--

ASSEMBLYMAN PAYNE: Assemblywoman Cruz-Perez.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you, Mr. Chairman.  
Not Speaker, Mr. Chairman. (laughter)

I just want to ask, during the hearings that we held, we find out that we have excellent police officers. Excellent. They came forward, and they testified. We have excellent police officers.

So I don't want to sound like all the State Troopers are bad apples. We have bad apples everywhere. We have bad apples in politics. We have bad apples in the public sector, in the private sector. And there's bad apples within the police departments. That's where we want to target. We want to target the bad apples.

Thank you.

ASSEMBLYMAN PAYNE: Thank you.

Mr. Cryan.

ASSEMBLYMAN CRYAN: I have a couple of questions for you, Mr. Rivera.

ASSEMBLYMAN STANLEY: Can I just respond, first, to Assemblywoman Myers.

ASSEMBLYMAN PAYNE: Yes, yes.

ASSEMBLYMAN STANLEY: I agree with Assemblywoman Cruz-Perez. Not all State Police are racists. But unfortunately, as in society, you have racists. You have some racist people. And we do have some racist people within the State Police.

When we took testimony, we heard testimony where black troopers had actually had sample pamphlets stuffed in their lockers that the Bloomfield Trooper Headquarters had been named Coonfield by some State Police, as it's often referred to just as a matter of fact in conversations, etc.

So unfortunately, we do have racists in the State Police as we have racists throughout society. But hopefully, with some of the recommendations that came out of the Black and Latino Caucus hearings, we can better screen people to understand what their mentality is.

And with things like having access to video, we can actually see-- And they know that not only is it just an investigation that might trigger access to this but also just from the public requesting it, it would be a case where their misdeeds would be brought to light.

And it's a small-- I think it's a small price to pay to prevent the kind of beating that that grandmother who testified took, up in North Jersey, or the attorneys who had been frisked at gunpoint, as we heard testimony -- days of testimony during our hearings.

Thank you very much, Mr. Chairman.

ASSEMBLYMAN PAYNE: Thank you.

Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thank you.

Mr. Rivera, the article that you showed -- it's from the *Gloucester County Times*, I believe -- it's in your testimony -- with the cases that were listed and so on. Could you just expand for me-- I recognize that this regulation is on the State Police, and the data that you're showing us is on the county police, so it's not apples to apples.



MR. RIVERA: Well, actually, it would be statewide as far-- The data was gathered from the counties, but those are for every municipality in the state which provided records, some of which was flawed.

And by not having the proper accountability layers in place, we would have never known that because the paper goes from the municipality to the county to the State, and then it gets stored somewhere. So no one in this room can go ahead and say, "Well, let me see the numbers," because when I looked at the numbers, the right hand didn't know what the left hand doing. The numbers were skewed.

ASSEMBLYMAN CRYAN: And what is the status-- I'm looking at Cumberland County -- 256 cases listed, 26 sustained, 189 dismissed from '96 to '98. Is that data now-- If I wanted to go back to Cumberland County, for example-- Is that data more accessible now? Is it still difficult? You touched upon this in your testimony.

MR. RIVERA: In the summary, it lists exactly, kind of, what their responses were, if they were forthcoming with it. I would love to try it again and make some calls just to see what type of response I get. I don't know, to tell you the truth, what the answer's going to be. Different counties are going to give different answers.

ASSEMBLYMAN CRYAN: Any part of this bill you support -- or regulation, I should say? I keep saying bill.

MR. RIVERA: Not really. (laughter)

Like I said, any personal pedigree information, personnel information should be kept private. Beyond that-- I mean, if it's going to go through-- If you're looking at the video stuff, and you're concerned about it

getting to the press too soon, put a time table on it then that it can't be released after X amount of days. And this way, if there's a complaint or if it's an investigation, it won't be blown -- because that would be one of my concerns.

Something happens today on the Turnpike or in Littleton, New Jersey. A videotape of the stop has happened. Joe Police officer leaks it out to one of his buddies who goes to the press. And the press or myself comes and says, "Well, I want a copy of the videotape." "Well, wait a minute, we have this gigantic investigation that we'd like to spread from this incident, and you're going to just blow the whole thing." So, I mean, these are some of the issues that you have to keep in mind.

ASSEMBLYMAN CRYAN: I guess-- And you're right. And that's exactly what my problem is at the end of the day.

We've all agreed that we have outstanding police officers throughout the State. We're all on the same page with that. I don't want to see guys in the papers because, with all due respect to the press-- But I've lived this in my family life -- with somebody -- a family member who's been vilified in the press and found exonerated. I just watched a United States Senator get crucified for over a year in the press, and no prosecutor could come forward. You're guilty until your proven innocent in the press.

MR. RIVERA: Yes.

ASSEMBLYMAN CRYAN: I agree we need to expose it. But it's certainly a prevalent concern of mine. When I look at your things here and with your data, I'd love to see some updated stuff, if it's available because, quite frankly, we're all in agreement that we want the bad ones out, but we want to keep, what we all believe are the majority, the great ones.

MR. RIVERA: And I agree with you too. As an advocate of free press and free speech, I'd like to see the media on top of things. I think they bring about some true changes in reform.

But on the same token, I was one of the those victims of the newspapers where I was fired, and I was this really bad guy. And I had to-- My character came under assassination where I almost have to prove myself for the years to follow.

ASSEMBLYMAN PAYNE: Thank you.

We're going to conclude this portion of the hearings.

We have one more coming up later on. I have to take a 10 minute break because I have to go to another meeting for a short period of time.

But let me just say this. I would thank everyone for coming. And I think one of the things we need to keep in mind is that as long as things are enforced across the board equally, then we have no problem with that.

Those of us who are minority citizens of the State of New Jersey don't regard ourselves as minority. We're as much a part of the American fabric as anybody else. And we also want to be proud of our law enforcement people. We're also law-abiding people, etc. But we simply cannot have a skewed enforcement of the law or racial profiling, as an example. Walk in my shoes, and maybe you'll know what I'm talking about.

Let me just say this to you also. When McVeigh bombed Oklahoma City, there was no profiling. They didn't go across the country looking for white, Irish-Americans, etc. All right? It was not-- As a matter of fact, the first person they tried to claim was some Arab guy who was on a plane in London somewhere.

And then it turns out that if, in fact, this is a litigimate tool for finding criminals, etc., then why is it not applied across the board equally? It would seem to me that-- I don't know if McVeigh was Irish or whatever he was. But if he is Irish, than even Cryan would have been pulled over, etc.

And half of you would have been pulled over. (referring to Assemblyman Rooney)

So, what I'm saying is, we need--

ASSEMBLYMAN ROONEY: I have a quick story.

ASSEMBLYMAN PAYNE: But what we need-- What we're trying to say here is that we're looking for, number one, law enforcement people -- and all of us to live under the scrutiny. We should not be afraid of scrutiny. If we're doing our job, then we should not have anything to worry about. As a matter of fact, it's been pointed out time and time again that the videotapes have exonerated some of the officers who have been falsely accused.

So I think that what we need to do is look at this-- And what I'm going to suggest and recommend is that; number one, we agree that these proposals were made by the former Attorney General. We now have a new Attorney General's office, etc. And we're going to recommend that they relook at this. We have a new State Police Superintendent, who might take care of half of these without any regulations or whatever.

So what I'm saying is that we will certainly recommend that these proposals be looked at -- the regulations -- proposed regulations, rather, be looked at again and sent back to the current administration to see to it that maybe they can address a lot of these things.

We want to see to it that we have superlative police officers. When I see a police officer on the Turnpike coming along or behind me, I don't want to have trepidations about it. I want to be able to look proudly at that guy doing his job. And until we're able to eliminate all these -- this shadow of racial profiling and also the very fact that we've read that there's still an increase on a number of minorities who are being profiled. So, it's an ugly situation, but we have to exercise it, get it out of our system, and get it out of the public. And then, I'm sure, we'll be able to resolve this.

So I think that we are looking forward to having a superlative State law enforcement agency. And we're going to work in cooperation with those factors that have been brought up.

ASSEMBLYMAN ROONEY: Just on a lighter note. I think I may have told you this and also Assemblyman Stanley, but I was watching one of the shows, and there was a black comedian on. And he came out and said, "A year or so ago, my people were not in favor of George Bush. And since 9/11, we've been absolutely supportive of him. He's an excellent president." And then he said, "Last year, my people were complaining about police stopping us on the highways, etc." He said, "It was called police profiling." He said, "Now, when we drive along the Turnpike and we see them pulling over these Muslim people, do you know what we call that? Excellent police work."

ASSEMBLYMAN PAYNE: Thank you, Mr. Rooney.

ASSEMBLYMAN ROONEY: It's a little different in times -- in context.

ASSEMBLYWOMAN MYERS: Mr. Chairman, when you said we, are you going to send a recommendation from this Committee? (no response)

ASSEMBLYMAN ROONEY: Ten minutes or longer?

ASSEMBLYMAN PAYNE: Fifteen minutes.

I'll discuss it with the entire Committee to see--

ASSEMBLYWOMAN MYERS: Okay. So you'll get back to us before--

ASSEMBLYMAN PAYNE: Absolutely.

Assemblyman, we want to reconsider this. We have two people to testify under the brain damaged segment of this. And I'm not sure how long that will take. I think there are just two that are here, correct?

MS. MOSQUERA (Assembly Majority Aide): Yes, they're ready.

ASSEMBLYMAN PAYNE: So, maybe what we'll do, and I trust that Assemblyman Barnes will forgive me-- But maybe what we'll do is just continue so that we can get that out of the way, and then we can--

All right? I know you have to get all the way back up to that suburban -- that country town up there, whatever it is.

ASSEMBLYMAN ROONEY: Yes, way up in the boonies -- Northvale.

ASSEMBLYMAN PAYNE: Is that a picture of your neighborhood up there, that picture in the back? (laughter)

ASSEMBLYWOMAN CRUZ-PEREZ: No, no, that's a picture of Puerto Rico. (laughter)

ASSEMBLYMAN ROONEY: Close. That's a little further up.

ASSEMBLYMAN PAYNE: A little further up. Is that right?

ASSEMBLYMAN ROONEY: That looks like the Hudson at some point.

ASSEMBLYMAN PAYNE: We have two persons that will testify now. And the testimony will be no more than, hopefully, five minutes each.

Is Vito Albanese here? Just identify yourself.

And Ms. Jankowsky.

ASSEMBLYMAN ROONEY: They're out in the hall.

We're on record on this, right?

HEARING REPORTER: Yes.

ASSEMBLYMAN ROONEY: Just for information, if I can start-- I'm a little bit familiar with this bill. One of the problems that we had up in my district is there was an outfit called Potomac Homes. They came into our district and bought up some of the larger homes. And then we're using the fact, the brain damaged legislation -- basically the Federal law -- brain damaged -- to come in and -- come into the community, basically, with Alzheimer's patients. Alzheimer's patients are people that progressively grow worse. I mean, so far, we haven't seen any-- We have seen some good medicine and research into it to stop the progress of it. But up until that time, it was something that was going to be worse and worse.

We had situations where, because they came under this particular law, they were able to go into these communities, and they have very low staffing. And this is what this is about -- is the staffing required. And they had no supervision and monitoring of the progress of the patient also. And we found people wandering in the streets because there wasn't sufficient staffing.

We did put into legislation a bill that would require that these people be tested every six months as to whether they can stay in this group home type of situation and also to monitor-- And I would like to add that to the

testimony that the Department of Human Service look into that and make sure we maintain the controls and supervision of the Alzheimer's patients to make sure that they're not just warehoused in these facilities and then not get the proper supervision or medical care.

So, with that proviso, I hope I've wasted enough time to get the speakers-- Used enough time, not wasted.

ASSEMBLYMAN PAYNE: Thank you. Thank you very much, Assemblyman Rooney.

You have seen the agenda. And as you know, this Committee invited the Commissioner of the Department of Human Services and the Director of the Division of Developmental Disabilities to discuss the reasons for the delay in adopting regulations required by Public Law 1993, Chapter 329. That law directed the Department of License and Regulatory community to license and regulate community residences for persons with head injuries and to develop program standards and criteria for education and professional experience of residence employees and for staffing ratios appropriate to the residents' needs.

Our concern here is that Public Law 1993 was signed into law in December, I believe, of 1993. And it's required by it that regulations be promulgated within 90 days of the passage of that legislation. Unfortunately, in 1993 -- a decade has gone by just about -- and these regulations have not been promulgated, as of now, for the implementation of this legislation.

And certainly, one of the major responsibilities of this Committee is to see to that the procedures are followed and their regulations are, in fact, promulgated and adopted. We have had a serious problem here.



And one of the reasons why we invited the Commissioner and the Division Director was to try to learn reasons why there was such an inordinant delay in the promulgation of these regulations, number one. And number two, without these regulations being written and adopted, there is a serious impact upon the licensure of these facilities -- that the question arises here -- is whether or not these facilities that have been set up for newer health care, in fact, within the standards that should be followed by these facilities. And until those regulations are adopted, we are operating in an area that is leaving, I think, a lot to chance and also in violation of the legislation.

The major violation, of course, is the fact that the Department did not follow through on the promulgation of these regulations. And I think that not only this Department -- not only the Department of Human Services but all Departments are required to promulgate regulations where there is legislation that is passed. And even in our previous experience we found that some of the Departments simply do not respond. Some of them don't respond.

I know on the Appropriations Committee the last time, we had a number of meetings where we wanted representatives from the Treasury Department and other Departments to come to answer questions that we couldn't answer. So I want to make sure that our Departments and people who are responsible for carrying out these services are, in fact, doing their jobs now and in the future, not only in this Department but others.

And I would just like to say, also, that we have a new administration, as I've said before. This Department has a new Commissioner. And I'm sure this new Commissioner is looking into the kinds of services that their Department is providing, etc. And we don't intend to prejudge what this

administration is going to do. But I think we have people here today who can testify as to the-- We have nobody here from the Department.

ASSEMBLYWOMAN MYERS: Mr. Chairman, can I just ask you a question?

ASSEMBLYMAN PAYNE: Sure. Yes.

ASSEMBLYWOMAN MYERS: You made a statement, and I'd like to ask OLS if they could confirm this. You said that the executive branch has to adopt regulations for every statute we pass because this statute does not have any direction in it. A lot of the bills that I've sponsored and laws that I've looked at say, "The Department shall adopt regulations within six months," or whatever at the end of them. This one doesn't say that -- that I could find -- although maybe it's in the other part of the -- another part of law.

MR. KELLY (Committee Aide): Assemblywoman, I don't believe there's a specific deadline for the promulgation of regulations, although the Department was directed in that legislation to promulgate regs.

**VITO ALBANESE SR.:** May I say something?

ASSEMBLYMAN PAYNE: Thank you. One second.

ASSEMBLYWOMAN MYERS: I just wanted to know. Is that true that the Departments have to adopt regs for every statute?

MR. KELLY: No, not with regard to every statute. But this specific Chapter 329 of '93 did direct the Department to promulgate regulations.

ASSEMBLYWOMAN MYERS: Okay. I thought it was standard. So that's not regulation. If you could tell me where it says regulations--

MR. KELLY: Well, let me find the--

ASSEMBLYMAN PAYNE: Okay. Thank you.

What we want to do is make sure that where it is required by legislation that regulations be promulgated within a specific period of time, that they, in fact, be done wherever that's happened. So we want to make sure that we follow up on that.

Let me just say that we have here to testify here-- As I said, there's no one here from the Department, but we do have Mr. Vito--

ASSEMBLYWOMAN MYERS: It does not say.

ASSEMBLYMAN PAYNE: We have here-- Well, we're going to-- As I said, OLS is going to research that.

And what the overall purpose of this Committee will be is to see to it that Departments, where it's stipulated by legislation will, in fact, carry out the regulations within the time that's stipulated by law.

All right, Assemblywoman? Is that satisfactory?

Let me introduce Mr. Vito Albanese Sr.

Can you identify yourself, Mr. Albanese?

MR. ALBANESE: Vito Albanese Sr.

ASSEMBLYMAN PAYNE: Is the red light on? (referring to PA microphone)

ASSEMBLYMAN ROONEY: Press the button until--

MR. ALBANESE: Good afternoon.

My name is Vito Albanese Sr.

May I make a brief comment on the statements that--

ASSEMBLYMAN PAYNE: Why don't you identify yourself though. You're the father of a TB--

MR. ALBANESE: Yes, I'm the father of a traumatic brain injured son. My son Billy is here today.

ASSEMBLYMAN PAYNE: Okay.

MR. ALBANESE: I have a copy of the original bill of Public Law 1993, Chapter 329 put out by Assemblyman Gary Stuhltrager and Co-Sponsor, Lee Solomon, which said in the bill that within six months of the law taking effect, rules and regulations must be promulgated. So I don't know if the C-30-something -- who codified those laws without any authority -- I know I have the bill. I couldn't find it at home, but I can present it to you at a later date. That bill says that within six months of the law taking effect, rules and regulations should be promulgated.

ASSEMBLYMAN PAYNE: Thank you.

I think you might want to identify yourself. You're the father of a-- And your son is here. Do you have a relationship with a New Jersey institution? Why don't you tell us about--

MR. ALBANESE: Okay. May I read my testimony?

ASSEMBLYMAN PAYNE: Fine. Thank you very much.

ASSEMBLYMAN ROONEY: Try and synopsise the testimony. I think the Chairman's only asked for five minutes for both-- He has another meeting.

MR. ALBANESE: At a previous hearing, they let me speak a little longer.

ASSEMBLYMAN PAYNE: Okay. Go ahead, please.

MR. ALBANESE: Good afternoon.

I would first like to thank Assemblyman Payne and the honorable Committee members today to hear my testimony. I'd also like to thank Guy Gregg and members of the Assembly Regulatory Oversight Committee for giving me the opportunity. And I'd also like to thank Assemblyman Kevin O'Toole and his excellent staff.

ASSEMBLYMAN PAYNE: Excuse me, Mr. Albanese. This is testimony that you had at the previous hearing?

MR. ALBANESE: Correct.

ASSEMBLYMAN PAYNE: All right.

MR. ALBANESE: And then I have one page that I made for this hearing.

ASSEMBLYMAN PAYNE: All right. Fine. I think--

MR. ALBANESE: I want the Committee to get a taste of what the first hearing was about. That's why I'm--

ASSEMBLYMAN PAYNE: Synopsise that, if you will, since that's the previous session, etc. Just synopsise what you've told them. And I think we have-- You presented us with it, correct?

MR. ALBANESE: I passed copies--

ASSEMBLYMAN PAYNE: Okay. Fine. But let's bring it-- Synopsise that, and then let's get to today's.

MR. ALBANESE: Well, my son has a significant history in the State of New Jersey because he was in coma, transferred from coma to Children's Specialized Hospital in Mountainside, New Jersey. And he went there for 22 months of rehabilitation. He stayed at the Bancroft School in

Haddenfield, New Jersey for over four years. So I think I have a good reason to be here testifying.

ASSEMBLYMAN PAYNE: Okay. Fine.

MR. ALBANESE: My son was placed in the Bancroft School in November of 1991 and came home to me in April of 1997.

I was very instrumental with my friend, Ms. Jankowsky, in lobbying for Public Law 1993 to the then Commissioner, Mr. Waldman. I lobbied the then Chief of the Office of Licensing, Vic Thomas, who issued these licenses. And I also met, on numerous occasions, with Assemblyman Solomon so that this law would take effect?

Well, lo and behold, we find out no rules and regulations were ever promulgated. A license for this facility -- traumatic brain injury -- was issued six months before the law took effect. A license for TBI 001 was given to Bancroft Mullica Hill residents on June 18, 1993. The law took effect December 23, 1993. And by what authority did Mr. Thomas have to issue a license without the law taking effect?

So in effect, it's my belief that it was an illegal license. And Bancroft should have never accepted that license. They had a provisional license. Provisional means serious deficiencies. For the past eight years, the same thing -- stayed provisional for eight years.

What did the Department of Human Services do to take away that license or at least make them fix the deficiencies? There's no checks and balances in these places. There's no mandatory fines. There's nothing because all you have is people going in to do inspections that are not trained or knowledgeable to investigate traumatic brain injury people. I'm talking about

State people because we worked on a group to put the regulations into effect. And it was said at this meeting, "Please help us learn what head injury is about." So, if you don't know what the disability is, how are you going to go and inspect it and monitor these places?

There's something very wrong with the way things are done in making sure our children are safe -- their's protection and their welfare is well taken into account. It costs New York \$183,000 a year, for four and a half years, at taxpayer expense. For what, abuse and neglect?

My son was threatened there that he saw two staff in his apartment making love. And he told them to keep quiet. One guy came in and said, "If you ever reported this to anybody, I'm coming tomorrow with a shotgun, and I'm going to blow your brains out."

ASSEMBLYMAN PAYNE: When was this? How long ago was this?

MR. ALBANESE: In 1995.

It was reported to DDD for investigation. Bancroft did an internal investigation, sent it to DDD, and the case was closed. DDD never even did an independent investigation to that allegation. I went to the police department and made a complaint. The Cherry Hill Police-- Nothing ever got done with that complaint. I have it in a log. The police called the group home where he was living. So if the police called, that shows that something happened.

There were incidents of him in the wheelchair being physically restrained -- unwarranted physical restraints. He has severe orthopedic problems. There's not one statutory law in the State of New Jersey that says physical restraints are warranted in these places. All they have is regulation and

directives by the Department of Human Services, DDD. Their directives give these providers the opportunity to restrain these kids. That's outrageous. The law is solid on the use of physical restraints in this state because the use of this becomes abusive and neglective.

ASSEMBLYMAN PAYNE: Assemblywoman, excuse me, could we keep it down there, please.

Thank you.

It's a courtesy to the testifier.

Continue, Mr. Albanese.

MR. ALBANESE: The State Division of DD's unwillingness -- inability to develop regulations and licensing procedures for traumatic brain injury program, over the course of eight years, suggests a more widespread pattern of inattentiveness and negligence on the part of State regulators.

The problems with New Jersey's brain injury regulations cannot be fixed without acknowledging and fixing other glaring deficiencies in New Jersey's regulations covering the care and treatment of individuals with the developmental disabilities.

New Jersey currently has a very poor reputation, nationally, among disability advocates and the better service providers. It is considered a state in which private facilities, while existing on Federal and State dollars, has historically been allowed to regulate themselves with little State oversight and quality control.

New Jersey's continued reliance on restraints, manual, mechanical, and chemical and other aversives, physical and psychological punishments used by staff on the disabled population -- although generally prohibited in other



sectors of society, i.e., parents in the home, the nursing home care givers, or even to prison staff, is out of sync with the best modern medical advice and educational techniques. Other states such as Pennsylvania have successfully dispensed with restraints and aversives long ago.

Restraints and other aversives are dangerous. The most recent study reported in *The Hartford Courant* newspaper on 10-11-98 suggested that from one to three U.S. citizens with disabilities dies due to restraints every week. Yet, even the most recent changes proposed by the Division of DD Circular 19 will only lightly restrict the use of restraints as an emergency technique, leaving programs free to continue using restraints to any extent or degree they wish, i.e., with virtually no Division oversight, as long as they are considered part of the client's treatment plan.

New Jersey's inability to promulgate responsible regulations in these areas leaves the State open to charges of noncompliance with the Federal Developmental Disabilities Assistance and Bill of Rights Act, the Americans with Disabilities Act, the rules applying to nonmedical community-based facilities for children and youth promulgated last year by the Federal Health Care Financing Administration and other statutes and regulations addressing civil rights and human rights.

Other states with regulatory problems similar to New Jersey's have faced lawsuits filed by the U.S. Department of Justice and by patient advocates. In the case of Tennessee, the state was forced to respond by revamping its entire human services system, bringing in new leadership and retraining all staff in alternatives to restraints and aversives.

ASSEMBLYMAN PAYNE: Mr. Albanese, if you can, kind of conclude. We have your testimony. Okay?

MR. ALBANESE: All right. I have one more paragraph, and then I will just leave.

ASSEMBLYMAN PAYNE: All right. Thank you very much.

New Jersey still has an opportunity to make these changes from within. Leadership issues at the Division of DD must be taken seriously -- very seriously because nobody showed up. That's a slap to this Committee's face and to me to answer the questions that I had to propose to them. It's outrageous.

Mr. Smith was invited as Commissioner -- failed to attend the first hearing. Mr. Commissioner has been invited as DDD Director -- failed to come.

This Committee has subpoena power. I would like to have the answers to what they have to say to these charges.

Let me just finish this one question.

The Division must be made to accept the responsibility for writing and enforcing regulations that accord with State and Federal statutes and Federal regulations. It may be necessary for New Jersey's Legislature to step in with a statutory basis for some of the more urgent reforms, in which the Division remains out of date and out of compliance.

ASSEMBLYMAN ROONEY: I'm very shocked to hear these charges. I hadn't heard them before.

I don't know if you're aware of it, but I was the original sponsor of the bill creating the Division of Developmental Disabilities. It goes back to the

mid '80s. It's been a Division that I've been very proud of. And I understand rules and regulations going across lines-- There's group homes for brain injured. There's also group homes for people with cerebral palsy. There's also for people with Down's Syndrome. There are different rules and regulations. In some situations, I can see restraints may be required depending upon the particular disability that that person has. It's hard to go broad-brushed and say, "You can do that." If we're in violation, that's a major concern.

One of the things I would ask is, have you gotten an attorney and filed charges? I would think that some of the things you're saying here are legitimate, chargeable against the Division or against the facility. Have you gone that far?

MR. ALBANESE: I contemplated. I'm not going to say I didn't. But I came here in good faith. This is my second time. I've been talking with DDD for two and a half years, and so has my friend Sally. We're not here about a lawsuit. We want the Division to fix a very broken system, sir.

ASSEMBLYMAN ROONEY: And I agree with you.

MR. ALBANESE: It's broken severely from the Commissioner on down.

ASSEMBLYMAN ROONEY: I agree with you.

MR. ALBANESE: There's no response to these people. They smacked everybody in the face by failing to show.

Now, on Friday I find out the proposed regulations, which was in the New Jersey registry, submitted 2001 -- in September -- are going to be rescinded. So, we're back to square one, no regulations for the traumatic brain injured population.

ASSEMBLYMAN ROONEY: One of the things I would also suggest is that we refer this information to the new public advocate, since I believe that is being created. There used to be an advocate for the handicapped way back when under the Public Advocate's office.

I've always agreed. I voted against doing away with the public advocate. I want that on that record. It was quite a while ago. And I think we do need an advocate for situations such as this. We had ombudsmen advocates, etc. And I think that's extremely proper. So I think we should refer it to the Attorney General's office and to a public advocate, should there be one.

MR. ALBANESE: Well, ironically, I met with the Attorney General and one of the administrative practice officers, two months back, with Ms. Jankowsky, and they were very serious about our comments -- that the regulations were unconstitutional, and there was no protection for our children.

The plan came back recently from the Attorney General's office that the regulation must be rescinded. And that's-- I worked very hard -- and Ms. Jankowsky -- and another parent here today on a workforce group to put these regulations in place as more protection. Now they're going to be rescinded. Now, nine or ten years are going to go by -- we still don't have the regulations.

ASSEMBLYMAN PAYNE: I don't think that's-- That's not accurate that they're being rescinded. Actually, they're being revised, and they're going to be resubmitted.

MR. ALBANESE: No. I was told there is going to be a proposal going in the Register as rescinded, and they're going to follow the TBI Federal regulations -- the TBI waiver.

ASSEMBLYMAN PAYNE: Let's hear from our representative.

MR. KELLY: We were told by the Department about a week ago -- was that the proposed regulations were being revised in response to public comments received by the Department and that they would be republished with changes based on those public comments. Basically, the process is going to begin over. The revised regs, response to public comments, and other 60-day period, after which the regs will presumably be adopted. That's the most recent information we had.

MR. ALBANESE: That's not what I was told, Mr. Kelly. I spoke to Mr. Evanochko, who is in the administrative practice office, Friday last. He said, "Due to the meeting we had, they're going to be rescinded. And the proposal is going to go out in the Register that they're going to rescind the regulations and follow the Traumatic Brain Injury Medicaid Waiver Program, which was in effect for the past nine years anyway. So why didn't they ever use those regulations?"

I told Mr. Kuster, use the Federal regulations. Nobody wants to hear the parents.

MR. KELLY: Well, that was the information we had. Perhaps there's some misunderstanding. We can follow up on it with the Department and try to get more recent information.

In regard to the question raised by Assemblywoman Myers, with respect to whether or not the statute required regulations to be promulgated. The 1993 law did not expressly do so. It simply called for standards. But the law that it amended already had a provision in it calling for regulations to implement the law. So it would be our interpretation that would require regulations to be promulgated as amended by the 1993 law.

ASSEMBLYMAN PAYNE: Was there a time frame when it was to be implemented?

MR. KELLY: They were told to come up with standards within six months.

ASSEMBLYWOMAN MYERS: Standards.

MR. ALBANESE: Thank you.

ASSEMBLYMAN PAYNE: Thank you, Mr. Albanese.

Let's hear from Ms. Jankowsky now.

MR. ALBANESE: I would like one more minute to say a couple other questions.

No, I'll let Ms. Jankowsky--

ASSEMBLYMAN PAYNE: Sure. Very good.

Now, we have Ms. Sally Jankowsky. She's a parent and advocate -- brain traumatic injury--

**SALLY JANKOWSKY:** Of a young man with a brain injury.

I brought him to the last one, but I couldn't bring him to this one. I have pictures so that you could see what he's been through.

ASSEMBLYMAN PAYNE: How old is he?

MS. JANKOWSKY: He's going to be 38.

This is how he looked. This is how he is today. This is after his coma. I think that's one issue that maybe DDD doesn't understand. Our children were not born this way. We had all families -- had such terrible trauma to our families after our children were injured. And it's not stopping. We just want to take care of them, see that they're well taken care of and no more harm comes to them. But it doesn't stop.

I live in New Jersey now. We lived in Brooklyn. I had to move here because we needed a ranch home. I took my son home to live with us. Now he's in a facility in Pennsylvania. I did place him in two facilities in New Jersey. They could not take care of him. I placed him in Pennsylvania because they take care of him. I might not be happy with every little thing, but there's no major issues. He fell in these facilities. They said it was his fault. Bancroft was the last one. I took him out very shortly after he was injured there with the fall. And it's in my testimony exactly what happened. Like I said, I will not put him in another facility in New Jersey until everything is straightened out and maybe not even then. I don't know.

As Mr. Albanese said, we are on the workforce committee for the standards. We did make suggestions. We were treated unfavorably, as far as I'm concerned. They treated us persona non grata. That's the only thing I can say. It's in my testimony also.

They ignored what we said. They went ahead and did what they wanted to do. And that can't be. We're the experts. We work with our kids. We know what they need.

Facilities ignore our pleas also for the needs that our children need. And they do things their own way. They also treat us on not an equal level.

ASSEMBLYMAN PAYNE: You say they-- You're talking about--

MS. JANKOWSKY: Not as a team.

ASSEMBLYMAN PAYNE: You're talking about the institutions or the facilities?

MS. JANKOWSKY: Yes, the facilities. Yes.

ASSEMBLYMAN PAYNE: They treat you guys--

MS. JANKOWSKY: Yes. Yes, they do.

Like I was saying, we were on the workforce committee, and we made suggestions. There were a few minor things that they listened to. But on this workforce committee, the person who is going to -- that was going to listen to the comments was also doing a training committee after -- eight years after the fact. And she said, "I don't know anything about brain injury. You have to tell us. You have to tell me about brain injury, okay?" She's on the comment committee for the standards. How can that be? How can someone, who doesn't know anything and admits they don't know anything, chair a committee?

ASSEMBLYMAN PAYNE: Give me the full title. What is it, the workforce committee on whatever, whatever?

MS. JANKOWSKY: The standards for 1044 C.

ASSEMBLYMAN PAYNE: And you were appointed by whom?

MS. JANKOWSKY: Well, we requested to be on the committee.

ASSEMBLYMAN PAYNE: You requested of whom?

MS. JANKOWSKY: Mr. Kuster.

MR. ALBANESE: Kuster.

ASSEMBLYMAN PAYNE: The Division of -- the Department rather--

MR. ALBANESE: He's chief of the Office of Licensing and Inspection.

ASSEMBLYMAN PAYNE: For the Department of Human Services?

MR. ALBANESE: Of DDD, yes.



MS. JANKOWSKY: These standards should have been written in 1993. We wouldn't be here today if they were done. We wouldn't be here today if the changes that we suggested were made.

At the last oversight committee hearing, Ms. Wehrlen, stated that they were remiss for not writing the standards. She said that they used 1044-A for people with brain injury -- apples and oranges -- two different disabilities. You cannot do that.

ASSEMBLYMAN PAYNE: Her testimony-- She testified at that hearing?

MS. JANKOWSKY: Yes, she did.

ASSEMBLYMAN PAYNE: Ms. Wehrlen?

MR. ALBANESE: Deborah Wehrlen. She was the Director of DDD at that time.

MS. JANKOWSKY: 1044--

MR. ALBANESE: We wrote down the notes. She said, "My testimony -- I came here. I am remiss that we didn't do the regulations."

ASSEMBLYMAN PAYNE: It must be in the-- If there are-- If the testimony was taken at that time, a transcriber--

MS. JANKOWSKY: It wasn't transcribed.

MR. ALBANESE: And remiss means negligence, as far as I'm concerned.

MS. JANKOWSKY: 1044-A is for developmental disability.

MR. ALBANESE: Now, the Legislature did not intend Public Law 1993 to be grandfathered into Public Law 1977. They were separate and apart.

They should have never used 1044-A regulations to monitor and supervise these facilities.

ASSEMBLYMAN PAYNE: Let's finish.

Let Ms. Jankoswky complete her testimony.

ASSEMBLYMAN ROONEY: Just-- I don't want to go much further with--

ASSEMBLYMAN PAYNE: Sure.

ASSEMBLYMAN ROONEY: --1044-A--

MS. JANKOWSKY: It's developmental disabilities.

Assemblyman Gregg said to her, "You mean, you just used them? You didn't ask anybody? You didn't tell anybody? You just used them. And that's against the-- You can't do that either."

ASSEMBLYMAN ROONEY: Just a little clarification. Basically, cerebral palsy is a developmental disability.

MS. JANKOWSKY: Right.

ASSEMBLYMAN ROONEY: Now, you can-- Cerebral palsy, basically, is an injury to the motor area of the brain.

MS. JANKOWSKY: At birth.

ASSEMBLYMAN ROONEY: Whether you get it at birth or later, basically a lot of the symptoms are the same. And the results are pretty much the same, and the treatment for them are the same.

MR. ALBANESE: That's not it.

MS. JANKOWSKY: I understand what you're saying, but that's not-- It can't be together.

MR. ALBANESE: Our kids were born normal.

ASSEMBLYMAN ROONEY: I'm not saying--

MR. ALBANESE: Cerebral palsy was at birth.

ASSEMBLYMAN ROONEY: I know.

MR. ALBANESE: They don't remember normalcy.

ASSEMBLYMAN ROONEY: Well, that's a whole different thing. That's attitudinal, rather than--

MR. ALBANESE: That's why they made it a new category in Washington. It's a Federal classification.

ASSEMBLYMAN ROONEY: All right. That's what I'm trying to get at.

ASSEMBLYMAN PAYNE: Okay, well that's--

MR. ALBANESE: It's traumatic brain injury.

ASSEMBLYMAN PAYNE: Mr. Albanese, wait, wait, wait, wait, wait.

ASSEMBLYMAN ROONEY: That's exactly what I'm trying to get at. Now, if there's a problem with that, then we should deal with that.

One of the other things that I would suggest for concerned parents -- I have been involved with DDD for -- since the late '70s. I was involved with a group called Spectrum for Living.

MS. JANKOWSKY: Yes. We know Spectrum for Living.

ASSEMBLYMAN ROONEY: It's New Concepts for Living, Life Opportunities. These are groups that were put together by parents of developmentally disabled children. And their facilities are run by the parents.

MS. JANKOWSKY: Right.

ASSEMBLYMAN ROONEY: It's not a for-profit organization.

MS. JANKOWSKY: Right.

ASSEMBLYMAN ROONEY: I would suggest to you-- I mean, regardless of what we do on rules and regulations, your concerns as parents should be predominant in forming groups like this or attaching to groups like Spectrum, like Life Opportunities, to then facilitate your own children into facilities that are basically run by the parents or controlled by the parents.

MS. JANKOWSKY: It's going to be run by the parents, but you still have to have licensing. You still have to have rules and regulations.

ASSEMBLYMAN ROONEY: They're already done. That's what I'm saying. If you can attach onto some of these existing groups or form your own groups-- I'm not saying anything about the rules and regs.

MS. JANKOWSKY: It's very difficult. We've been trying to do this for 10 years.

ASSEMBLYMAN ROONEY: I will talk to Spectrum for you. I'm on the board.

MS. JANKOWSKY: Well, we've talked to--

ASSEMBLYMAN PAYNE: Well, the Assemblyman is offering to bring another dimension to it.

MS. JANKOWSKY: Okay. Another dimension.

ASSEMBLYMAN ROONEY: If you give me some-- Oh, I have your information.

MS. JANKOWSKY: All right. This is what I was going to suggest -- that licensing for traumatic brain injury be issued through a complete new agency, maybe the division of traumatic brain injury, with oversight from the public advocate.

This disability is a lot of medical challenges, mental challenges, because these people with brain injuries remember who they were and where they were. And that is not the same as being born with a disability. There might be some things that are similar. There are some similar feelings. People with CP might want to be married or whatever it is, which our children have, too. You know, there's different things. But it is a different disability.

ASSEMBLYMAN ROONEY: Well, we don't differentiate between people who are born deaf or born blind and become deaf and become blind in later life. We don't differentiate. They do. They do have the attitudinal problem. The adjustments are totally different. But in DDD, we service all those populations. We can't-- We've got to find a way to bring you into the fold and to bring you in properly so that your children will be properly taken care of.

I'm appalled to hear about this -- Bancroft-- This is a--

MS. JANKOWSKY: It's not only them. There's other facilities, and they all--

ASSEMBLYMAN ROONEY: It's a for-profit group though.

MR. ALBANESE: Bancroft is a not-for-profit-- It started off as a not-for-profit school. It is now a \$68 million corporation.

ASSEMBLYMAN ROONEY: Right.

ASSEMBLYMAN PAYNE: Sixty-eight million dollars?

ASSEMBLYMAN ROONEY: And it was the same as Potomac also -- my problem with--

MR. ALBANESE: So, they have a facility at Bancroft right now. It's an alternative to inpatient psychiatric care. I believe that facility is illegal because they keep kids there inpatient with psychiatric problems.

The law in New Jersey says if you're incompetent, you must be judged incompetent by a judge of jurisdiction. They keep kids there in restraints, on psychotropic drugs, with no oversight by the State.

ASSEMBLYMAN PAYNE: No oversight by the State.

MR. ALBANESE: No. I got a recent report from them. Everything's hunky-dory there. It's great.

ASSEMBLYMAN PAYNE: You got a report from where?

MR. ALBANESE: From DDD that the program that Bancroft is running is a great place. Well, I know by reading the New Jersey statutory law, if you have a psychiatric problem, you have a right, for writ of habeas corpus, and you have a right to counsel, and you've got a right to go in front of a judge and say, "Why am I being held in this institution without proper legal authority?" Most of the kids that go to Bancroft go for school programs. There are IEPs run by State education departments. It does not-- And those IEPs call for the least restrictive environment. That environment at Bancroft is highly restrictive. And I brought to your office's attention that a boy who was left there died.

ASSEMBLYMAN PAYNE: Yes.

MR. ALBANESE: That's outrageous. They put him with no life signs in a company van, not even calling 9-1-1 for an ambulance and transported him 50 minutes away to Children's Hospital in Pennsylvania -- supposed to go to the closest hospital in a life or death situation.

ASSEMBLYMAN PAYNE: Except it was my understanding in that case that Cooper Memorial did not have the facilities to take care -- that somebody suggested that the hospital he was taken to was the Children's Hospital in Pennsylvania. Is that correct?

MS. JANKOWSKY: Yes.

MR. ALBANESE: No, no.

ASSEMBLYMAN PAYNE: Yes, no, yes, no.

MR. ALBANESE: When you're in life or death -- says you go to the closest hospital. His pulse was-- His respiration was 50 over 20. That boy was already in coma.

ASSEMBLYMAN PAYNE: Then he died the next day.

MR. ALBANESE: The boy died the following day with severe pneumonia and sepsis. You don't get pneumonia on a 50-minute ride to a hospital.

ASSEMBLYMAN PAYNE: All right. Fine.

Mr. Albanese, we're going to, obviously,--

The conditions in a situation that exists within this area are just so all encompassing. Secondly, we have a new administration. Even though Mr. Smith was here during the last administration, I believe he was acting for a short period of time--

MR. ALBANESE: Acting Commissioner.

ASSEMBLYMAN PAYNE: --Acting Commission of Human Services.

We do have a new Commissioner there. And I was informed that the new Commissioner said that she simply had not had an opportunity, and would like to have an opportunity, to review the workings of her Department.

Now, you pointed out that Mr. Smith is there. And, too, I'm somewhat disappointed that there's no representative -- even Mr. Smith -- or no representative even is here today-- And we're going to look into that and find out why that's the case. It may be that he was ordered not to come, simply because of the -- that this is a brand-new administration. They're trying to get their arms around everything that's going on there. It could very well be.

The bottom line, however, is that every person who happens to fall within the category of brain damaged or developmentally disabled, etc., certainly deserves to have the very best kind of treatment and very best kind of care. We have to get to the bottom of this. We have to find a way not to just keep going over there, year after year after year -- same thing over and over again. But we need to find a way to find some way to resolve the problems, to resolve it and take care of it. I don't have the answer now, but I have a tendency to sometimes be very simplistic about these things and say, "This is what's supposed to be done. Let's do it." But I don't know-- And we can't afford to have red tape -- those kinds of things impede the service and the care that our patients get. We can't have that. We have to find a way to get to the bottom of these problems and resolve them because these are human beings we're talking about. As you say, these are people who were born normal in this situation -- who were normal and have been damaged and therefore remember what it was like, etc. They simply must be given the kind of treatment that is humane and effective. We're going to try to find every way-- I'm glad to know



that Assemblyman Rooney has a good deal of familiarity in this area and will be very helpful to us and try to -- arrive at the bottom of it. But we have to be able to have some very specific kinds of paths to follow in order to resolve the problem.

MS. JANKOWSKY: May I say--

ASSEMBLYMAN PAYNE: Yes.

MS. JANKOWSKY: May I make another--

One of the issues that you will hear is that they can't get staff.

Okay?

ASSEMBLYMAN PAYNE: Yes.

MS. JANKOWSKY: DDD has a waiting list with 5000 -- 6000 people waiting on it. They have houses that are ready, but they can't get staff.

ASSEMBLYMAN PAYNE: Yes.

MS. JANKOWSKY: Do you know why they can't get staff?

ASSEMBLYMAN PAYNE: Low salaries. Low pay. Is that right?

MS. JANKOWSKY: No salary.

ASSEMBLYMAN PAYNE: And also training.

ASSEMBLYMAN ROONEY: They just increased the staff last year.

MS. JANKOWSKY: It's a dollar. It's nothing. It's nothing.

ASSEMBLYMAN PAYNE: And the facilities are fighting against having that dollar going directly to the workers. They want to use part of that dollar. The facilities are fighting to have that dollar not go directly to increase the salary of these people but to use part of that to make up for the reimbursement formula.

MS. JANKOWSKY: My son is living in Pennsylvania. And the funding agent is paying that facility \$25 an hour to take care of him. He has a one-on-one. That is a lot of money. And I know that that care giver is not getting \$25 an hour. That's so they can have their doctors, their Ph.D.s, on staff.

ASSEMBLYMAN PAYNE: It's a business.

MS. JANKOWSKY: It's a business. Exactly. And a business is not going to deal with our children the way they should be dealt with.

ASSEMBLYMAN PAYNE: Ms. Jankowsky, Mr. Albanese--

ASSEMBLYMAN ROONEY: Just a -- I'm sorry -- a matter of information. There is a law, which is also my law, that says by the year 2008, the State should eliminate the waiting list for the--

MS. JANKOWSKY: My son is on that list.

ASSEMBLYMAN ROONEY: Well, supposedly by 2008-- Now, that was assuming that we would have money because it's approximately \$50,000 per person on that list in order to get them placed in those homes.

ASSEMBLYMAN PAYNE: You said, Mr. Albanese, that New York State was paying \$128,000 a year.

MR. ALBANESE: It's \$183,000.

ASSEMBLYMAN PAYNE: Oh, \$183,000. And you said it's \$50,000 to--

MR. ALBANESE: For what?

ASSEMBLYMAN ROONEY: Yes, \$50,000 to \$60,000. It may have gone up since we heard the bill. I think it was about three years ago.

MR. ALBANESE: It was \$429 a day. For what? Abuse, neglect? My son's got 50 stitches in his face for -- and no staff around. And he had one-to-one. Where was the one-to-one? We went to--

ASSEMBLYMAN PAYNE: We have a problem up--

MR. ALBANESE: --four different hospitals.

ASSEMBLYMAN PAYNE: We have a problem of enforcement.

MR. ALBANESE: He went down there for schooling.

ASSEMBLYMAN PAYNE: Right.

MR. ALBANESE: Let me just finish. He came home out of that facility with psychosis.

ASSEMBLYMAN PAYNE: We have a problem.

MR. ALBANESE: Who gives that back to my son, Mr. Payne?

ASSEMBLYMAN PAYNE: You made your point very clearly. It's just that we have to find a way to resolve this.

MR. ALBANESE: Well, it's the leadership at DDD.

ASSEMBLYMAN PAYNE: That's one of the--

MR. ALBANESE: If they're incompetent, they shouldn't be in those positions.

ASSEMBLYMAN PAYNE: What we're doing is taking your suggestions. You're right. You said before, it had to be leadership. And we also have to have coordination. We have to have oversight. We have to have enforcement of the regulations. We have to have monitoring. Those are some of the areas that we need to see that happen. Leadership, monitoring, oversight, the coordination, all right, because one hand doesn't know what the other's doing very often.

MR. ALBANESE: That's correct.

ASSEMBLYMAN PAYNE: And if these facilities-- I guess they have a right to have a profit. But the fact is that we should not have a situation where the service and the care of patients is compromised because of them.

And I'm not going to say that all of these facilities are not doing their job. I don't know that. We need to look into that. And we also need to see to it that the new Commissioner of Health and Human Services will, in fact, see to it that her Divisions, including this one, are carrying out their work. We have to give them a few months.

That doesn't make you feel any better, those of you who have patients in these facilities. It doesn't make you feel any better. I guess you ask, "How long do we have to wait to have the right thing?"

MS. JANKOWSKY: Right, 18 years.

ASSEMBLYMAN PAYNE: Let me tell you, we're going to do everything we possibly can with your direction. We need your help. We need the other advocates. We need your help to give us the direction of where do we go and how do we do this?

MR. ALBANESE: Let this Committee here -- this Oversight Committee form a task force. And we'll gladly go and meet with your task force and the new Commissioner. And maybe we all can work together to solve some of these problems.

ASSEMBLYMAN PAYNE: Well, one of the purposes for this hearing was to hear from your side, hear from the State's side, etc. And as I say-

-

MR. ALBANESE: Where is the State?

ASSEMBLYMAN PAYNE: --because this is a brand-new administration, I think we need to give them a little bit of time to get together again, either through a task force effort or have another hearing on this matter.

I thank you very much for coming. And I appreciate your keeping-- The squeaky wheel gets the grease. Keep up the pressure on us. Keep the pressure up on us.

MR. ALBANESE: No, it's not about the pressure on you, sir.

MS. JANKOWSKY: How many years of--

ASSEMBLYMAN PAYNE: Well, no, no. I'm serious.

MR. ALBANESE: You're new to this Committee, also.

ASSEMBLYMAN PAYNE: Well, I know. I know.

Mr. Albanese, let me just say this.

MR. ALBANESE: He said, file a law suit. Why should I file a law suit? I'd really be persona non grata.

ASSEMBLYMAN PAYNE: Mr. Albanese, what I'm suggesting is that you keep pressure on us, and we're going to keep pressure on those people who are responsible for carrying out their responsibilities.

Thank you for coming, and let's continue this.

MR. ALBANESE: Well, what about the answer? I came here for three questions to be answered.

ASSEMBLYMAN PAYNE: Mr. Albanese, let me-- I know your frustration.

MR. ALBANESE: And I'm going to go home again from a second hearing with no answers.

ASSEMBLYMAN PAYNE: Mr. Albanese, I know your frustration, or at least I think I may know some of it. But we want answers, also. As I say, you don't see anybody here representing the administration. We've asked for them. And I explained to you why the reasons are I think they're not here.

I think in fairness, we need to give the new Commissioner an opportunity to put her hands around it. If Mr. Smith is the one that needs to be brought here or be brought to task, then so be it. But I think that it's only fair that we give them a short period of time, at least, so that when we call them again, they will have somebody here.

We do not automatically have subpoena powers. Subpoena powers are given by the full Assembly. We don't have that. We have to request that, and the entire Assembly will give us that.

MR. ALBANESE: I understand.

ASSEMBLYMAN PAYNE: All right. I want to thank you for coming.

MR. ALBANESE: But the concerns that you heard here today wouldn't warrant you to say, "Where are you, State, to answer these charges?"

ASSEMBLYMAN PAYNE: Mr. Albanese, we're going to see to it that they come here. And if they don't come, we do have the right, by appealing, to have subpoena powers.

I want to thank you all for coming. And believe me, keep the pressure on.

This meeting is adjourned.

**(MEETING CONCLUDED)**