

**APPENDIX TO STATEMENT OF
DIRECTOR CATHY COLLINS-TAYLOR**

EXECUTIVE SUMMARY

The Office of the Inspector General (“OIG”) conducted an investigation, in part, into the decision to modify an operation planned by the Ohio State Highway Patrol (“OSHP”) to arrest a person allegedly attempting to convey contraband to prison inmates working at the Governor’s Residence (the “Operation”).

Introduction

The Director of Public Safety, Cathy Collins-Taylor, testified under oath that the decision to modify the Operation was made by the OSHP Superintendent, Colonel David Dicken, who was unpersuaded that the Operation was appropriate. Colonel Dicken and numerous other witnesses provided testimony, under oath, that corroborates Director Collins-Taylor’s version of events, and e-mails that were consistent with Director Collins-Taylor’s testimony were produced by the Department of Public Safety. Despite this evidence, the OIG concluded that Director Collins-Taylor was untruthful.

An all too common mistake in investigations is for investigators to seek to obtain evidence that substantiates initial reports or impressions and ignore evidence that contradicts these early, tentative conclusions. The OIG investigators appear to have made this mistake instead of conducting a full, complete, open-minded investigation. This phenomenon was compounded by a reliance on an incorrect reading of Ohio law to establish motive. As a result, the OIG incorrectly concluded that Director Collins-Taylor lied about the decision to modify the Operation.

Review of the OIG Report

This Appendix is based on a review of the available portion of the record relied upon and developed by the OIG. The OIG has not made publicly available all of the records it obtained or relied upon. In particular, investigator notes and records obtained by subpoena were not made available despite the fact that they would appear to be public records. Full recordings of interviews have not been made available to the public, although portions of those interviews were played on television news reports. As of this date, the OIG also has only made interview transcripts available for 35 of the 49 people reportedly interviewed.

The Report issued by the OIG is characterized by a failure to acknowledge evidence as well as significant problems with the evidence cited. Moreover, many of the factual findings of the Report are simply not supported by the law, the evidence, or are based on mischaracterized or misrepresented evidence. For example:

- The Report on page 23 asserts that the statutes governing DPS and OSHP “are silent regarding the DPS Director’s authority to control Patrol investigations.” However, Revised Code 5502.011 specifically provides the Director with the authority to “authorize and approve investigations to be conducted by any of the department’s divisions.”
- The Report on page 23 references an e-mail written by Director Collins-Taylor. In that e-mail, Director Collins-Taylor refers to concerns by the ODRC Director of “embarrassment to the boss.” The Report states that Director Collins-Taylor “would not even concede that the phrase ‘embarrassment to the boss’ referred to Governor Strickland.” However, in her testimony at page 90 she was asked, “when you say ‘boss,’ you mean?” She answered, “I mean the Governor.”

- The Report on page 29 states that there is “no precedent for conducting a knock and talk on a case involving an attempted contraband conveyance.”
 - However, DPS provided to the OIG operations plans for two knock-and-talk operations involving contraband conveyance into a prison, including an alleged conveyance of drugs. OSHP case nos. 09-040085-1233 and 09-350036-1233.
 - Knock-and-talks are so common that on the standard operations plan form used by OSHP, there is a check box. Knock-and-talks are standard procedures in executive protection cases.
- The Report on page 30 states that Colonel Dicken and others viewed the operation plan as “reckless and dangerous.” However, the word “reckless” never appears in the interviews of Director Collins-Taylor, Colonel Dicken, Chief of Staff Michael McCann or Lt. Joe Mannion.
- The Report on page 30 states that Colonel Dicken and Lt. Mannion contended that the “conveyance operation posed a grave danger to the Stricklands and their guests.” However, the term “grave danger” was never used by either Colonel Dicken or Lt. Mannion.
- The Report on page 33 asserts that DPS impeded the investigation by sending excess documents to the OIG. However, on March 8, 2010, in response to a DPS offer to go through the documents found during a search of the e-mail system to remove irrelevant documents, OIG investigator Craig Mayton refused, in writing, and insisted on receiving all 46,000 documents.

The Report also fails to acknowledge significant evidence in support of a contrary view of the facts of this case. For example:

- The Report asserts that Director Collins-Taylor was untruthful when she said that Colonel Dicken made the decision to modify the Operation. The Report fails to disclose the following evidence in support of Director Collins-Taylor:
 - On page 130 of his testimony, Colonel Dicken said, “But there was no mistake who was running the Highway Patrol that very hour, sir, and it was me.”
 - At 10:42 pm on Friday, Colonel Dicken sent an e-mail to Chief of Staff McCann and Major Kevin Teaford. The e-mail states that he intends to meet with Major Booker and Captain Henderson and that he will “advise you around noon of our action steps.”
 - On page 74 of his testimony, Chief of Staff McCann says, “I have never been part of a conversation with either the Director or the Colonel that gave me any indication, anything other than the Colonel made the decision to cancel the operation.”
- The Report asserts that Director Collins-Taylor was untruthful when she said that the decision to modify the Operation was made on Saturday, January 9, 2010 following a

meeting between Colonel Dicken, Major Booker, and Captain Henderson. The Report fails to disclose the following evidence in support of Director Collins-Taylor:

- On page 131 of his testimony, Colonel Dicken testified about the meeting he had set up with Major Booker and Captain Henderson. He said, "I don't know that I had fully dismissed the drop even Saturday morning."
- On page 17 of his testimony, Chief of Staff McCann said, "the Colonel was going to meet with the investigators in the morning and that they would get back with us."
- At 10:52 pm on Friday, Director Collins-Taylor sent an e-mail to Chief of Staff McCann and Colonel Dicken. This e-mail asked for a call in the morning and states that she will be calling the Governor's Office and ODRC "when we are sure of the plan."
- At 10:51 pm on Friday, Captain Henderson sent an e-mail to Lt. Jarvi. She acknowledges that discussions on the plan were continuing. She wrote, "Right now it sounds like the plan *may* change . . ." (emphasis supplied).

Conclusion

The OIG investigators repeatedly demonstrated hostility towards witnesses who provided information inconsistent with their narrative and, in the end, relied heavily on opinions and unsubstantiated claims. Many facts were either mischaracterized or ignored in an apparent rush to judgment. The flaws in the investigation are especially distressing because the Report accuses career law enforcement officials of untruthfulness. Based on long and distinguished careers of public service, Director Collins-Taylor and others should not have their credibility and integrity challenged by a faulty Report that fails to account for all of the evidence gathered.

REVIEW OF OIG INVESTIGATION 2010037

1. Factual Summary

The facts of this matter are well established by the testimony and records obtained by the OIG. On Friday, January 8, 2010, the Ohio State Highway Patrol ("OSHP") learned of a plot to convey contraband to prison inmates working at the Governor's Residence. The Office of Investigative Services ("OIS"), under the command of Major Robert Booker and Captain Michelle Henderson, developed a plan that would have allowed the contraband to be delivered and then would have arrested the person who made the drop (the "Operation"). The Operation was scheduled to take place on Sunday, January 10, 2010.

Upon learning of the proposed Operation on Friday evening, the Director of the Ohio Department of Public Safety ("DPS"), Cathy Collins-Taylor, and the Superintendent of OSHP, Colonel David Dicken, had some concerns about whether undertaking the Operation was appropriate. Director Collins-Taylor was informed by the Governor's Office of the proposed Operation, and then attempted to gain more information and advice from subject matter experts, including the outgoing and incoming Directors of the Ohio Department of Rehabilitation and Corrections, the head of the OSHP Executive Protection Unit, and the DPS Chief of Staff.

Based on these conversations, Director Collins-Taylor became concerned that the Operation was inconsistent with Executive Protection principles and poorly planned. In addition, it was becoming apparent that the alleged crime the Operation was designed to catch was not even a crime because the contraband was most likely tobacco; it is not a crime under Ohio law to convey tobacco into a prison. Director Collins-Taylor's concerns, and her desire for OSHP to consider the alternative of conducting a "knock-and-talk," were conveyed to Colonel Dicken.

Colonel Dicken attempted to obtain more information about the Operation from Major Booker and Captain Henderson during phone calls and a meeting on the morning of Saturday, January 9, 2010. Major Booker and Captain Henderson were unable to provide adequate answers to the questions raised by Colonel Dicken and Director Collins-Taylor. Instead, they expressed hostility to the act of "outsiders" – meaning the Director of DPS – asking questions and raising concerns about the Operation.

When Major Booker and Captain Henderson could not provide a sufficient justification for the Operation, Colonel Dicken ordered OSHP to attempt a knock-and-talk instead. The OSHP investigators successfully made contact with the suspect and no incidents occurred over the weekend at the Governor's Residence.

The OIS investigators wrote in their report that Colonel Dicken had stated that Director Collins-Taylor wanted the Operation to be changed. This statement was included despite the fact that none of the OIS investigators spoke with either Director Collins-Taylor or Colonel Dicken. Despite the fact that the statement in the OIS report was easily demonstrated to be false, despite the fact that the Director of Public Safety is authorized under Ohio law to supervise OSHP investigations, and despite the fact that civilian control of law enforcement is necessary and proper, the OIG started an investigation.

2. The Report Incorrectly Concludes that the Director Has No or Ambiguous Authority Over Patrol Investigations

A basic premise underlying the Report is incorrect: that the Director of Public Safety lacks the clear authority to approve or supervise a criminal investigation by the Highway Patrol.¹ The Report states that Major Booker and Captain Henderson have “publically accused Collins-Taylor and members of the Governor’s staff of interfering in . . . other investigations.”² However, no substantive support for these inflammatory allegations in the interviews is provided.

The Report’s analysis of this issue begins with a misstatement of the law. The Report states that the statutes governing the Department and OSHP “are silent regarding the DPS Director’s authority to control Patrol investigations.”³ This is not correct. OSHP was created by the Legislature *within* the Department of Public Safety.⁴ The Director of Public Safety is the “chief executive and administrative officer of the department”⁵ and is empowered by the Legislature to “administer and direct the performance of the duties of the department.”⁶ There is no doubt that this responsibility includes the oversight of criminal investigations performed by the Highway Patrol. In fact, the Revised Code specifically provides the Director with the authority to “authorize and approve investigations to be conducted by any of the department’s divisions.”⁷

This misstatement of the law fundamentally undermines the conclusions of the Report with regard to the conduct of Director Collins-Taylor and other department employees. The Report never provides a motive for Director Collins-Taylor and other department employees to lie about who made the decision to modify the Operation. However, in an interview with the Cleveland Plain Dealer, the OIG explained its view of this matter:

[Inspector General] Charles said he believes Collins-Taylor made the decision the night before but lied to investigators because as a civilian, she may not have power to stop a police matter. “If it is a law enforcement operation what might get dicey is obstruction of official business, perhaps,” Charles said.”⁸

The OIG is wrong. Director Collins-Taylor possessed the legal authority to modify, or even cancel, the Operation.⁹ Accordingly, despite the insulations contained in the Report, Director Collins-Taylor had no

¹ Report at 23.

² Report at 23. See e.g. Henderson at 30.

³ Report at 23.

⁴ R.C. 5503.01.

⁵ R.C. 5502.011(B).

⁶ R.C. 5503.011(c).

⁷ R.C. 5502.011(B).

⁸ Cleveland Plain Dealer, May 6, 2010.

⁹R.C. 2921.31(A). The Statute provides:

No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity,

motive to lie about her role in the decision-making process – she had full authority to modify the Operation, but preferred to defer to Patrol Superintendent Dicken.

3. The Report Incorrectly Concludes that the Director Made the Decision to Modify the Operation on Friday, January 8, 2010

The Report reaches three conclusions concerning the decision to modify the Operation: (a) The Decision was made by Director Collins-Taylor; (b) the decision was made on the evening of Friday January 8, 2010; and (c) the decision was made for improper, political, reasons. As will be shown below, these conclusions are not supported by the evidence.

a. Colonel Dicken Made the Decision to Modify the Operation

Colonel Dicken, and not the Director, was the decision-maker. Colonel Dicken was very explicit on this point: “But there was no mistake who was running the Highway Patrol that very hour, sir, and it was me.”¹⁰ This quote does not appear in the Report.

i. Evidence the Report Fails to Acknowledge.

The Director was appropriately interested in an operation planned for the Governor's Residence, and appropriately concerned that the initial plan by OIS to conduct this type of operation in this situation was not correct based on the information she had received. But – and this warrants emphasis – there is no direct evidence, whether by e-mail, testimony, or otherwise, that she did anything but provide advice and guidance. Importantly, there is no direct evidence that Director Collins-Taylor and not Colonel Dicken was the final decision-maker.

The Report confuses oversight and the provision of advice with the act of making a decision. Both, while well within the discretion of the Director of Public Safety, are distinct actions. As Director Collins-Taylor explained, “Per the duties of the Director, I have oversight. The buck stops with me.”¹¹ The Report ignores testimony that makes it clear that the Department's senior leadership understood and appreciated this distinction.

No person who spoke with Director Collins-Taylor that weekend testified that she, and not Colonel Dicken, made the decision to modify the Operation. Collins-Taylor spoke about this issue with Chief of Staff McCann, ODRC Director Terry Collins, Lt. Mannion, and Governor Strickland's Chief Legal Counsel Kent Markus:

shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

The Director could not be charged with Obstructing Official Business because the authority under R.C. 5501.011(B) constitutes a “privilege” under the statute. R.C. 2921.31(A).

¹⁰ Dicken Int. at 130. The Report does not disclose that Major Teaford confirmed Colonel Dicken's testimony. See Teaford Int. at 11 (“And did he say anything about the Director telling him that --- directing him or ordering him to change the plan? No, sir.”).

¹¹ Collins-Taylor Int. at 9.

- McCann testified that she did not make a decision. He said, "I have never been part of a conversation with either the Director or the Colonel that gave me any indication, anything other than the Colonel made the decision to cancel the operation."¹²
- Kent Markus' testimony is consistent with the view that Collins-Taylor had concerns about communications and the operations. He never states that she had made a decision.¹³
- Director Collins was unable to unequivocally testify that Collins-Taylor had made a decision. He merely said that, "there was some discussion about talking to the lady on the outside."¹⁴
- Lt. Mannion testified only that he discussed his concerns about safety with Director Collins-Taylor and her response was "Well, I see what you're talking about."¹⁵ Mannion explicitly stated that he did not know if the decision was "final" after his discussion with Director Collins-Taylor, and explained that Colonel Dicken indicated to him that a decision would be made following a meeting Saturday morning with Major Booker and Captain Henderson.¹⁶

In addition, Sgt. Miller later stated that he had always assumed that Colonel Dicken, not Director Collins-Taylor, had made the decision. He stated, "other than being told [by Lt. Jarvi] that Director Taylor --- Cathy Collins-Taylor was at that meeting on Saturday, I assumed from the beginning that Colonel Dicken is the one that changed it."¹⁷

The Report fails to acknowledge the e-mails that are consistent with the conclusion that Colonel Dicken, not Director Collins-Taylor, made the decision.¹⁸ At 10:42 pm on Friday, Colonel Dicken writes to Chief of Staff McCann and Major Teaford that he intends to meet with Major Booker and Captain Henderson "at my office tomorrow at 11 am to discuss" and that he will "advise you around noon of our action steps."¹⁹ This e-mail seems to unequivocally support the version of events offered by Director Collins-Taylor and Colonel Dicken. The e-mail states that the decision *will be made the next day by Colonel Dicken after a meeting with Major Booker and Captain Henderson*. Indeed, this e-mail would make no sense if a

¹² McCann Int. at 74. See also McCann Int. at 17 ("I passed on to the Director that evening that that was the plan, that the Colonel was going to meet with the investigators in the morning and that they would get back with us"); McCann Int. at 44 ("That was purely --- it's a Patrol function and it was the Colonel's decision to make.");

¹³ Markus Int. at 16-17. Markus is asked to interpret e-mails sent by Collins-Taylor, but is reluctant to do so (it's "a little dangerous to speculate what's in other people's heads"). Markus Int. at 16.

¹⁴ Collins Int. at 6. See below for a further discussion of Director Collins' testimony on this point.

¹⁵ Mannion Int. at 111.

¹⁶ Mannion Int. at 111.

¹⁷ Miller Int. at 46.

¹⁸ The Report includes a summary of some of these e-mails as part of a chronology attached as Exhibit 4 to the Report. However, the text of the Report does not acknowledge the significance of these e-mails. Accordingly, the focus of this Appendix is on the text of the Report.

¹⁹ ODPS no. 3.19.10 000012

decision had been made; had a decision been made, there would be nothing to discuss and no need to wait until after the meeting to let Chief of Staff McCann know what the plan will be.²⁰

ii. Problems with the Evidence Relied Upon By the Report

Notwithstanding the substantial direct evidence described above, the Report asserts that “documents and interviews demonstrate that the decision was made by Director Collins-Taylor following high-level discussions between Collins-Taylor, Mannion, Collins, McCann, Markus and John Haseley.”²¹ However, despite this broad assertion, the Report does not cite to or quote a single statement by any of the participants in these discussions that Director Collins-Taylor made the decision.²² The Report goes further by falsely asserting that Colonel “Dicken was not a participant” in these discussions.²³ Yet, on Friday January 8, 2010, Colonel Dicken spoke to or exchanged e-mails with McCann at least six times,²⁴ spoke to Lt. Mannion for twenty-nine minutes,²⁵ and exchanged two e-mails with Director Collins-Taylor.²⁶

The *only* document referred to by this section of the Report to conclude that Director Collins-Taylor made the decision to change the operation was not even authored by Director Collins-Taylor. In an e-mail commenting on media coverage of the decision, Lindsay Komlanc wrote, “shock, awe and amazement that my quotes along the lines of ‘Director Collins-Taylor ultimately made the decision with the full support of Colonel Dicken and DRC’ . . . were not used.”²⁷ There are a number of problems with the reliance on this e-mail and Director Collins-Taylor’s sarcastic one word response (“Nice”).²⁸ Perhaps most importantly, the e-mail is selectively quoted. The next quote in the e-mail that Komlanc complains the Dispatch failed to use explicitly states that the decision was made by Colonel Dicken: “*The Superintendent* felt strongly that the plan we ultimately went with was the safest plan for all involved.”²⁹

Komlanc’s statement that the Director made the decision is incorrect. Komlanc explained in her interview that, when initially talking to the media, she was more focused on the substance of the decision not who actually was the decision-maker.³⁰ She said, “I believe I was actually responding specifically to the

²⁰ ODPS no. 3.19.10 000011. At 10:45, Colonel Dicken sent an e-mail to the DPS Chief Legal Counsel stating that he may need “advice” the next morning. As with the 10:42 e-mail, this would make no sense if a decision had been made, since there would be no further need to obtain advice.

²¹ Report at 23.

²² See Report pp. 22-26.

²³ Report at 23.

²⁴ E-mail 4:07, e-mail 5:34, phone call 9:24, phone call 10:04, e-mail 10:12, e-mail 10:42,

²⁵ Phone call 9:34

²⁶ E-mail 10:52, e-mail 10:59

²⁷ Report at 24.

²⁸ ODPS no. 03102010002154. The Report, at 23-24, suggests that the failure of DPS to later dispute press reports about who made the decision is evidence that Director Collins-Taylor made the decision. This is non-sensical. DPS is under no obligation to dispute every erroneous press report, as to do so would be unduly burdensome.

²⁹ ODPS No. 03102010002154.

³⁰ The OIG did not initially provide a transcript of Komlanc’s interview or a recording. Disturbingly, copies of this transcript were made available to the media before being provided to other state agencies.

question of would you have changed the decision?"³¹ Komlanc's testimony was that the Director supported the decision and provided information, but distinguished this from "making the decision."³² For example, Komlanc, when asked about a statement attributed to her in the Plain Dealer, stated, "My understanding [of] the situation from speaking with the Colonel is that the Colonel made the decision and the Director fully supported it."³³ Komlanc further explained that the context of her statements to the media was important:

. . . going back to a lot of the very recent history between the Patrol and the Department, there has been a lot reported and a lot written on about there being friction between the Division and the Department. The Patrol --- a lot reported on the Patrol and the Department were not on the same page. So when this began and started, and overall one of the things that I felt it was important to show was that the Patrol and the Department were on the same page.³⁴

This explanation does not appear in the Report even though Colonel Dicken provided support for Komlanc's analysis. He mentioned in his interview that Major Booker's and Captain Henderson's reaction to his decision that the plan would be modified "harkened back to the broken relationship of many months ago between the former Superintendent and the former Director and I thought we had moved past that."³⁵

In response to questions about this particular e-mail, Komlanc stated, that she "never intended to say that the Director did this."³⁶ Komlanc explicitly denied the claim in the Dispatch: "I was not trying to say that she issued some sort of directive to do this."³⁷ Komlanc also explained:

. . . the ultimate decision or the ultimate responsibility rests with the Director. That's, that's what I was trying to say. Did I do a poor job of it? Obviously. Once again, not assuming that this e-mail was going to be used to try to show that she did something wrong, or did something inappropriate . . . [The reporter] was trying to ask what her role was, and I was trying to show that the Patrol and the department were on the same page.³⁸

These explanations are omitted from the Report.

³¹ Komlanc Int. at 18.

³² Komlanc Int. at 16.

³³ Komlanc Int. at 15. See also Komlanc Int. at 17 ("Obviously she was participating in the dialogue that occurred as the decision was being made. But what I have been trying to say is that the Colonel made the decision based off of the information that he had at hand."); Komlanc Int. at 54 ("But it is clear to me in the discussions that I've had with both the Director and the Colonel that --- that the Colonel made the decision and the Director had supported that and was involved and provided information.").

³⁴ Komlanc Int. at 16.

³⁵ Dicken Int. at 27.

³⁶ Komlanc Int. at 20.

³⁷ Komlanc Int. at 23.

³⁸ Komlanc Int. at 22.

The Report fails to include any substantive analysis to refute Komlanc's explanation of the e-mail. Additionally, the Report does not include any evidence from which to conclude that Komlanc provided false statements, nor does the Report provide any motive for Komlanc to fabricate this point. Instead, the Report resorts to sarcasm³⁹, noting that "incredibly" both Director Collins-Taylor and Komlanc testified consistently on this point.⁴⁰ However, there is a non-incredible explanation: both persons were telling the truth.⁴¹

The Report also claims that the January 8, 2010 e-mail in which Director Collins-Taylor mentions that Director Collins was concerned about "possible embarrassment to the boss" is evidence that "Dicken was not involved in this decision."⁴² The Report seriously mischaracterizes Director Collins-Taylor on this point. The Report asserts that she "would not even concede that the phrase 'embarrassment to the boss' referred to Governor Strickland."⁴³ The full exchange from the interview is as follows:

Q: And then you reference the embarrassment to the boss.

A: Yes.

Q: What did you mean by that?

A: The embarrassment that I spoke of earlier. The embarrassment to the administration in general; to the Patrol, to DRC, to DAS. The fact somebody could throw something over the fence at the Governor's office [sic], that's all --- or the Governor's residence, I'm sorry --- that's all an embarrassment to the administration, to all of us.

Q: *Well, when you say "boss", you mean...*

A: *I mean the Governor.*

Q: ...the administration or the Governor?

A: Administration – the administration. The boss 'cause the administra --- I look at the administration and the Governor are the same thing.

Q: Well, wait a minute. *The boss is the Governor, right?*

³⁹ Again, the OIG investigators seemed to have pre-determined the "appropriate" responses for Komlanc. For example, when initially asking about the e-mail, the OIG investigator prefaced his question with: "And, so, you've had time to think about your response to this . . ." ³⁹ And, when Komlanc admitted that she "did a bad job of writing it," the OIG investigator responded, "No, you're doing a bad job of synching up your story with other people." Komlanc Int. at 23.

⁴⁰ Report at 24.

⁴¹ The only difference in the testimony between Director Collins-Taylor and Komlanc involves whether the Director corrected Komlanc's statement. This difference is not material because, as noted above, Komlanc was clear about who made this decision. Komlanc also explained, the Department's entire senior staff had been discussing this issue when this e-mail was sent and understood the context. See Komlanc Int. at 54.

⁴² Report at 23.

⁴³ Report at 21.

A: *Yes*⁴⁴

Previously in the interview, Collins-Taylor had described in detail the conversation she had with Director Collins. Director Collins-Taylor testified about this conversation as follows:

Q: Well, let me back up to the --- to embarrassment. What exactly did you mean by an embarrassment, you discussed embarrassment?

A: There was a myriad of issues. *You know it's the Governor. We have a statutory responsibility to protect the Governor.* We spend a lot --- we didn't have this conversation. I'll tell my thought at the time. We spend a lot of money, probably at least a million dollars to make sure that that residence is secure and the First Family is protected. And we --- and I didn't want the information to get out that people can just break the security around there by throwing stuff over the wall. That's embarrassing to the Highway Patrol. That's embarrassing to DPS.⁴⁵

Director Collins-Taylor's attorney also expressed concern about the tendency of the OIG Investigators to insist upon getting the answer they wanted. During the interview he states, "You know I'm sorry if that --- if you disagree with her characterization of her words, but she's telling you the truth. And obviously you guys have already concluded what you think the truth is."⁴⁶ It is critical to note that OIG investigators never asked Director Collins about this e-mail or this aspect of his conversation with Director Collins-Taylor.

The Report also mischaracterizes the text of this e-mail. The e-mail states that "Terry C [Director Collins] had concerns about the level it was being ramped up to also and the embarrassment to the boss."⁴⁷ This language does not imply in any way that Director Collins-Taylor made a decision to avoid "embarrassment to the boss," only that Director Collins had expressed these concerns to Director Collins-Taylor.

⁴⁴ Collins-Taylor Int. at 90 (emphasis supplied).

⁴⁵ Collins-Taylor Int. at 21 (emphasis supplied). See also Collins-Taylor Int. at 23 ("It was a myriad of things that could have been an embarrassment to all of us.")

⁴⁶ Collins-Taylor Int. at 91.

⁴⁷ ODPS No. 3.19.10 000004

Sgt. Miller testified that Lt. Jarvi inserted this language in the narrative, explaining that Lt. Jarvi “just put it in there and told me that she was present during the meeting.”⁴⁸ However, Director Collins-Taylor was out of town at the time and could not have been present at the meeting.⁴⁹ The OIG investigators conducted two interviews with Lt. Jarvi, but failed to follow-up on why he would have told Sgt. Miller that the Director had been present at the meeting. Curiously, Lt. Jarvi testified in his first interview that Sgt. Miller said that he (Sgt. Miller) had been in the meeting with Colonel Dicken, and that he (Sgt. Miller) had told Lt. Jarvi about the change in the plan.⁵⁰ The OIG investigators never followed up on these inconsistencies on this important issue.

Only two people were present at the meeting with Colonel Dicken: Captain Henderson and Major Booker. Captain Henderson never states in her interview that the change was made at the order of Director Collins-Taylor. Rather, Captain Henderson testified three different times that that Colonel Dicken said only that Director Collins-Taylor had asked some questions about the operation.⁵¹ Similarly, Major Booker never testified that Colonel Dicken stated that Director Collins-Taylor had ordered the change in the operation. He testified that Colonel Dicken only “mentioned the Director’s concerns.”⁵²

The inclusion of this misleading statement in the OIS incident report became apparent during a January 27, 2010 meeting at the DPS about this matter. At the meeting, Lt. Jarvi stated that his superiors (either Major Booker or Captain Henderson) had ordered the investigation into this matter to be closed because of media inquiries.⁵³ At the time when the case was closed, ODPS had not received any media inquiries.⁵⁴ Testimony about this statement was provided by numerous individuals, including Director Collins-Taylor,⁵⁵ Colonel Dicken,⁵⁶ Chief of Staff McCann,⁵⁷ and Komlanc.⁵⁸ (In a second interview with the

⁴⁸ Miller Int. at 30

⁴⁹ Collins-Taylor Int. at 34.

⁵⁰ Jarvi Int. 1 at 36-37.

⁵¹ Henderson Int. at 11 (“[Colonel Dicken] went on for awhile and he asked several questions . . . and that the Director, Cathy Collins-Taylor, was curious as to why if we had information a crime was going to occur, why we wouldn’t do something to stop it.”; Henderson Int. at 14 (“I do remember [Colonel Dicken], like I said, stating the fact that the Director had concerns that if we knew something like this was going to happen, why wouldn’t we stop it from occurring.”); Henderson Int. at 22 (“I told them [Lt. Jarvi and Sgt. Miller] that Colonel Dicken had relayed that the Director had question[s].”)

⁵² Booker Int. at 17. Lt. Jarvi testified that he was told by Captain Henderson that, during the 11:00 meeting on Saturday January 9, 2010, Colonel Dicken had ordered OIS to modify the plan at the direction of Director Collins-Taylor. Jarvi. Int. at 38 (“Q: Captain Henderson then confirmed Sgt. Miller’s account and that is that the Colonel had directed her and Major Booker to modify the plan... at the request of the Director? A: Right”).

⁵³ The Department provides only closed cases in response to public records requests.

⁵⁴ Komlanc Int. at 32.

⁵⁵ Collins-Taylor Int. at 126 (“the investigators told us that they were told to hurry up and close the report; that the media was calling on it”).

⁵⁶ Dicken Int. at 54 (“I was told by Lt. Jarvi that he --- I think his exact words were, “Well, we were pressured to close the [case] ‘cause of media inquiries.”).

⁵⁷ McCann Int. at 80 (“Lt. Jarvi made the statement that he had, he had received information from one of his supervisors to hurry up and close the case because of media inquiries.”).

⁵⁸ Komlanc Int. at 32.

OIG investigators, Lt. Jarvi denied making this statement.⁵⁹) This narrative led to hearings in the Ohio Senate and, ultimately, this investigation.

As noted above, these inconsistencies should have led the OIG investigator to, at a minimum, view the developing narrative that Director Collins-Taylor ordered the modification of the Operation skeptically. As noted above, the investigators were hostile to statements which didn't comport with their view of the case. For example, Lt. Mannion's attorney asked the OIG investigators, "What is it you're trying to get him to say . . . What is it – what do you want him to say?" He later notes, "you've got a theory. He's here to answer questions."⁶⁰ In a similar manner, Colonel Dicken's attorney noted that the OIG investigators were asking about contested issues "like that's a fact. . . you're saying like that, like that's a fact and I, I'm not sure we agree with everything that's in your --- premise of your question."⁶¹

b. Colonel Dicken Made the Decision to Modify the Operation On Saturday, January 9, 2010.

The Report concludes that the decision to modify the operation was made on Friday, January 8, 2010. The evidence in support of this conclusion is strictly circumstantial and as noted above, substantial evidence supports the conclusion that Colonel Dicken, not Director Collins-Taylor, was the decision maker.

i. Evidence the Report Fails to Acknowledge.

Colonel Dicken testified that he had set up a meeting on Saturday because he wanted to hear more details from Major Booker.⁶² But he was clear that no decision had been made: "I don't know that I had fully dismissed the drop even Saturday morning."⁶³ The Report does not discuss this testimony.

Colonel Dicken spoke with four people on Friday evening. The Report does not disclose that none of these four testified that a decision had been made that evening.

⁵⁹ Jarvi Int. 2 at 2. The OIG does not explain why a second interview was conducted with Lt. Jarvi. However, his testimony in his initial interview on this point was somewhat different. He said

at some point, I don't know, somebody asked at what point I became aware that there was media inquiries on this and I said, "You know I don't remember. I know I was asked by somebody on our staff side about this case. It might have been Lt. Tyler, might have been Captain Henderson, and I don't even remember the date 'cause it wasn't like they sat me down and said, "Gene, you gotta get this case closed out today." But I was asked at one point, "Hey, what's the status on that?" Or "Hey, is that ready to get closed?" Or "Did you guys get those corrections make?", or something to that effect.

Jarvi's denial is also contradicted by Trooper Schlotterbeck. See Schlotterbeck Int. at 41. ("I know there were some media inquires about it and I think that's kind of where it was going along the lines of why the case had been closed.").

⁶⁰ Mannion Int. at 79.

⁶¹ Dicken Int. at 29.

⁶² Dicken Int. at 36. See also Dicken Int. at 130.

⁶³ Dicken Int. at 131. Dicken also testified that he told Chief Legal Counsel Joshua Engel that at the meeting on Saturday morning "We're going through it one more time and see if they can convince me about the plan . . ." Dicken Int. at 33. The OIG never attempted to interview Engel to verify this statement.

- Major Booker testified only that Colonel Dicken said that Director Collins-Taylor had some concerns about the operation and then raised an issue about probable cause because the contraband was likely tobacco. He testified that Colonel Dicken on Friday evening said, “perhaps we should talk about this the next morning.”⁶⁴
- Lt. Mannion testified that he could not recall if Colonel Dicken stated that he agreed with his concerns about the operation, but that Colonel Dicken told him that the meeting with Major Booker and Captain Henderson had been set up for the next morning.⁶⁵
- Chief of Staff McCann testified that Colonel Dicken wanted to meet with Major Booker and Captain Henderson on Saturday morning because he felt that “he wasn’t getting the whole story.”⁶⁶ Chief of Staff McCann explicitly stated that there had been no change in the plan on Friday evening and “that the Colonel was going to meet with the investigators in the morning and that they would get back with us.”⁶⁷
- Major Kevin Teaford testified that Colonel Dicken said that he “had some concerns with an operational plan that Major Booker had . . . He said, “I’m not pleased with it so far, but I’m going to meet with Major Booker and Captain Henderson.”⁶⁸

Significant e-mail traffic on Friday evening that is consistent with the conclusion that no decision had been made is omitted from the Report. At 10:42 pm, Colonel Dicken sent an e-mail to Chief of Staff McCann and Major Teaford. He writes that after speaking with OSHP personnel, he has “no real satisfactory answers” and “will be meeting at my office tomorrow at 11 am to discuss.”⁶⁹ This e-mail explicitly contradicts the findings of the Report. Colonel Dicken ends the e-mail with the statement that decisions will be made after the Saturday meeting between the Colonel, Major Booker, and Captain Henderson. He wrote, “I’ll advise you around noon of our action steps.”⁷⁰

Additional evidence exists supporting the assertion that Colonel Dicken made the decision to modify the Operation. At 10:52 pm, Director Collins-Taylor sent an e-mail to Chief of Staff McCann and Colonel Dicken. Although this e-mail is mentioned in the Report, the Report fails to include that the language that Director Collins-Taylor states that she will be calling Markus and Director Collins “when we

⁶⁴ Booker Int. at 16.

⁶⁵ Mannion Int. at 111. It is unclear who Mannion is referring to when he says “I think at that time they said it wasn’t going to happen.” Colonel Dicken similarly testified that he told Lt. Mannion on Friday evening that he was “still considering” the plan although he was “not inclined to do this.” Dicken Int. at 104.

⁶⁶ McCann Int. at 16-17.

⁶⁷ McCann Int. at 17. See also *Id.* (“Q: So as far as you knew, Saturday morning the ops --- the original ops plan was still in place? A: Yes, sir, it was.”) and (“It wasn’t until probably mid-afternoon on Saturday I got a call from Colonel Dicken and said that he had cancelled the whole plan”).

⁶⁸ Teaford Int. at 4.

⁶⁹ ODPS no. 3.19.10 000012

⁷⁰ ODPS no. 3.19.10 000012

are sure of the plan.”⁷¹ This e-mail clearly implies that Director Collins-Taylor is awaiting a decision from Colonel Dicken on Saturday morning.

Colonel Dicken responded to Director Collins-Taylor that “there seems to be some confusion.”⁷² He explained in his interview that Major Booker thought that the plan would proceed but that he “didn’t have a comfort level that [Major Booker] understood that this was still open for discussion.”⁷³

Significantly, even Captain Henderson’s e-mails are consistent with the view that no decision had been made on Friday evening. At 10:51 pm she wrote to Lt. Jarvi that “it sounds like the plans may change reference the surveillance.”⁷⁴ Lt. Jarvi responded with a message the next morning indicating that Sgt. Miller had spoken with Captain Henderson and that the “idea of sending units out to contact the suspect was discussed.”⁷⁵ These e-mails from OIS personnel, which are in the record, but not mentioned in the body of the Report, contradict the Report’s conclusions by suggesting that the plan may change or was still under discussion as late as Saturday morning.

At 11:26 am, Colonel Dicken sent an e-mail to Director Collins-Taylor, Chief of Staff McCann, Major Teaford, and Chief Counsel Joshua Engel. In this e-mail, he describes the plan he had developed: attempt a knock-and-talk (plan A) and maintain increased surveillance on the property.⁷⁶ This e-mail contains no indication that the changes were made at the direction of Director Collins-Taylor (i.e. Colonel Dicken never says, “as you directed”). Moreover, this e-mail would make no sense if a decision on this matter had been made previously -- Colonel Dicken would have been merely repeating Director Collins-Taylor’s instructions back to her. The Report does not mention this e-mail in discussing who made the decision, or when the decision was made, to modify the Operation.

The Report also fails to cite a significant follow-up e-mail that confirms that Colonel Dicken made the decision to modify the plan after meeting with Major Booker and Captain Henderson. A few minutes after Colonel Dicken’s 11:26 am e-mail, at 11:43 am, Chief of Staff McCann sent an e-mail to Director Collins-Taylor.⁷⁷ This e-mail states, Colonel Dicken’s “plan sounds ok to me. Are you ok with it?” This e-mail confirms not only that the plan is Colonel Dicken’s – not Director Collins-Taylor’s – but that it was finalized on Saturday morning. This e-mail, which confirms that nobody was aware of the final decision until Colonel Dicken’s 11:26 am e-mail, is not mentioned in the Report.

⁷¹ ODPS no. 3.19.10 000015

⁷² ODPS no. 3.19.10 000010

⁷³ Dicken Int. at 22.

⁷⁴ ODPS no. 3.19.2010 000021.

⁷⁵ ODPS no. 3.19.2010 000021.

⁷⁶ ODPS no. 3.19.10 000006. The Report refers to this e-mail in regards to why the plan was cancelled, but selectively ignores the e-mail in this section of the Report.

⁷⁷ ODPS no. 3-19.10 000018.

i. Problems With The Evidence the Report Relies Upon.

The Report's analysis of the events of Friday, January 8, 2010 starts with the claim that Lt. Mannion was "working behind the scenes to have the operation cancelled."⁷⁸ The Report specifically claims that Lt. Mannion never contacted patrol personnel involved in this matter, including Major Booker, Captain Henderson, Lt. Jarvi, or Sgt. Miller. However, Captain Henderson testified that she recalled talking to Lt. Mannion at least once on January 8, 2010.⁷⁹ Sgt. Miller testified that he spoke with Lt. Mannion earlier in the afternoon.⁸⁰ Lt. Jarvi testified that Lt. Mannion asked a lot of questions and seemed concerned about the plan.⁸¹ Lt. Mannion also spoke for twenty-nine minutes with Colonel Dicken.⁸²

The claim that Lt. Mannion was able to have the plan modified on Friday night is undermined by another e-mail not cited by the Report. At 1:19 pm on Saturday, Colonel Dicken sent an e-mail to Chief of Staff McCann and Major Teaford. This e-mail states that he had spoken with Lt. Mannion. Colonel Dicken then writes, "He is aware of the plan and likes it."⁸³ As with other e-mails, this message would make no sense if the decision had been made previously – especially in light of the fact that Colonel Dicken and Lt. Mannion spoke for a significant length of time on Friday evening.

The Report then states, in a conclusory fashion, that discussions– in a "flurry of calls" that evening – "resulted in the decision to call off the operation."⁸⁴ The Report does not cite to any testimony from anyone at the Department, the Governor's Office, or OSHP, in support of this claim. Instead, the Report relies upon a series of e-mails, often placing particular emphasis on verb tenses.

The Report relies upon a 9:40 pm e-mail from Director Collins-Taylor to Chief of Staff McCann.⁸⁵ This e-mail describes a conversation that Director Collins-Taylor had with Director Collins.⁸⁶ This e-mail does not say that a decision has been made, only that Director Collins has no objections to the knock-and-talk alternative plan being discussed.⁸⁷ More significantly, the e-mail says that there is a meeting planned for the next day, a statement that clearly implies that discussions are expected to continue. Finally, Director Collins-Taylor ends the e-mail with "More to follow. Might want to contact dd [Colonel Dicken] to bring

⁷⁸ Report at 20. It is unclear exactly what "behind the scenes" means, although there seems to be the suggestion that Lt. Mannion sharing his concerns with the Director of Public Safety and the Superintendent of the Highway Patrol is somehow improper. The Department rejects this view.

⁷⁹ Henderson Int. at 12.

⁸⁰ Miller Int. at 19.

⁸¹ Jarvi Int. at 16-18.

⁸² ODPS no. 03102010016151.

⁸³ ODPS no. 03.19.10 000007.

⁸⁴ Report at 20.

⁸⁵ Report at 21

⁸⁶ The phrase in the e-mail, "Terry C had concerns about the level it was being ramped up to also and the embarrassment to the boss" is discussed elsewhere in this response.

⁸⁷ Director Collins-Taylor's testimony is consistent with this explanation. She said that the purpose of the e-mail was to explain that, "if that were the plan that was ended up with that he was fine with it." Collins-Taylor Int. at 92.

him up to speed.”⁸⁸ This ending also suggests that Director Collins-Taylor expected discussion of the proposed plan to continue, and that no decision had been made.

The Report cites to a 9:52 pm e-mail from Director Collins-Taylor to Chief of Staff McCann which states, “Hopefully we have succeeded in a grand downscaling.”⁸⁹ This e-mail actually supports the conclusion that no decision had been made. The inclusion of the word “hopefully” is the key, as it implies that no decision has yet been made. The Report does not include Collins-Taylor explanation that she wanted to see a “downscaling” because she was concerned that there was no crime about to be committed. She testified that she meant she hoped that “this operation was not spinning out of control for what we believed to be was tobacco.”⁹⁰ The Report also fails to note that the recipient of the e-mail testified that he did not take this as suggesting that a decision had been made. The OIG investigators asked Chief of Staff McCann if “the cancellation of this operation is what’s referred to as ‘grand downscaling?’” He answered, “No, not the cancellation.”⁹¹

The Report cites to a 10:17 pm e-mail from Chief of Staff McCann to Director Collins-Taylor. This e-mail states that Colonel Dicken will be “reaching out to Booker tonight to advise of the knock and talk.”⁹² It does not appear that OIG investigators questioned Chief of Staff McCann about this e-mail. The Report does not disclose that Colonel Dicken explained that the knock and talk was presented to Major Booker “as a potential option.”⁹³ Read in concert with the 10:52 pm e-mail from Director Collins-Taylor, this is the only logical interpretation of this e-mail.⁹⁴

The final e-mail relied upon by the Report is an e-mail sent at 9:42 am on Saturday morning from Director Collins-Taylor to Markus. The Report quotes the first sentence of the e-mail, “scaling any planned operations back,” but omits the next line, “I’ll call you with an update later after col dicken has had his face to face with his internal folks.”⁹⁵ This omitted next line indicates that Director Collins-Taylor expected that OSHP would take her concerns into account and likely would not proceed with the Operation, but that she expected to hear a final plan from Colonel Dicken after his meeting with Major Booker and Captain Henderson. This final line of the e-mail must also be considered, “Your cause for concern was right on.” Both Director Collins-Taylor and Markus testified that this concern was about the failure of OIS

⁸⁸ Report at 21.

⁸⁹Report at 21.

⁹⁰ Collins-Taylor Int. at 93.

⁹¹ McCann Int. at 49.

⁹² Report at 21.

⁹³ Dicken Int. at 20.

⁹⁴ The Report also cites to a 10:13 pm e-mail from Director Moore. However, Director Moore did not speak with Director Collins-Taylor about this incident, but relied on information from Director Collins. Director Collins’ testimony is discussed below. The context of this e-mail is difficult to discern since the OIG investigators never asked Director Moore to do anything more than essentially read from the e-mail. Moore Int. at 30.

⁹⁵ ODPS No. 3.19.10 000007.

Investigators to pass along important information, and not about a substantive decision about how to approach the operation.⁹⁶

Finally, the Report's reliance on the testimony of Director Collins is misplaced. Director Collins states that he learned about the plan for the knock-and-talk on Friday evening, but he also mentions that he is aware that there is a meeting planned on Saturday morning to discuss the matter.⁹⁷ Thus, viewing all his testimony together, whether Collins is testifying that a final decision has been made, or merely that the knock-and-talk option had been discussed, is unclear. While the Report accurately quotes a portion of his testimony, the Report fails to include Director Collins' statement that he did not have a great recollection of this specific aspect of his conversations with Director Collins-Taylor. He explained, "After that was over there was some discussion about talking to the lady on the outside. And I don't recall that discussion because it wouldn't been a decision I could have made anyway."⁹⁸ Director Collins also said, "When I had my discussions Friday night I was not aware of all the particulars other than what I termed as monitoring. I didn't know what, you know, I didn't know --- I didn't know what that plan was because really that plan didn't affect me or DRC."⁹⁹

4. The Operation Was Not Modified for Improper "Political" Reasons.

The Report asserts that "concern about protecting the Governor from political embarrassment" was a "key factor" in the decision to modify the operation.¹⁰⁰ However, the Report never provides any direct evidence to support this claim. In fact, the testimony of all involved is remarkably consistent on this point: politics was not a factor and was never discussed.¹⁰¹ Director Collins-Taylor explained her thinking behind her advice that the Operation should be modified: "I could see, based upon the fact that a) it's tobacco; b) she's not going to get the letter in time; c) this whole security risk."¹⁰²

a. There Were Legitimate Concerns That the Operation Was Inconsistent with Executive Protection

The Report presents a false choice between a perfectly safe operations plan and a decision to reject this plan because it "posed a grave danger."¹⁰³ The Report sets up this false choice in two ways. First, it mischaracterizes Colonel Dicken's views of the operation plan. For example, the Report claims that Colonel Dicken and others viewed the plan as "reckless and dangerous."¹⁰⁴ In fact, the word "reckless" never appears in the interviews of Director Collins-Taylor, Colonel Dicken, Chief of Staff McCann or Lt.

⁹⁶ Markus Int. at 17 ("the concern about whether there was adequate communication"); Collins-Taylor Int. at 102 (concern was that "I had not been in the loop. That he got two calls from DRC and that it had never gotten to my level.").

⁹⁷ Collins Int. at 6-7.

⁹⁸ Collins Int. at 6.

⁹⁹ Collins Int. at 14.

¹⁰⁰ Report at 26.

¹⁰¹ See Collins-Taylor Int. at 102; McCann Int. at 67; Markus Int. at 18.

¹⁰² Collins-Taylor Int. at 30.

¹⁰³ Report at 30.

¹⁰⁴ Report at 30.

Mannion. In a similar fashion, the Report states that Colonel Dicken and Lt. Mannion contended that the “conveyance operation posed a grave danger to the Stricklands and their guests.”¹⁰⁵ The term “grave danger” was never used by either Colonel Dicken or Lt. Mannion.

Second, the Report engages in after-the-fact, second-guessing of a career law enforcement professional. . In reality, this situation presented Colonel Dicken with limited information about a number of possible courses of action, none of which may have been perfect.¹⁰⁶ The Report acknowledges that Major Booker and Captain Henderson were unable to “demonstrate why the conveyance operation was safe, well planned, and should go forward.”¹⁰⁷ In this situation – and after receiving advice from others with significant law enforcement experience – Colonel Dicken made the best possible decision under the circumstances based on the information he possessed at that time.

The Report claims that the Operation should have been allowed to continue because it was “routine, well-planned and safe.”¹⁰⁸ This misrepresents the issue that confronted Colonel Dicken and others on the evening of January 8 and the morning of January 9. Rather, the issue for decision-makers was whether, based on the limited information shared by OIS, it was prudent to undertake this particular mission at this particular time.

The record is unequivocal that this operation was not well-planned. Sgt. Miller e-mailed the operations plan to Captain Henderson at 4:43 p.m. on Friday.¹⁰⁹ Sgt. Miller acknowledged that he never actually discussed the plan with Lt. Mannion prior to sending it to Captain Henderson.¹¹⁰ Remarkably, Sgt. Miller also never discussed the plan with the Bexley Police prior to sending it to Captain Henderson, even though the plan was to have the Bexley Police make the traffic stop, or with the property owners where the drop was allegedly going to occur.¹¹¹ In fact, it appears that he apparently spent less than one hour working on the plan before passing it on to Captain Henderson. Captain Henderson made no changes to the plan, and passed it on to Major Booker by e-mail a mere twenty minutes later at 5:03 pm. Major Booker did not even open the e-mail until 10:20 p.m.¹¹²

¹⁰⁵ Report at 30.

¹⁰⁶ The Report claims that Colonel Dicken’s decision to essentially undertake the operation if contact could not be made with the suspect as an acknowledgement that the original plan was safe. Report at 30. In fact, this was merely a contingency plan in case the preferred actions were not successful. Colonel Dicken characterized it in his interview as “the best case scenario. That if something does occur we do have adequate staff there.” Dicken Int. at 41.

¹⁰⁷ Report at 37. In fact, the testimony indicates that Major Booker was so anxious to proceed with the operation that he even suggested a plan to stop the suspect on the way to the Governor’s Residence despite the lack of probable cause. Dicken Int. at 17.

¹⁰⁸ Report at 26.

¹⁰⁹ ODPS no. 3.19.10 000005.

¹¹⁰ Miller Int. at 18. Sgt. Miller testified that there was some discussion that the nature of the object to be dropped was unknown, and that it could have been a weapon. Miller Int. at 46. Yet, this contingency is not addressed in the operations plan.

¹¹¹ Miller Int. at 24-25.

¹¹² ODPS no. 3.19.2010 000017

The flaw that many law enforcement officials saw with the plan was unwittingly expressed by Lt. Jarvi in his interview: "I [thought] what we should do is handle this exactly like we would handle any other case."¹¹³ But this was not like a conveyance case into a prison or the fairgrounds.¹¹⁴ Rather, the operations plan failed to consider executive protection issues. Lt. Mannion, who is responsible for executive protection and has received extensive training in this field, felt that the plan was unwise.¹¹⁵ Other troopers assigned to executive protection shared this concern – a fact not disclosed in the Report.¹¹⁶ Mannion explained the concerns most succinctly: "if this was the Whitehouse . . . if the Secret Service knew two days in advance or three days in advance if somebody's going to throw something over a fence or that, they're not going to let it happen."

The fact that those responsible for executive protection objected to the plan should have been sufficient grounds to re-consider the wisdom of undertaking the operation at this location. OSHP is required by statute to provide protection for the Governor,¹¹⁷ and Director Collins-Taylor was explicit that executive protection was of utmost importance: "my primary concern was for safety at the residence and the people inside as we are statutorily required to handle that."¹¹⁸ Yet, the record establishes that Major Booker and Captain Henderson did not take the concerns of Executive Protection into account.¹¹⁹ In fact, Captain Henderson testified that she was not even interested in the views of Lt. Mannion; she said, "Joe was strictly notified as a courtesy, quite frankly."¹²⁰ Captain Henderson even initially resisted the idea of informing the Governor's staff about the Operation.¹²¹

The Report unfairly dismisses the opinions of Director Collins-Taylor, Colonel Dicken and Chief of Staff McCann that the risk to the safety of the First Family from an unknown object being permitted to be

¹¹³ Jarvi Int. at 17.

¹¹⁴ The Report attempts to draw a parallel between the operation at the Governor's Residence and a later operation at the Fairgrounds. Report at 29. These situations are obviously different, as the Fairgrounds does not involve executive protection responsibilities. See Dicken Int. at 97 ("Q: The conveyance --- the drop at the Fairgrounds, how do you see that different? A: Well, there were no dignitaries to be concerned with.")

¹¹⁵ See Mannion Int. at 107-111.

¹¹⁶ Esenweine Int. at 22; Durr Int. at 11. The fact that other EPU troopers shared Mannion's view undermines the allegation in the report that Mannion's concerns were an "edifice of self-serving distortions." Report at 27-28.

¹¹⁷ R.C. 5503.02(E)(1)(a).

¹¹⁸ Collins-Taylor Int. at 22. See also Collins-Taylor Int. at 38 ("We have a statutory responsibility to protect that and the issue is you don't, you don't let people throw something over the fence of something that you're statutorily required to protect.")

¹¹⁹ Mannion. Int. at 108 (Captain Henderson "knew I didn't want it but was like hey, we're going to do it anyway.")

¹²⁰ Henderson Int. at 41. Major Booker stated that he was not aware of any objections by Lt. Mannion. Booker Int. at 21-22. Whether Captain Henderson failed to pass this information along to Major Booker, or Major Booker shared Captain's Henderson's lack of concern for the views of Executive Protection, is unclear.

¹²¹ Moore Int. at 22

delivered to the residence outweighed the value of a possible criminal conviction.¹²² The dismissal of this plan is unfair because all three have significant law enforcement experience.

Director Collins-Taylor worked as a Columbus Police Officer for twenty-six years. During that time, she helped establish the Exploited Children's Unit and has served as an instructor at the Ohio Peace Officers Training Academy. She served for two years as the executive director of the Ohio Investigative Unit ("OIU"). Most significantly for the purposes of this situation, she previously received executive protection training and served as a branch chief of State and Local Coordination and Domestic Security for Ohio Homeland Security, where she oversaw the creation of the Ohio Response System. In light of her law enforcement and homeland security experience, her opinion that the original plan was not wise is entitled to more substantial deference than the Report provides.

For similar reasons, the opinion of McCann that this was a "dumb plan" should not have been summarily dismissed by the OIG.¹²³ McCann has more than 30 years of experience in law enforcement, including administration, leading operations, sensitive investigations and multi-jurisdictional efforts. While working for the Columbus Police Department, he led investigations relating to homicides, serious crimes and suspicious disappearances, as well as Critical Incident Response Team investigations. In 2002, he was selected as Police Officer of the Year. In 2007, he was named a Deputy Director within OIU, overseeing Administration and OIU's southern district offices operations. McCann has earned his right to express his concerns that the OSHP investigators were acting too recklessly.¹²⁴

The Report rejects and mischaracterizes the concerns of Colonel Dicken.¹²⁵ Colonel Dicken has over nineteen years of law enforcement experience, including service as an OSHP post commander. He explained his concerns about the operation as follows:

Well, if we have people that are on the grounds that are tasked to protect the dignitaries that are present, I don't know that it's fair and reasonable to allow intentionally another component of risk to be introduced. I think they have their hands full with their regular

¹²² The Report claims that the object was to be placed on private property outside of the residence. However, it is undisputed that Collins-Taylor, McCann, Mannion and Dicken all believed that the object was to be thrown over the wall.

¹²³ Report at 28. The Report notes that ODPS Officials "mocked and ridiculed" the OIS investigators who developed the plan. As career law enforcement officers, they were, perhaps, too characteristically blunt in their observations.

¹²⁴ The Report suggests that McCann was untruthful or ignored information because he did not immediately express objections to the Operation. Report at 29. However, he testified that he did not intend to signal approval of the plan, and understood that Dicken intended to get back to him after he obtained more information. In any event, even if he had approved the plan, his opinion was permitted to change once he obtained the views of Lt. Mannion.

¹²⁵ Report at 29. Colonel Dicken had testified before the Senate that he believed the original plan represented a "gross violation of officer safety." The Report picks up on this, but fails to acknowledge that he explained this testimony as follows: "And maybe I overstated in terms of saying it's a gross violation of officer safety, but if I can't get a comfort level from a 32-year veteran about how every minor detail's going to be executed, yeah, I'm getting nervous about the Troops." Dicken Int. at 128. The Report also fails to acknowledge that Major Teaford confirmed that the Senate testimony was the first time that Colonel Dicken had mentioned "officer safety." Teaford Int. at 18. Major Teaford testified that Colonel Dicken was concerned about security at the Governor's residence.

duties. And to intentionally allow a foreign event to occur, I question the reasonableness of that.¹²⁶

And, when asked whether he thought the risk posed by the plan was “unnecessary,” he stated, “I don’t know at the time I thought that it was unnecessary. I questioned the reasonableness of it and if there was a better way to do things.”¹²⁷

The Report implies or claims that all of the objections must have been politically motivated because there is “no precedent for conducting a knock and talk on a case involving an attempted contraband conveyance.”¹²⁸ This is simply not true. The claim by Sgt. Miller, quoted in the Report, that he never heard of a knock-and-talk being done in law enforcement is contradicted by the fact that OSHP has a “Pre-Planned Knock & Talk” check-off box on the standard operations plan form used by Sgt. Miller in this case.¹²⁹ In response to the OIG request for records, the Department provided records of operations for *two knock and talk operations involving attempted contraband conveyance conducted within the past year*. In case no. 09-040085-1233, OSHP conducted a knock and talk with a person suspected of smuggling cash to a prisoner at Southeastern Correctional Institution.¹³⁰ And, in case no. 09-350036-1233 OSHP conducted a knock and talk operation with a person suspected of smuggling marijuana into Pickaway Correctional Institution.¹³¹ Finally, the Report is disingenuous by limiting the situation where knock and talks are considered to conveyance cases. Lt. Mannion testified that knock-and-talk operations are fairly standard in situations involving potential threats to the Governor.¹³²

b. Evidence That No Crime Was Likely To Be Committed

The Report fails to adequately address one of the most important issues in this matter – the fact that the item to be delivered to the inmate was most likely tobacco. This is the fundamental threshold issue that Colonel Dicken had to resolve before approving the plan because the conveyance of tobacco into a prison is not a crime under Ohio Law.¹³³ In reaching a decision, Colonel Dicken was required to take into account that the risk posed by allowing an unknown object into the Governor’s residence would be outweighed by the likelihood that no evidence of a crime would be obtained.

The OIS investigators were adamant that the term “six pack” referred to drugs. However, none of the investigators claimed any first-hand knowledge of the term or was even able to identify precisely which drug was implicated. Sgt. Miller was explicit that the conclusion that “six pack” referred to drugs was an assumption, and was not based on any actual knowledge:

Q: What did you determine six-pack was referring to?

¹²⁶ Dicken Int. at 43.

¹²⁷ Dicken Int. at 43.

¹²⁸ Report at 29.

¹²⁹ Report Exhibit 14, page 1.

¹³⁰ ODPS Document nos. 03112010015083-86

¹³¹ ODPS document nos. 03112010009504-08.

¹³² Mannion Int. at 124.

¹³³ See R.C. 2921.36.

A: We didn't make a determination. I mean based on our experience dealing with inmates, we know that at times they talk in code to cover up any type of criminal activity they might be using. So based on our reference with the six-pack and the money, our assumption was that it was drugs.¹³⁴

Major Booker and Captain Henderson admitted to no first-hand knowledge that "six pack" referred to drugs. Major Booker was only able to say that Captain Henderson, Sgt. Miller, and the DRC investigator believed that "six pack" referred to drugs.¹³⁵ Captain Henderson admitted that she "was not familiar with what a six-pack was."¹³⁶

In contrast to the speculation and assumptions by the OIS investigators, the current and former Directors of ODRC expressed a view that "six pack" likely refers to tobacco.¹³⁷ Director Moore stated that "In 23 years I've never heard drugs referred to as a six-pack."¹³⁸ Director Moore explained that tobacco was the most logical explanation:

It doesn't add up why a guy that gets out in 2010 would take a chance of dropping drugs and having drugs delivered; take a chance of his wife getting a felony conviction, getting her arrested; and why he would take a chance of getting a new felony conviction. Now, tobacco on the other hand, she drops tobacco she's going to get maybe a littering charge . . . I said, "Man", I said, "It seems to me like it's tobacco."¹³⁹

Director Moore also indicated that the value of the item to be dropped was consistent with tobacco.¹⁴⁰ Similarly, while Director Collins was not familiar with the term "six pack," he also believed that this incident involved a likely drop of tobacco. He stated that he told Director Collins-Taylor that this matter most likely involved tobacco.¹⁴¹

5. DPS Did Not Obstruct the Investigation

¹³⁴ Miller Int. at 12. Miller equivocates later in his interview: "I mean I don't have anything that leads me to believe that it wasn't drugs." Miller Int. at 13. Similarly, while DRC investigator Scott Thompson initially states his belief that "six pack" referred to drugs, he later acknowledged that "it could have been really anything." Thompson Int. at 20.

¹³⁵ Booker Int. at 13, 17.

¹³⁶ Henderson Int. at 4. Henderson failed to acknowledge that Director Moore told her his opinion that this incident most likely involved tobacco. Moore Int. at 21 ("I said, 'Well, Cap,' I said 'I think it's tobacco.' I said, 'I, you know, I can't imagine these guys would be moving drugs there.'")

¹³⁷ In all likelihood, a six pack of loose or chewing tobacco.

¹³⁸ Moore Int. at 19. To be fair, Director Moore also stated that he had never heard of tobacco referred to as a "six pack" either.

¹³⁹ Moore Int. at 20.

¹⁴⁰ Moore Int. at 25. See also Collins Int. at 38-39. Compare Report at 4 n. 2.

¹⁴¹ Collins Int. at 4.

At all times, DPS complied with its statutory obligation to cooperate with, and provide assistance to, the OIG. The finding to the contrary is incorrect.¹⁴² Rather than going to “extraordinary lengths” to impede the investigation, DPS went to extraordinary lengths to be open and transparent. Director Collins-Taylor assigned the Chief of Staff and an attorney to expedite all requests from the OIG. DPS spent almost \$10,000 in over-time expenses in order to provide the OIG with a copy of every document requested under challenging timelines. The Report fails to note that DPS permitted the OIG investigators to personally inspect the email accounts for several employees, including the Director and the Superintendent, and even provided the OIG with sensitive information related to its computer servers and operating systems.

The suggestion by the OIG that DPS provided voluminous pages of records in order to impede the investigation is highly disingenuous. The IG's requests and demands were overbroad and, in many instances, unrelated to the Operation. Significantly, the original subpoena from the OIG requested eleven categories of records. The subpoena did not simply request records related to this incident. The subpoena also demanded the production of several broad categories of documents:

- Records of OSHP investigations since January 1, 2009 related to eleven inmates, one private citizen, and one state employee;
- Records of investigations related “in any way” to the Governor's Residence since January 1, 2009;
- Records of communications related “in any way” to the Governor's Residence since January 1, 2009;
- Cell phone records for nine Department employees;
- All “reports, memorandums or other writings” that “refer to the Governor's Residence in any way since December 1, 2009”;
- Various ODPS policies and procedures, including the policies on the “seizure, analysis, destruction or other disposition of contraband or evidence”; and
- All operations plans that “refer to the Governor's Residence in any way.”

The Report suggests that the DPS “intentionally used search terms that were overly broad.”¹⁴³ There is no evidence to support this claim. As the OIG is aware through previous requests made to DPS, DPS has an antiquated e-mail system that does not permit easy searching. Given the nature of this investigation, it may have been impossible to utilize search terms that would not produce as many unresponsive records.¹⁴⁴ Tellingly, when told about the search terms DPS intended to use, the OIG investigators never suggested any alternatives.¹⁴⁵

¹⁴² See Report at 32.

¹⁴³ Report at 33.

¹⁴⁴ The Report does not mention that the OIG interviewed members of the DPS IT staff about this issue. Copies of these interviews were not made available for review.

¹⁴⁵ March 8, 2010 letter from Pamela Bolton to Craig Mayton.

The challenge facing the Department was a classic "Catch 22." Markus contemporaneously noted the dilemma facing the Department in his interview:

I know on the subject of the mass volume of documents, the frustration has been expressed to me that they say we --- we're concerned that we sort of are damned if we do and damned if we don't. That if we don't turn over large volumes of documents that are completely responsive to every term that's associated with the materials requested, we fear being accused of having withheld things.¹⁴⁶

The Report fails to acknowledge Markus' statement that the DPS attorneys responsible for providing responsive documents to the OIG "insist that they are not trying to be difficult or obstructionist; that they are trying to do their very best."¹⁴⁷

DPS does not contest that the OIG received many non-responsive documents. However, the Report neglects to mention that this *was the choice of the OIG*. Correspondence between DPS and the OIG reveals that DPS gave the OIG a choice: either permit DPS extra time to go through the documents to pull out the non-responsive documents or receive all of them. The OIG chose to receive all the documents.¹⁴⁸

6. Conclusion

It is no secret that previous senior leadership of the Highway Patrol and the Director's Office did not always share information or work collaboratively on important matters. This conflict is, perhaps, best illustrated by an exchange described by Colonel Dicken in his testimony. When Colonel David Dicken mentioned to Major Robert Booker that he had been consulting with DPS civilian leadership, Major Booker complained that "outsiders are running the Patrol."¹⁴⁹ Colonel Dicken explained that he corrected Major Booker's mistaken views:

I said, "Now, who would that be?" And he said, "Well, the Director." And I said, "Do you mean Cathy Collins-Taylor?" And he said, "Yeah." And I said, "Bob, she's not an outsider; she's our Director." She had the right to have an opinion. She's our boss.¹⁵⁰

Since Director Collins-Taylor was appointed Director of DPS, she has aggressively pursued an improvement in relations between the civilian leadership of the DPS and OSHP. The Director and Colonel agree that civilian oversight of the Highway Patrol is appropriate and consistent with good governmental practice.

The goal of this Appendix is to avoid these inflammatory issues, to show proper respect for a state agency, and to not impugn the motives of public servants. It appears that the OIG has not prepared a full, fair, complete and accurate report. Instead, the Report relies too heavily on opinions and unsubstantiated

¹⁴⁶ Markus Int. at 24.

¹⁴⁷ Markus Int. at 24.

¹⁴⁸ March 8, 2010 letter from Craig Mayton to Pamela Bolton

¹⁴⁹ Dicken Int. at 89.

¹⁵⁰ Dicken Int. at 91. See also Teaford Int. at 7.

claims, while failing to acknowledged substantial evidence that leads to a contrary view of the facts of this case.