

ORIGINAL

STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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In the matter of

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

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

Friday, October 5, 2007
10:15 a.m.

STENOGRAPHIC RECORD of an Investigative
Interview conducted pursuant to agreement

INTERVIEWEE: RICHARD BAUM

APPEARANCES: For the Commission:

HERBERT TEITELBAUM, ESQ.
Executive Director

MEAVE M. TOOHER, ESQ.
Investigative Counsel

JOAN P. SULLIVAN, ESQ.
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator

MANATT, PHELPS & PHILLIPS, LLP
Attorneys for the Interviewee

BY: STEVEN F. REICH, ESQ.

REPORTED BY: 
Certified Shorthand Reporter

1 R I C H A R D B A U M,
2 called to appear before the Commission, and being
3 duly sworn/affirmed by the notary public, was
4 examined and testified as follows:

5 EXAMINATION BY MS. TOOHER:

6 Q. Would you state your name for the record,
7 please.

8 A. Richard Baum, B-a-u-m.

9 MS. TOOHER: Would you like to note your
10 appearance?

11 MR. REICH: Sure. I am Steven Reich. I
12 am counsel to Mr. Baum.

13 Q. You are here voluntarily today; is that
14 correct, Mr. Baum?

15 A. Yes.

16 Q. And, where are you employed?

17 A. Governor's Office, the Capitol in Albany.

18 Q. What is your position?

19 A. I am Secretary to the Governor.

20 Q. What are your duties in that position?

21 A. Several. I guess I would divide it between
22 assistant to the Governor in his decision making.
23 I also manage the decision making structure, the
24 flow of information to him to allow him to make

1 decisions, make sure opinions reach him in a form
2 where he can make appropriate decisions. And, in
3 the other direction outward toward the government,
4 making sure the Governor's decisions and
5 inclinations are carried out throughout the
6 government.

7 Q. And, where are you in terms of the hierarchy
8 of the chamber? And when I say the "chamber" I
9 mean the executive chamber.

10 A. I report directly to the Governor. Most of
11 the chamber, I believe, except for the Counsel and
12 Lieutenant Governor reports to me.

13 Q. The counsel being --

14 A. David Nocente.

15 Q. Mr. Nocente also reports directly to the
16 Governor?

17 A. I believe if you looked at our
18 organizational chart, that's the way it would
19 work, correct.

20 Q. And do you know a Darren Dopp?

21 A. I do.

22 Q. In what capacity do you know Mr. Dopp?

23 A. He was the Communications Director when
24 Governor Spitzer was Attorney General, and he was

1 Communications Director when Governor Spitzer took
2 office.

3 Q. For the purposes of the record, when did
4 Governor Spitzer take office?

5 A. January 1st of this year.

6 Q. And, Mr. Dopp joined him at that time?

7 A. Yes.

8 Q. And you joined him at that time as well?

9 A. Correct.

10 Q. And what is your relationship with Mr. Dopp
11 in the chamber, your reporting relationship?

12 A. He reports to me -- reported to me.

13 Q. And he is no longer the Communications
14 Director?

15 A. I don't know officially. I don't know how
16 it's listed. Right now, I suspect that he's still
17 listed as Communications Director in payroll. But
18 he's not acting as Communications Director.

19 Q. What you know of his current status?

20 A. I know -- I've been recused from these
21 matters, But I know from reading the newspaper
22 that he has basically been collecting his vacation
23 pay right now. He is not coming to work every
24 day. He is home as if on vacation.

1 Q. Do you know approximately the date at which
2 he was no longer in the office?

3 A. The date that the Attorney General's report
4 was released; I actually don't know precisely what
5 date that is.

6 Q. What is your understanding of Mr. Dopp's
7 duties?

8 A. He oversaw direct -- he oversaw the press
9 secretary who is largely more responsible for the
10 day to day interaction with the press, responding
11 to the dozens of questions that come in every day;
12 at times, did that function himself as well
13 responding to various issues, and oversaw the
14 general what you call communications strategy.

15 Q. Were his duties limited to communications in
16 media?

17 A. Yes, although, you know, if everyone is in a
18 meeting it's not like he couldn't comment on a
19 policy matter, but that was his responsibility.

20 Q. And, is that somewhat the policy in the
21 chamber, if everyone is in a meeting they put
22 their opinion in or are free to speak if they have
23 an opinion on something?

24 A. Yeah. I think people generally realize they

1 are mostly responsible for their area but, sure.
2 You know, it is not -- yes. It's an environment
3 where people can speak out and give an opinion if
4 it's not directly their sphere of responsibility.

5 Q. Is Mr. Dopp an attorney; do you know?

6 A. No.

7 Q. Are you an attorney?

8 A. No.

9 Q. In Mr. Dopp's media responsibilities did he
10 have investigatory functions?

11 A. No, not that I know of or that he was
12 directed to by anyone else.

13 Q. And you were his direct report?

14 A. Yes.

15 Q. Are you familiar with William Howard?

16 A. Yes.

17 Q. Do you know where Mr. Howard is currently
18 employed currently?

19 A. I think the State Office of Emergency
20 Management, I believe, but I'm not certain. He is
21 somewhere in the Emergency Management bureaucracy.
22 I think he's in SEMO.

23 Q. Was he previously located in the executive
24 chamber?

1 A. Yes.

2 Q. What was his position there?

3 A. He was Assistant Secretary for Public
4 Safety.

5 Q. And, what was his working relationship with
6 you?

7 A. He directly reported to Michael Balboni who
8 was the Deputy Secretary for Public Safety.
9 Assistant Secretaries report to Deputy
10 Secretaries, so he didn't have a direct reporting
11 relationship with me. Because of the area that he
12 was responsible for which include areas like SEMO,
13 Homeland Security, State Police, at times he came
14 to me directly when a matter had to be brought to
15 the Governor quickly, if there was a highly
16 sensitive matter the governor should know about.

17 Q. So, would it be fair to say that Mr. Howard
18 felt comfortable coming to you on issues that he
19 felt needed to be brought to the Governor's
20 attention?

21 MR. REICH: You can say your perception,
22 but you can't testify about what Howard thought.

23 A. Yes. I don't know what he thought. Yes, he
24 came to me on matters that were clearly matters

1 that needed to come to the Governor; public safety
2 issues. Sometimes areas in his purview were
3 things that were moving quickly, so it was hard.
4 He wouldn't initially go to the typical meetings
5 and reportings and memos and all that stuff,
6 Someone had to tell someone, someone had to get to
7 the governor to get the governor to know something
8 or other.

9 (Recess taken)

10 INTERVIEWEE: You know, I can't tell you
11 what he was thinking, but I know he would come to
12 me ^{when} ~~whether~~ there was an important or
13 time-sensitive matter, essentially, that had to
14 reach either me or the governor. And, because of
15 the area or sensitivity of what he dealt with,
16 sometimes he would come directly to me on an
17 as-needed basis because events could be moving
18 quickly in his area.

19 Q. Where was Mr. Howard's office physically
20 located --

21 A. On the second floor.

22 Q. -- in proximity to you?

23 A. On the same floor kind of the opposite side
24 of the second floor but it's, you know, all the

1 same floor.

2 Q. What about Mr. Dopp's office?

3 A. On the second floor as well, nearer than Mr.
4 Howard's.

5 Q. Nearer to Mr. Howard?

6 A. Nearer to me than Mr. Howard's was, but all
7 a walkable distance on the same floor.

8 Q. And how often would you say on a weekly
9 basis would you meet with Darren Dopp?

10 A. Very frequently. Most mornings I would
11 touch base with him just to review what's in the
12 newspapers, what's coming up, the communications
13 issues the next day or next week. And, on an
14 as-needed basis during the day. If it's a slow
15 news day not that much. If there was a lot going
16 on, a lot if incoming questions or some
17 controversy we would talk more frequently.

18 Q. What about Mr. Howard? How frequently would
19 you meet with him?

20 A. Much less frequently. It tended to ebb and
21 flow depending on what was going on in his area.
22 Not on a daily basis and not necessarily on a
23 weekly basis unless -- but, then, it could be a
24 few times a week if there was something important

1 to discuss.

2 Q. Now, when Governor Spitzer came into office
3 in January did he set up office protocols as far
4 as -- there has been a lot of discussion about
5 openness and transparency.

6 A. There was a general statement to the press
7 and the public that -- I don't recall if it was
8 written or not -- that we would try to be ^{more} ~~our~~ open
9 than the previous administration had been
10 perceived, mostly to the press but to the public
11 also on a range of matters ranging from FOIL to
12 access to what is called the "Hall of the
13 Governors" where we all work.

14 Q. On FOIL what was the approach on that issue
15 for the chamber?

16 A. Generally, being more open and a general
17 pledge that the press office would help to get the
18 press what it was looking for when appropriate on
19 a timely basis. The critique of the previous
20 administration ^{was} that the press took particular
21 umbrage that it could take them a long time to get
22 a FOIL, a long time to litigate and it was just
23 difficult.

24 Q. Was a FOIL officer set up in the chamber at

1 that time?

2 A. Yes.

3 Q. Who was the FOIL officer?

4 A. I should correct that. I don't know if that
5 person became the FOIL officer the day we came in.
6 I am not involved in the specifics of how FOIL is
7 materialized ^(?) or who it goes to and all that. I
8 know ultimately there was a FOIL officer who was
9 Maria Treisman.

10 Q. Is it Maria or Mariah?

11 A. I think you might be right. It's Mariah.
12 I'm not certain.

13 Q. Treisman?

14 A. I think so.

15 Q. And what is the earliest you can place Ms.
16 Treisman as the FOIL officer?

17 A. Sometime since we have been here. Certainly
18 not -- it could have been -- I have no
19 recollection of a specific moment when I knew she
20 was there.

21 Q. Is it within the last month or two or was it
22 earlier in the administration?

23 A. Earlier, because when there was a FOIL that
24 could pertain to me I would get an e-mail saying:

1 Do you have any responsive documents, it would be
2 from her. I don't know her.

3 Q. When you say you don't know her, you have
4 never met her?

5 A. I recognize her in the hallway. I don't
6 know if we have ever spoken.

7 Q. At some point you started getting e-mails in
8 FOILS pertaining to you?

9 A. Yes.

10 Q. And, is that your understanding of how the
11 FOIL process works in the chamber?

12 A. You know, as I said, I was never involved in
13 the mechanics of it, who the request went to and
14 who spoke to who. I honestly couldn't tell you
15 how it works precisely or how it worked. I'm more
16 conscious of how it works now because of this
17 whole issue.

18 Q. What type of an e-mail would you get from
19 Ms. Treisman?

20 A. A FOIL seeking documents pertaining to -- I
21 can't even think. You know, what to do about the
22 prisons, I mean anything. Do you have anything
23 responsive to this? If so, please forward.

24 Q. Would you receive all FOIL requests that

1 came to the chamber or notification?

2 A. I don't know -- I don't know.

3 Q. How frequently do you get e-mails from Ms.
4 Treisman?

5 A. Infrequently.

6 Q. Infrequently, maybe once a week? Once a
7 month?

8 A. Once a month, twice a month.

9 Q. Now, you indicated, though, that there were
10 discussions about or statements in the chamber
11 about FOIL and easing up on the FOIL requirements;
12 is that correct?

13 A. I don't know if I would classify it as
14 "easing up on FOIL requirements." It was
15 assisting in the production of FOILS, being
16 clearer. I guess the word probably that would be
17 used at the time -- I don't know the precise word.
18 I guess the word I would probably use now to
19 describe preparing FOILs is more clearly and more
20 timely than we were doing. If we are producing
21 something, say, whatnot, getting an answer on a
22 timely basis.

23 Q. Did you have staff meetings on this issue of
24 FOIL?

1 A. I did not. I don't recall ever being at a
2 staff meeting on that.

3 Q. So, how did you get this understanding as
4 far as easing up or -- I keep using that word and
5 I apologize -- the transparency issue with FOIL?

6 A. I don't recall a specific discussion. I
7 know ultimately Darren Dopp told the press we are
8 going to do a number of things to be more open,
9 and this was among them.

10 Q. Did you discuss that with Darren, the FOIL
11 and the presentation to the press?

12 A. I don't recall a specific discussion about
13 it. I know I was told, you know, we are going to
14 be saying we are opening up. It was a campaign
15 promise also from the governor to the press,
16 really, that we were going to be more open. So,
17 it was a natural thing to do. I think I was
18 probably just told we were saying it.

19 Q. When you say you were told, who told you?

20 A. Probably Darren.

21 Q. Was there ever any writing or written memo,
22 to your knowledge, about FOIL and the processes in
23 the chamber?

24 A. Not that I know of, no. But that wouldn't

1 -- typically I wouldn't be managing how FOIL is
2 produced or what the regulations are. I'm not an
3 attorney. And even if I was, given my job I
4 wouldn't engage in the specifics of production.

5 Q. Okay. But, to your knowledge, was staff in
6 the press office ever given any information or a
7 memo of any kind concerning FOIL and the needs of
8 the chamber in that regard?

9 A. Not that I know of. I don't know.

10 Q. And, do you know Marlene Turner?

11 A. Yes.

12 Q. How do you know Marlene Turner?

13 A. She was the scheduler for the Attorney
14 General's office. And she is, you know, what's
15 called Chief of Staff to the Governor.

16 Q. And, do you know what her duties are?

17 A. Yes. She manages what I call the space
18 around the governor. She manages his movements,
19 his schedule, the flow of paper and documents to
20 him, the flow of people in and out of his office,
21 the advance, and events.

22 Q. And, do you know what her responsibilities
23 are as far as executive travel?

24 A. She coordinates it.

1 Q. And, when you say "she coordinates it," do
2 you mean just for the Governor?

3 A. She coordinates it for the Governor and --
4 she coordinates it for of the Governor. And I
5 think in this area that we are going to lead into,
6 she also ended up coordinating use of the
7 helicopter when it was requested by people outside
8 of the Governor's office.

9 Q. Do you know her responsibilities in terms of
10 coordinating the use of the helicopter?

11 A. Not specifically. I know it was her general
12 area, purview.

13 Q. Did you have any discussions as the chamber
14 was coming in and setting up practices and
15 protocols about the use of the helicopter and the
16 state planes?

17 A. I don't recall anything specific. I know
18 the form was modified in some way, the request
19 form.

20 Q. Do you know how that came about?

21 A. I don't. I know -- I don't know
22 specifically. I believe counsel's office modified
23 it.

24 Q. When you say "counsel's office" do you know

1 who worked on that?

2 A. No, I don't recall.

3 Q. And what was the modification of the form?

4 A. I don't recall. It was generally -- the
5 upshot was that it was right after the Hevesi
6 matter and it was to get greater -- I don't know
7 what the word is -- accountability about the use
8 of public vehicles.

9 Q. And, do you recall ever having discussions
10 with Ms. Turner or anyone else in the chamber
11 concerning that accountability issue and the use
12 of the helicopter and planes?

13 A. I don't recall any.

14 MR. REICH: Just to be clear, do you
15 mean during the initial part of the
16 administration?

17 MS. TOOHER: Yes.

18 MR. REICH: Okay.

19 A. I don't recall any right now. Obviously, I
20 remember -- I am telling you something that I
21 remember so I had some discussions. I just don't
22 remember any specific discussions.

23 Q. So, you do remember having discussions but
24 not particular discussions?

1 A. What I was telling you just now is the
2 product of someone talking to me and me talking to
3 somebody at some point, but I don't remember
4 exactly what the give-and-take was or anything
5 like that.

6 Q. So, you did participate in those
7 conversations. You recall having some level of
8 discussion?

9 A. I recall knowing that we were changing the
10 form and that the point was to make sure it was
11 responsive to what had gone on in the Hevesi
12 Hevesi matter.

13 Q. I'm sure there were a lot of things going
14 on.

15 A. I'm sure I found out by talking about it
16 with someone, but I don't recall the give-and-take
17 or with who precisely.

18 BY Mr. TEITELBAUM:

19 Q. Mr. Baum, you said at the beginning of your
20 testimony that you were recused from these
21 matters. Could you just elaborate on that for us,
22 please.

23 A. The issue of what to do about Darren Dopp's
24 employment since he has been suspended, I was not

1 involved in that. If he were to be brought back,
2 what status he would be brought back in or whether
3 he would be terminated.

4 Q. Were you told why you were recused from that
5 area?

6 A. In the conversation I had with David Nocente
7 there was nothing that -- You know, in general
8 since I'm here as some kind of party to this, it
9 didn't seem -- I think he felt it wasn't wise.

10 Q. At what point in time did the recusal occur?

11 A. I don't remember; after he was suspended. I
12 don't remember when I was told.

13 Q. Soon after the issuance of the Attorney
14 General's report?

15 A. No, because the issue of what would happen
16 next didn't come up for at least a month. When it
17 started to come up in the chamber. And just to be
18 clear -- I'm not sure what you were asking. I was
19 also recused for largely -- I don't know if I was
20 technically recused, but I was not consulted in
21 the decision of his suspension either.

22 Q. Did you ever learn why Darren Dopp was
23 suspended?

24 A. Well, why the Governor and counsel's office

1 decided to suspend him, you mean?

2 Q. Yes.

3 A. As I said, I was not part of that
4 discussion. It was essentially made over a
5 weekend when I basically wasn't around. My sense
6 was it was because of the disclosures in the Cuomo
7 report.

8 Q. Did you learn what particular disclosures in
9 the Cuomo report were the bases for the
10 suspension?

11 A. No. I never had a discussion as to, okay,
12 what were you thinking that weekend.

13 Q. I don't mean from Mr. Nocente or the
14 decision makers concerning Dopp's suspension. I
15 mean from anybody on the second floor, did anybody
16 explain to you why you were --

17 A. Those would be the people who would know
18 would be the counsel's office and the Governor.
19 No one else really knew or was involved in the
20 decision. It was the lawyers. Peter Pope who was
21 not technically with counsel's office but, for all
22 intents and purposes was working with them.

23 Q. Concerning the e-mails that were sent to you
24 requesting documents in connection with FOIL

1 requests, and I mean generally, was Treisman the
2 person who, as a matter of course, would be the
3 one who would be sending you that e-mail?

4 A. Yes.

5 Q. Anybody else?

6 A. No, not that I recall.

7 MR. TEITELBAUM: Okay.

8 BY MS. TOOHER:

9 Q. Let's get back to the helicopter issue and
10 the use of the chopper. After you initially came
11 in and there were changes on the certification
12 requirements --

13 A. Um-hmm.

14 Q. -- did you have specific meetings with
15 individuals in the chamber staff concerning the
16 helicopter and the use of the airplanes?

17 A. No. I don't recall any specific meetings on
18 that.

19 Q. Do you recall ever meeting with Preston
20 Felton concerning air travel and on use of the
21 helicopter?

22 A. No.

23 Q. Do you recall a meeting with Olivia Golden?

24 A. I don't recall a meeting on that, no.

1 Q. Do you have any recollection of discussing
2 this issue with William Howard at some point?

3 A. I don't recall ever discussing it with him.

4 Q. And were you ever asked to review decisions
5 concerning the use of the helicopter?

6 A. It didn't -- I don't recall. I now know
7 from looking at the document production here that
8 I received a few e-mails saying, hey, is it okay
9 that Senator Bruno is using the helicopter. It
10 wasn't an issue that I dealt with or spent any
11 time on.

12 Q. Why would you receive e-mails asking is it
13 okay if Senator Bruno uses the helicopter?

14 A. I don't know precisely why I received those
15 e-mails. All I could say is that he was using it
16 a lot so periodically it would bubble up. And so
17 the question is: Is it okay that he is using it
18 this much? In my view it was. As long as the
19 proper forms were filled out it's fine with me.

20 Q. When you say "he is using it a lot" what do
21 you mean by that?

22 A. Frequently. Basically, weekly it seemed he
23 was using it, I guess.

24 Q. How did you come to know that?

1 A. I don't recall specifically. I just recall
2 the general sense that he was using it quite
3 frequently. The Speaker didn't use it at all, so
4 it was a contrast I suppose. And, I said, that's
5 my supposition about why I received those e-mails.

6 Q. Did Marlene Turner tell you when Senator
7 Bruno was using the helicopter?

8 A. Not typically.

9 Q. And, what was your decision making process
10 in responding to her inquiries?

11 A. I didn't really have a process. My view was
12 it's fine as long as he fills out the forms.

13 (Commission's Exhibit 37 was marked for
14 identification.)

15 Q. I am going to show you an e-mail that has
16 been marked Commission Exhibit 37. It's an e-mail
17 from Marlene Turner dated April 30, 2007. Can you
18 identify this document?

19 A. I didn't remember seeing it until I saw it
20 as part of the document production here. But it's
21 an e-mail to me.

22 Q. Do you recall receiving this e-mail?

23 A. No.

24 Q. But it went to you, Richard Baum NYEC. Is

1 that your e-mail address?

2 A. Yes.

3 Q. Is that where Ms. Turner would regularly
4 e-mail you?

5 A. Yes.

6 Q. Is there any other address that she would
7 e-mail you at?

8 A. Not typically, no.

9 Q. So, if Ms. Turner sent this e-mail to you --

10 A. I would get it.

11 Q. You would get it. And the date, 4/30 2007,
12 does that refresh your recollection at all as to
13 decision making on Senator Bruno's use of the
14 plane --

15 A. No.

16 Q. -- or the helicopter?

17 A. No.

18 (Commission Exhibit 38 was marked for
19 identification.)

20 Q. I am going to ask you to look at
21 Commission's Exhibit 38, which is an e-mail from
22 Marlene Turner 4/30 2007. The time is now 5:57
23 and there is a thread of e-mails. Could you
24 identify this document?

1 A. When you say identify, do I believe it's a
2 --

3 Q. Do you know what this document is? Have you
4 seen it before?

5 A. I have seen it before, yes.

6 Q. Can you tell me what it is?

7 A. I mean I didn't recall receiving until I saw
8 it as part of this investigation. But it's an
9 e-mail to me with a number of issues that she
10 needed to discuss, including the Bruno helicopter.

11 Q. Do you recall why she wanted to speak to you
12 about the Bruno helicopter?

13 A. No, not specifically. Although, as I said,
14 I assume it's generally that: Is it okay that
15 he's using it again.

16 Q. And, again, why would she be asking you this
17 question?

18 A. I don't know any specific reason other than
19 it was frequent and she wanted to make sure it was
20 okay.

21 Q. And, do you recall discussing with her
22 whether or not it was okay?

23 A. I don't recall this specific conversation
24 that ensued from this. But I recall generally

1 telling her when it came up that it was fine as
2 long as he filled out the forms. I believe he was
3 using it frequently. It's only April and we're
4 fairly new and she was asking if it's okay.

5 Q. And, your understanding as to the frequency
6 of the use of the helicopter, what is that based
7 on?

8 A. I assume -- I don't remember a specific
9 conversation. But I'm sure Marlene told me, yeah,
10 he's using it a lot.

11 Q. Did you have discussions with anybody else
12 in the chamber about the frequency of his usage?

13 A. I don't recall having any.

14 Q. And, is there anything that you would
15 consider in deciding whether or not it was
16 appropriate for him to be using the helicopter?

17 A. No. As I said, I felt that as long as he
18 filled out the form and attested it was for an
19 appropriate purpose it was fine with me.

20 Q. Did you receive copies of those forms when
21 Ms. Turner forwarded this information to you
22 asking if the senator could use the helicopter?

23 A. No.

24 Q. Did she provide you with any additional

1 information besides the information contained in
2 the e-mail?

3 A. No. My position was as long as the form is
4 filled out, it's fine with me. So, I'm sure she
5 would have told me that was not filled out.
garbled

6 Q. Did you relay that to her in any way?

7 A. In general, I believe I told her that that
8 was my position. I don't remember the dialogue
9 about it.

10 (Commission Exhibit 39 was marked for
11 identification.)

12 Q. I will show you what has been marked as
13 Commission's Exhibit 39. It's an e-mail. Again,
14 the thread begins with Marlene Turner, 5/01/07 at
15 5:55 p.m. Can you identify this document?

16 A. It's an e-mail from Marlene Turner to me.

17 Q. Have you seen this document before?

18 A. I have seen it. I obviously received it.
19 And I have seen it again in the process of this
20 investigation.

21 Q. And in the thread of the e-mail it starts
22 with, "Last chance. Anything changed today for
23 Bruno and the helicopter flight approval?" And,
24 then, there's a response, "Eliot agrees we should

1 okay." Do you recall sending that to Ms. Turner?

2 A. No.

3 MR. REICH: Wait a second. Take a look
4 at the e-mail.

5 MR. TEITELBAUM: I don't think it's a
6 response.

7 MR. REICH: It's from Turner to ^{Baum.} Bill.

8 You are asking: Do you remember receiving it?

9 MS. TOOHER: Yes.

10 Q. And, do you know why Ms. Turner would send
11 you this e-mail?

12 A. Well, my supposition is that I failed to
13 respond to this one. I had been unresponsive
14 there, so she's telling me if I have anything to
15 say I should say it now. I think in general -- I
16 don't remember, again, the specifics. I think I
17 called her and said, "Fine with me if he fills out
18 the form." And she wrote back and said, "The
19 Governor agrees it's fine."

20 BY MR. TEITELBAUM:

21 Q. Mr. Baum, just so the record is pristine
22 here, when you say "this one" you are talking
23 about the e-mail that was sent at 5:25 p.m., the
24 one at the bottom of 39?

1 A. Yes, I believe so.

2 MR. TEITELBAUM: Okay.

3 BY MS. TOOHER:

4 Q. And, then, at 5:55 there is a subsequent
5 e-mail, "Eliot agrees we should okay." Were you
6 aware Ms. Turner was discussing Senator Bruno's
7 use of the helicopter with the Governor?

8 A. I don't recall. Obviously, I got the
9 e-mail. I don't recall if she said "I'm going to
10 check with Eliot" or anything like that.

11 Q. Would Ms. Turner have discussed it with you
12 before she went to the Governor on this issue?

13 A. I always assumed implicit in this e-mail
14 that Eliot agrees with me that it's okay, so I
15 assume we had spoken before she got back to me and
16 said: Eliot agrees. It's okay.

17 Q. But, you don't recall having any
18 conversation with anyone beyond Ms. Turner
19 concerning the uses of the helicopter on May 1st?

20 A. On May 1st, no, I don't recall.

21 Q. And, to your knowledge were any standards
22 set up for determining whether or not it was
23 acceptable for the senator to use the helicopter
24 beyond filling out of the form?

1 A. No, none that I recall beyond the original
2 form and whatever discussions occurred within the
3 chamber at the beginning of the administration.

4 Q. Did you discuss the use of the helicopter in
5 early May with Mr. Howard at all?

6 A. No, not that I recall.

7 Q. Do you recall what Mr. Howard's employment
8 position was in early May as far as the chamber?

9 A. Assistant Secretary ^for Public Safety.

10 Q. Were there conversations at that time about
11 whether or not he would be remaining with the
12 chamber?

13 A. I don't remember the date, but around then
14 there were conversations about whether he would
15 stay there on a temporary basis. At some point we
16 decided to make him permanent.

17 Q. And, it was around early May that that
18 decision was made?

19 A. April or May; I don't recall. I wouldn't
20 want to say early May. I'm not certain.

21 Q. Did you personally meet with Mr. Howard in
22 that decision making process?

23 A. Yes.

24 Q. And, did you have discussions with him about

1 what he could bring to the chamber?

2 A. Not specifically because we had been dealing
3 with each other up until then so it wasn't -- if
4 you mean like a job interview kind of thing, no.

5 Q. What sort of discussions did you have, if
6 you recall?

7 A. I had discussed his -- I had been
8 interacting with him in his job up until then.
9 So, I knew enough about him that I wouldn't have
10 sat down and said -- okay, he understood what we
11 would be expecting from his job, I think.

12 Q. Did you discuss the use of the helicopter
13 with Mr. Howard at that time?

14 A. No, I don't think so. I don't recall
15 discussing it with him.

16 Q. And, did he discuss his prior experience
17 with the Pataki administration with you during
18 that time frame?

19 A. In general -- I'm sorry. Tell me what
20 you're --

21 Q. Did he discuss his prior experience with
22 you?

23 A. As generally what he does, his work?

24 Q. Yes.

1 A. Not in that time frame. When he started my
2 concern was that no one on our team that was
3 entering had a background really in what we call
4 homeland security, anti-terrorism, or anything
5 regarding police work. And that had been one of
6 his areas of responsibility. And, although he was
7 with the prior administration I was concerned
8 about something happening when we came having no
9 one available to us who understood the
10 bureaucracy^{ies}s, the players, strengths and
11 weaknesses and all that. So, I asked him to stay
12 on at least temporarily. As he stayed on, I felt
13 and the Governor felt he was doing a good job.
14 So, at some point we decided to keep him.

15 Q. And when you say you started to feel he was
16 doing a good job, what were the types of things
17 that were influencing your decision in that
18 regard?

19 A. It was just our general interaction; his
20 level of knowledge. He seemed to be able to
21 evaluate situations well and give candid opinions
22 about them. He seemed to manage other people well
23 who were reporting to him.

24 Q. And, did he ever bring up the issue of the

1 helicopter and executive travel?

2 A. I don't recall ever discussing it with him.

3 MR. REICH: You mean during that time
4 frame?

5 MS. TOOHER: Yes.

6 A. I know there were e-mails to me from him but
7 I don't recall talking to him about it.

8 (Commission Exhibit 40 was marked for
9 identification.)

10 Q. Showing you Commission Exhibit 40, an e-mail
11 marked Richard Baum, 5/01/07 to William Howard.
12 And it's an earlier thread from William Howard on
13 the same date. Date do you recognize this
14 document?

15 A. Yes. It's an e-mail from Bill Howard to me.

16 Q. And you responded to this e-mail?

17 A. Yes.

18 Q. When you say "appreciate how much you have
19 contributed" what were those contributions at this
20 time?

21 A. You know, the management of the State Police
22 and Homeland Security, SEMO, the effort to
23 understand what was going on there and to explain
24 to us what was going on there, to make sure the

1 Governor would be prepared and I would be prepared
2 and other people would be prepared in case there
3 was a natural disaster or human disaster, you
4 know, like what happened in Margaretville. There
5 was a big shootout with the State Police, and a
6 terrorist attack which obviously could happen in
7 that time period. I don't know if at that time
8 the Margaretville situation had happened yet.
9 And, also, there was flooding in Delaware County.
10 But, in general, he was good. When we had him in
11 those situations he was good and responsive.

12 Q. On State Police issues did he discuss with
13 you areas he felt needed to be addressed in the
14 State Police?

15 A. Yes -- yes.

16 Q. And, the State police was responsible for
17 providing the executive travel; is that correct?

18 A. Yes.

19 Q. And they were responsible for the helicopter
20 and the ground travel that went with those things;
21 is that correct?

22 A. Yes.

23 Q. And Mr. Howard had experience with that in
24 the prior administration as well; is that correct?

1 A. That is my sense from reading what happened
2 since this whole story has become public. But I
3 don't recall knowing that or being conscious of
4 that at the time.

5 Q. So, he didn't bring that as part of his
6 prior experience to you as of this e-mail?

7 A. No, I don't believe so.

8 Q. And when you --

9 A. Wait. I think when we met we talked broadly
10 about the management of the chamber and the
11 differences between in how we were doing it and
12 how the prior administration was doing it. And I
13 said to him, you know, "Don't feel restricted to
14 yourself. You are the only person here who has
15 seen what was and what is. I remember saying to
16 him, "Feel free to tell me if you see anything
17 which could be done differently or managed
18 differently outside of your area." And I think
19 that's what that is referring to there.

20 Q. One of the things that had changed in coming
21 in with the new administration was the form and
22 the issue of the certification for use of the
23 helicopter; is that correct?

24 A. Yes.

1 Q. And this was an area that Mr. Howard had had
2 some experience with when he was with the Pataki
3 administration; is that correct?

4 A. I didn't know what he had.

5 Q. You didn't know prior to the decision to
6 keep him on that he had experience with the travel
7 issue and the helicopter?

8 A. I don't recall that being part of my
9 decision making. I don't recall thinking, oh, he
10 has experience with executive travel; we should
11 keep him on.

12 Q. Did you think he has experience with
13 executive travel, so maybe we should talk to him
14 when making changes in that process?

15 A. I don't remember thinking that or doing
16 that.

17 Q. Do you remember anyone bringing that to your
18 attention?

19 A. That we should speak to Bill Howard about
20 it?

21 Q. Yes.

22 A. I don't recall that. I don't remember
23 anyone saying to me: We should talk to Bill about
24 how we do this.

1 Q. Did Marlene Turner ever mention to you that
2 Bill has experience in this area; I have been
3 discussing it with him?

4 A. I don't think so. I don't remember her
5 saying that to me.

6 BY MR. TEITELBAUM:

7 Q. Getting back to 39 for a moment, Mr. Baum,
8 you had said that among your responsibilities was
9 managing flow of information to the Governor; is
10 that correct?

11 A. Um-hmm, on policy matters, if we decided to
12 do something.

13 Q. Is the matter that is contained in 39, the
14 okaying of Senator Bruno's helicopter flight, is
15 that a type of matter that would typically go to
16 the Governor, the magnitude of it?

17 A. Typically, I don't know how I would
18 characterize it. Obviously, it bubbled up. But
19 at this point, you know, the Governor used the
20 helicopter, too.

21 Q. The reason I'm asking, it strikes me -- and
22 I want to know if you agree with this -- that
23 raising the issue with the Governor, the approval
24 of the Senator's use of the helicopter indicates

1 that the issue has some level of importance.

2 Would you agree with that?

3 A. Well, okay. The context for us and the
4 reason why it was discussed at all is that this
5 was all after the Hevesi matter had gone on which
6 -- it sounds remote from this sitting here now.
7 But the whole controversy when he was running was
8 removal. And the uproar over his replacement was
9 a major ^(?)texture in our lives. So, the major issue
10 of use of executive travel was present. I don't
11 know how to put it. I think my guess is that she
12 is responding to the general sense that Senator
13 Bruno had been using it frequently at that point
14 and she was letting people know.

15 Q. Was the subject of Senator Bruno's use of
16 the helicopter as part of the subject of executive
17 travel a subject in which the Governor was in the
18 loop?

19 A. The subject of --

20 Q. Executive travel and, specifically, Senator
21 Bruno's use of the helicopter, was that a subject
22 where the Governor was kept in the loop?

23 A. I don't believe so. I don't believe I did,
24 but I can't say what was said to him when I was

1 not present. But I don't believe he was generally
2 in the loop besides this sort of notification of
3 usage.

4 Q. Did it strike you as unusual at the time you
5 received Exhibit 39 that the Governor was asking
6 if it was okay?

7 A. I don't remember what I thought when I
8 received it. All I can tell at you is that the
9 context was general issues about travel and that
10 we would be peppered at that time and pressed
11 about the use of government aircraft. Put it this
12 way. We knew the use of government vehicles was
13 an issue for us coming in, and it remained an
14 issue because of the Hevesi matter and then
15 questioning about use of it. And it was an issue
16 in the prior administration, and will be an issue
17 in 20 years. So, I knew there would be a
18 checking, you know, on that sort of matter.

19 Q. Was the subject in particular of Senator
20 Bruno's use of the helicopter something which was
21 the subject on which the Governor was kept up to
22 date at around this time, May 1st?

23 A. I don't believe so.

24 Q. Did that ever happen between May 1st and

1 July 1st when the Governor was brought into the
2 loop on the subject of the Senator's use of the
3 helicopter?

4 A. The only way I knew that he was in the loop
5 from my experience is that he was told that there
6 was a media request about the use of the
7 helicopter.

8 Q. Is that the only piece of information that
9 you would have that would indicate the Governor
10 was in the loop?

11 A. Yes. That's the only thing I recall.

12 BY MS. TOOHER:

13 Q. You testified a moment ago --

14 A. I'm sure you are conscious of it; there was
15 not a group, but there was a media request and I'm
16 sure he was in the loop that -- I'm sure this will
17 come up later. But Darren Dopp generated a
18 document pursuant to the request that made him
19 aware about the use of the helicopter that was
20 brought to the Governor's attention because he ^(Dopp)
21 wanted to issue a pres^s release.

22 Q. You testified a moment ago that you were
23 peppered about travel at around the May 1st time
24 frame.

1 A. I wouldn't say about the May 1st time frame.
2 Just since we have been in, there have been
3 various questions about travel. It was a big
4 political issue at the time.

5 Q. Wasn't there some questions about the
6 Governor's use of the plane around this time frame
7 to go out to a California trip?

8 A. There were questions about that. I don't
9 remember the time frame, but there were questions
10 about his trip to California.

11 Q. Was there any response in the chamber to
12 those media comments? Was there any approach that
13 the chamber was taking on the use of the plane and
14 the helicopter?

15 A. At some point I asked to see a list as to
16 how the Governor had used the helicopter and what
17 it had been used for. And it seemed to me on one
18 occasion he should reimburse the state.

19 Q. So, you were reviewing the use by the
20 Governor of the helicopter?

21 A. Not generally, but at some point I said to
22 Marlene Turner I'd like to see a list of where we
23 have gone and what we have done while we were
24 there.

1 Q. Do you recall approximately when that was?

2 A. No. Probably April or May, I believe.

3 Q. So, around the same time that you were
4 getting the requests from Marlene about Senator
5 Bruno's use of the helicopter you were asking her
6 for information about the Governor's use of the
7 helicopter?

8 A. I just don't remember if it was before or
9 after. There was questions about inappropriate
10 use, you know. There had been a request prior to
11 this back in March early on about the Governor's
12 use of the helicopter from the press. I think in
13 the D.A.'s report it was mentioned. It was at
14 some point I said, "I want to make sure we're
15 using it appropriately." ^u
 ^

16 Q. When you say "we want to make sure that we
17 were using it appropriately" who is the "we" that
18 you are referring to?

19 A. The chamber; that Governor's use is
20 appropriate.

21 Q. Did there come a time when you wanted to
22 know if Senator Bruno was using it appropriately?

23 A. No, because my feeling was that he was
24 attesting that he was using it on official

1 business and that it was his business.

2 Q. What were you doing to review for the
3 Governor's appropriate use of the helicopter?

4 A. To me, the only standard was it had to be
5 used for official business. If Senator Bruno said
6 it was used for official business, it was okay
7 with me. It was our responsibility to make sure
8 we were using it -- that we were asking the same
9 question he was asked. I wanted to be sure we
10 were using it for official business.

11 Q. What did you review to determine whether or
12 not it was being used for official business?

13 A. Marlene either told me or gave me -- I don't
14 remember -- a list of when it had been used and
15 what we had done once we got there.

16 Q. So, Ms. Turner provided you with the
17 information concerning where the Governor had gone
18 and what he had done when he got there?

19 A. Yes.

20 Q. What sort of documentation was that?

21 A. I don't recall. I don't remember. She had
22 told me over the phone. I suspect she told me
23 over the phone, but I don't remember for sure.

24 Q. What prompted you to make that inquiry of

1 her?

2 A. There were, in general, requests about the
3 Governor's use of the helicopter for [?] (sentence fragment) I wanted to
4 know what the underlying facts were.

5 Q. Did you ever discuss the appropriate use of
6 the helicopter with anyone beyond Marlene Turner?

7 A. Yes.

8 Q. Who did you discuss that with?

9 A. There was I believe one trip that he should
10 reimburse the state for, so I had to discuss that
11 with David Nocente and Marlene and with the
12 Governor.

13 Q. And, did you discuss it with Darren Dopp at
14 all?

15 A. I don't recall discussing it with him. I
16 don't particularly remember discussing it with
17 him. That doesn't mean I didn't. In a way, I
18 would be surprised if I wouldn't have told him
19 something like that which would pertain ^{to} ~~on~~ media
20 requests about the issue.

21 Q. Which trip did the Governor reimburse for?

22 A. ^{We} ~~He~~ talked about a trip to California.
23 Originally, he was scheduled to drive to New York
24 City to get a plane for California. And because

1 of various changes in his schedule because of the
2 situation in Margaretville where the shootout
3 occurred between the man and the State Police, his
4 schedule changed drastically and he wasn't able to
5 get out of Albany quickly enough to get to New
6 York City to get the flight. So, he ended up
7 using the helicopter to get there. It's actually
8 arguable that it was fine. The train to your home
9 station is okay. Your home station, his work
10 station is New York City. But it seemed to me the
11 flight was directly to Kennedy or La Guardia,
12 wherever he left from which included a flight to
13 catch a flight to a fundraiser. And, just to
14 avoid any questions and to be completely
15 appropriate he should reimburse the state.

16 Q. And, who was aware of the decision to
17 reimburse the state?

18 A. Me, Marlene Turner, David Nocente, actually
19 Bill Howard was because I saw e-mails where he was
20 involved in calculating the cost. And, like I
21 said, I suspected I told Darren but I don't
22 remember telling him precisely.

23 Q. What was the date of the California trip?

24 A. I don't know. I could find out, but I don't

1 know.

2 Q. And, in your discussions about the Governor
3 reimbursing, did anyone ever mention the idea of
4 anyone else reimbursing for use of the helicopter?

5 A. Not to my knowledge.

6 Q. Did Marlene Turner ever say to you anything
7 about Senator Bruno reimbursing for the use of the
8 helicopter?

9 A. Not that I recall, no.

10 Q. Did anyone ever make any comments about
11 other people don't reimburse, so why is the
12 Governor doing this?

13 A. I'm not sure what I would have put as the
14 reason why I wanted to do this. As was discussed
15 in the Cuomo report, as long as you have some
16 official purpose and you can claim some official
17 purpose, it's essentially okay. The law -- it's
18 just a matter of the regulations as they existed
19 then. And -- not my problem but my belief is that
20 this trip had no purported official purpose. It
21 was to get a plane to California to raise money.
22 So, as long as -- My position, as I mentioned, had
23 always been that as long as Senator Bruno or
24 anyone else attested that there was an official

1 purpose, it was okay.

2 Q. What was your awareness as to the standards
3 for reimbursement?

4 A. How much money?

5 Q. No, under what conditions you would
6 reimburse.

7 A. I never -- well, my understanding was as
8 long as you had some official purpose you actually
9 did not have to reimburse.

10 Q. Where did you get that understanding from?

11 A. I don't know. It turned out to be basically
12 my understanding what the A.G.'s report said, but
13 I don't know.

14 Q. But you made a determination --

15 A. Probably from the counsel's office.

16 Q. You made a determination that the Governor
17 would, in this particular case, have to reimburse
18 for the California trip?

19 A. Yes, because I didn't see any official
20 purpose for the trip.

21 Q. But you don't know where you got the
22 understanding that there was a line to be drawn?

23 A. Well, for example, I knew that, as we were
24 discussing on the e-mails, that Senator Bruno had

1 to attest -- that as long as he filled out the
2 form that said there was an official purpose it
3 was fine and that that form had somehow come out
4 of the Counsel's office. So, my sense was that as
5 long as there's an official purpose, that's fine.

6 Q. Did you ever discuss with anyone what
7 "official purpose" meant?

8 A. No.

9 Q. Did you ever discuss with anyone whether
10 there had to be a certain amount of official
11 purpose?

12 A. I don't recall.

13 Q. When you asked Marlene Turner for the
14 information what did you tell her you were looking
15 for?

16 A. I don't recall. I told her I wanted to know
17 what he was doing on the trips to make sure it's
18 okay.

19 Q. But, you asked her for both the travel,
20 where he went and what he did once he got there?

21 A. Correct.

22 Q. What were you looking for?

23 A. To make sure there was an official purpose.

24 Q. But, what were you looking at those

1 documents to try and determine?

2 A. What documents?

3 Q. For where he went when he was there, were
4 there specific types of things that you were
5 looking at?

6 A. I was looking to make sure there was a
7 governmental purpose; that had he had done
8 something governmental when he was there.

9 Q. So, if there was any governmental purpose
10 was it your understanding that that was enough?

11 A. My understanding was that's enough. In
12 fact, I remember every place it was all, virtually
13 all governmental purposes and maybe there was like
14 one political -- it could have been one stop
15 stopping by a county Democratic dinner. But it
16 was all, by and large, governmental purpose. And
17 this one, largely because of the scheduling snafu
18 surrounding the situation had been different, the
19 opposite.

20 BY MR. TEITELBAUM:

21 Q. Did you ever speak to Richard Rifkin about
22 what the standard was concerning the appropriate
23 use of state aircraft with regard to mixed use,
24 business and non-business --

1 A. I don't recall doing that.

2 Q. -- at any time?

3 A. Like I said, I just don't recall.

4 BY MS. SULLIVAN:

5 Q. Do you know if there was a political
6 fundraising component of the trip that had
7 official business on it as well, whether the
8 Governor should reimburse for the entire trip?

9 A. No, that wasn't my understanding. My
10 understanding was as long as there was a
11 governmental use.

12 Q. Right. On the California trip, because of
13 the political component, political fundraising
14 component?

15 A. The fundraising was everything.

16 Q. So, there was no official --

17 A. Correct.

18 BY MS. TOOHER:

19 Q. In the time frame of mid May did the
20 helicopter issue come up again?

21 A. In the time frame mid May --

22 Q. You mentioned Darren Dopp doing a statement.

23 A. Right, I'm sorry. Darren had told me at
24 some point that he had received a request for

1 documents pertaining to air and land travel by
2 Senator Bruno and Governor Spitzer. I don't
3 remember ^gbut having gotten it, ^{but}I now know he sent
4 me an e-mail saying there were documents going
5 back, or something like that. As he ^rstated to
6 gather the documents he was worried that it would
7 look like we had condoned improper behavior
8 basically, especially in light of the Hevesi
9 matter, that we had been complicit in Senator
10 Bruno using it for essentially political purposes.
11 So, his view was, as he would say, he wanted to
12 get ahead of the story and call a halt to using
13 the helicopter and say we are looking into it
14 rather than having it come through a FOIL that
15 would be ultimately fulfilled and having us
16 implicated and tarnished over what he believed
17 would be improper use of the helicopter.

18 Q. You said he wanted to get ahead of the
19 story. What was the story, as you understood?

20 A. Eventually, we would have to fulfill the
21 FOIL. We would have to give any documents over.
22 And the first documents he got were more recent to
23 him. So, rather than have the story come out, I
24 guess the way he would, I assume put it, and the ^{? (garbled)}

(?)

1 way put it down -- I don't know what his exact
2 words were -- it would look like he did
3 inappropriate things we should have known about or
4 someone knew about it and let it go on. So, he
5 wanted to instead say that there was something
6 inappropriate going on and we're stopping it and
7 looking into it.

8 Q. When you say he was doing inappropriate
9 things --

10 A. Senator Bruno.

11 Q. And what were the inappropriate things?

12 A. Using the helicopter for political purposes,
13 using it for political meetings.

14 Q. Did you see anything that Mr. Dopp had
15 obtained at that time?

16 A. No.

17 Q. So, what did he explain to you as the basis
18 for these inappropriate things?

19 A. You know, he said he had gone to New York
20 City, and while in New York City he had --

21 Q. When you say "he had gone" --

22 A. I'm sorry. Senator Bruno had gone to New
23 York City and attended a Republican fundraiser and
24 attended a meeting at AIG. He thought both things

1 would be viewed as political meetings.

2 Q. Did he indicate if the senator had done
3 anything else on those trips?

4 A. I don't recall. Actually, I don't even
5 recall him using those specifics. I know that
6 from looking at the e-mails that had the specifics
7 that he was citing. I don't recall any other
8 specifics, if there were any others.

9 Q. When Mr. Dopp first came to you about the
10 potential issue of Senator Bruno using the plane
11 he told you there was a FOIL request?

12 A. I don't know if he used the word FOIL. He
13 said there was a request from the media. I
14 wouldn't necessarily get into a FOIL or request.

15 Q. I think you said a moment ago that he was
16 concerned that the FOIL request would come in and
17 he wanted to get ahead of the story.

18 A. No. I'm sorry. He said a request. I don't
19 know if it was a FOIL or a request without a
20 technical FOIL. He had told me there was a
21 request from the media and as he started to gather
22 information he was concerned that it would look
23 bad, look bad for Senator Bruno and, more
24 importantly, look bad for us that we condoned it,

1 whatever went on.

2 Q. But weren't you getting these types of
3 requests all the time, requests for information on
4 the use of the plane and use of the helicopter?

5 A. About the Governor. I don't recall other
6 requests about Senator Bruno.

7 Q. But you had received requests about use of
8 the plane.

9 A. By the Governor. I don't -- Put it this
10 way. I don't get involved in specific requests.
11 I can tell you he had received a request about
12 Senator Bruno's use and was now gathering the
13 materials. I don't know if it was one request or
14 several or he had done this before. But at this
15 point he was gathering material.

16 Q. What did he relate to you about the
17 materials specifically?

18 A. That it portrayed him as using the
19 helicopter and then attending political events.

20 Q. Did he indicate what information he
21 received, what type of documents?

22 A. No, not specifically.

23 Q. Did he indicate who he had received the
24 documents from?

1 A. Well, one of the e-mails to me says Bill
2 Howard had the records or something like that.
3 So, clearly Bill Howard. But I don't remember any
4 of the detailed description of how he got them or
5 who he had spoken to.

6 MR REICH: Before we ^og_^ forward, Rich,
7 you need to be careful in your answers to separate
8 between what you knew at the time and what you now
9 know because of seeing the e-mails and ^{to put that}~~in the~~ in
10 context.

11 A. It's implicit in what I was saying. But it
12 is important because at the time -- my information
13 at the time was Darren told me he had received a
14 request for information about air and land travel
15 by the Governor and Senator Bruno and anyone else.
16 He wasn't really looking into anyone else. And
17 and that as he gathered information and said he
18 thought it was potentially embarrassing or, you
19 know, it doesn't look great.

20 Q. I'm going to show you what has previously
21 been marked as Commission Exhibit 30.

22 A. There's one minor clarification. I said AIG
23 and I meant C.V. Starr.

24 (A discussion was held off the record.)

1 (Recess taken)

2 MS. TOOHER: We're back on the record
3 after a short break. Mr. Baum, is there something
4 you would like to place on the record that you
5 would like to clarify.

6 INTERVIEWEE: I don't remember the
7 precise question, but I felt you asked a question
8 and I was thinking about it while we were talking.
9 I should have answered it to be fully responsive.
10 You asked if I ever had discussions about Senator
11 Bruno's use of the helicopter in that earlier
12 period when the new form had been generated. I
13 wasn't involved in the generation of the form. I
14 never really engaged in it. I assumed it was
15 between counsel and Marlene Turner. When the form
16 was first sent up it somehow implied -- the form
17 that was sent up suggested that they would have to
18 list the Senator's itinerary when he arrived and
19 where he was going. Ken Riddette called me. He
20 was my main liaison in the Senate; he's Secretary
21 of the Finance Committee or something -- he's gone
22 now. And Ken complained about that and said
23 there's no way Senator Bruno is going to be
24 listing his itinerary for Governor Spitzer. He

1 made what I thought was actually a valid point
2 that one branch of government shouldn't feel
3 required to tell another branch of government what
4 it's doing ⁱⁿ ~~and~~ someplace or another just because
5 they're using governmental resources. ~~she~~ ^I thought
6 it was right and a fair point. And in the
7 interest of general comity in the beginning I
8 agreed and told Marlene ^{and} ~~and~~ I didn't think they
9 should be forced to list their itineraries; that
10 Attesting that they were doing governmental
11 business was, to me, taking responsibility for
12 what they were doing. I don't know if the form
13 changed or -- I don't remember exactly what
14 happened, but because of that we didn't ask for
15 the itineraries.

16 Q. So, just to be clear, in early January the
17 form was sent up to the Senate?

18 A. Yes.

19 Q. Was it sent anyplace else?

20 A. I don't know.

21 Q. And, you received a telephone call from Ken
22 Riddette over at the Senate who indicated their
23 interpretation of the form was that it required
24 Senator Bruno to provide his ground itinerary when

1 they submitted the form?

2 A. Yes.

3 Q. And he indicated Senator Bruno was not going
4 to do that?

5 A. No, didn't want to. It wasn't an angry
6 conversation, but it was just -- he said he felt
7 very strongly that he didn't want to do that.

8 Q. Could you explain to me in a little more
9 detail what his basis was for not providing the
10 ground itinerary?

11 A. It was the balance of power again, the
12 separation of powers point that I was making just
13 now; that one branch doesn't tell the other branch
14 what it's doing moment to moment, and the fact
15 they are using government resources isn't a reason
16 we can demand their movements and activities.

17 Q. And you agreed with this argument?

18 A. With the argument. I felt we were all at
19 the point of trying to get along and it was a fair
20 point. And I felt that as long as he was
21 attesting there was governmental duties --

22 Q. And, you indicated that you spoke with
23 Marlene Turner as a follow-up to this
24 conversation?

1 A. Yes.

2 Q. Exactly what did you relate to her?

3 A. I don't remember the words, but I related
4 that I agreed we didn't have to make him give us
5 the itineraries.

6 Q. So, you specifically told her that
7 itineraries were not a necessary part of
8 requesting use of the helicopter?

9 A. Yes.

10 Q. Did she have any response to that?

11 A. I don't recall specifically.

12 Q. Did you relay it to anyone else at that
13 time?

14 A. I believe David Nocente.

15 Q. Did you discuss with David Nocente your
16 decision before you relayed it to the Senate?

17 A. I don't remember. I think -- I'm not sure.
18 It was kind of irrelevant. I never called the
19 senate back and said: Don't worry about it. I
20 told Marlene to tell them to deal with the issue.

21 Q. So, you didn't tell --

22 A. I didn't call Ken back and say: We decided
23 this. Ken called Marlene back -- I wouldn't
24 necessarily make the time to call as long as I

1 could have Marlene call whoever she was dealing
2 with and let them know that we decided to do it in
3 a way that shouldn't require a phone call between
4 me and Ken.

5 Q. I was a little unclear. I thought you had
6 relayed to Ken Riddette when he called you that --

7 A. No. He registered his opinion. I thought
8 about it and spoke to Marlene. We agreed to do it
9 in a way that the Senate wouldn't object to.

10 Q. So, you didn't discuss your decision with
11 anyone before you relayed it to the Senate?

12 A. I discussed it with Marlene and David
13 Nocente.

14 Q. And did you discuss it with Darren Dopp at
15 that time?

16 A. I don't recall doing so. It's possible, but
17 I don't recall that.

18 Q. Did there ever come a time when you changed
19 this position and determined there should be
20 ground itineraries provided?

21 A. No -- no.

22 Q. And, was this ever reduced to any sort of a
23 memo to Marlene or anyone else that the
24 itineraries would not be required?

1 A. Not by me, no; not that I know of.

2 Q. Do you know if Marlene ever advised anyone
3 that the itineraries would not be required?

4 A. Not that I know of beyond the Senate. I'm
5 going to say, because you asked if I ever
6 discussed it with anyone else.

7 Q. I appreciate that. Thank you. Going back
8 to Commission's Exhibit 30, which I believe you
9 have in front of you, do you recognize this
10 document?

11 A. Yes.

12 Q. Do you recognize this as the document that
13 was provided to you by Darren Dopp --

14 A. Yes.

15 Q. -- in mid May?

16 A. Yes.

17 Q. And, what was your understanding of what
18 this document was in mid May?

19 A. Well, as we discussed before we broke, it
20 was his effort to, as I put it, get ahead of the
21 story, to disclose if there was a problem and say
22 that we're working to correct it, rather than wait
23 for the problem to come to our attention through a
24 FOIL through the press.

1 Q. And, what was your understanding of the
2 "problem" set forth in Commission's Exhibit 30?

3 A. That Darren believed there was a problem
4 that he was using the helicopter for --

5 Q. That Senator Bruno was using --

6 A. That Senator Bruno was using it for
7 political purposes.

8 Q. And, did he meet with you on this statement?

9 A. I think we spoke over the phone.

10 Q. And he provided a copy of the statement to
11 you?

12 A. I believe he e-mailed it to me.

13 Q. Did he e-mail anything else with this
14 document?

15 A. I don't remember.

16 Q. Did he ever provide you any information
17 about what Senator Bruno was doing at the time
18 that prompted him to write this statement?

19 A. Just what's in here.

20 Q. So, he didn't?

21 A. No, I'm sorry. Implicit in the Sheraton
22 Hotel thing was that there was a Republican
23 fundraiser that night at the Sheraton Hotel.

24 Q. And, were you aware when you looked at this

1 statement whether Senator Bruno was doing anything
2 else in addition to these activities?

3 A. I have no knowledge.

4 Q. Did you ask Mr. Dopp if Senator Bruno was
5 doing anything else in addition to these
6 activities?

7 A. No, I didn't ask him.

8 Q. But you were aware that if he was doing
9 additional activities there would be nothing wrong
10 with his use of the helicopter?

11 A. To be clear, you are asking essentially what
12 my reaction is to this.

13 Q. Correct.

14 A. My view was, I mean if C.V. Starr -- It's a
15 big insurance interest in the state and it is, no
16 matter what anyone says, official business. You
17 know, Senator Bruno would say he was meeting with
18 them about insurance business.

19 Q. So, it was your understanding that what
20 Senator Bruno was doing likely involved official
21 business?

22 A. Yes. Just -- I have no independent
23 knowledge [^] ^{apart} from what I received. The fact [^] ^{that} he was
24 going to a major insurance company and then going

1 to a Republican fundraiser that night didn't seem
2 to me to violate any policy, you know, any rule,
3 regulation.

4 Q. So, your reaction to this at the time that
5 you received it was that you did not see a
6 problem?

7 A. My reaction to it was that I didn't believe
8 that this would end up being a violation of any
9 official policy.

10 Q. So, did you relay that to Darren Dopp?

11 A. Yes.

12 Q. How did you relay that to Mr. Dopp?

13 A. I believe over the phone I said I don't know
14 -- to the effect -- I don't remember the words --
15 I said something to the effect of I don't think
16 that if this came to light it would be seen as any
17 kind of official misconduct and I don't think we
18 should put out a press release. And I thought it
19 would be an irritating flash point with the Senate
20 for us to put out something like this, and it
21 didn't seem worth it to me.

22 (Commission Exhibit 41 was marked for
23 identification.)

24 Q. I am showing you what has been marked as

1 commission Exhibit 41. It's an e-mail from
2 Richard Baum, 5/17 at 1:54 p.m. and appears to be
3 over the same statement by Darren Dopp. Can you
4 identify this document?

5 A. It's an e-mail from Darren to me with that
6 statement.

7 Q. Then, the top, as the thread continues --

8 A. I wrote back to him.

9 Q. Do you recall sending this e-mail?

10 A. I recall the discussion. I don't remember
11 the exact -- I don't recall the words I wrote
12 back. I remember the conversation ensuing from
13 this was great relief.

14 Q. And the words you write to him are, "Wow!
15 I'll be back in a bit. My only concern is that it
16 invites scrutiny of E.S. but I think we are pretty
17 airtight."

18 A. Yes.

19 Q. "Wow"?

20 A. I thought it would be an aggressive move
21 that would create a big stir.

22 Q. I understand that.

23 A. You are asking me the question why I wrote
24 it. That's why I wrote it. I thought it would be

1 a big move to do something like that.

2 Q. You testified a moment ago that your review
3 of this statement led you to believe that Senator
4 Bruno had done nothing wrong.

5 A. He did nothing wrong. It didn't make clear
6 that anything had been done wrong.

7 Q. "My only concern is it invites scrutiny of
8 E.S." Invites scrutiny in what way?

9 A. I'm sure I meant scrutiny of our own travel,
10 but I think we're okay. I think we're airtight.
11 Sort of obvious words.

12 Q. And what followed up as a consequence of
13 this?

14 A. A conversation with Darren and the Governor
15 where I and the Governor both felt it was a
16 mistake to put something out like this. And we
17 said: Just fulfill the FOIL in the appropriate
18 way. Don't do anything proactive.

19 Q. Was the Governor provided a copy of Mr.
20 Dopp's statement?

21 A. I don't know. I don't know if he was
22 provided a copy.

23 Q. During your conversation with the Governor
24 did you discuss the content of the statement?

1 A. Roughly; that the statement would -- yes
2 roughly, I would say. I don't know if he had seen
3 it previously or not.

4 Q. Do you recall whether or not this was
5 forwarded by e-mail to the Governor?

6 A. I don't know.

7 Q. Did you relay to the Governor your concerns
8 about Senator Bruno's activities, your concerns
9 about the release of this on Senator Bruno's
10 activities?

11 A. Oh, yes.

12 Q. What did you say?

13 A. My recollection is roughly, I said: I don't
14 think the idea that this is any kind of official
15 misconduct will hold up, and it will be a major
16 irritant with us and the Senate, so I don't think
17 we should do it.

18 Q. And did you discuss the nature of the
19 activities and the use of the helicopter at that
20 time?

21 A. No, I don't think so. It was confined to
22 this press release and the specific information in
23 it.

24 Q. What was relayed concerning this press

1 release to the Governor?

2 A. I can't give you the specifics. It was
3 really that there was -- it was some sort of
4 summary of what was in here. I don't remember the
5 words.

6 Q. And, did you have a direct conversation with
7 the Governor at this time?

8 A. No. I think it was Darren, me, and the
9 Governor on the phone. We were all in different
10 places.

11 Q. You were all in different places?

12 A. Yes.

13 Q. And, what was Darren Dopp's position?

14 A. He thought we should release it. I don't
15 remember how strongly he advocated, but it was his
16 idea.

17 Q. And did you tell Mr. Dopp your viewpoints on
18 the press release beyond the irritant factor but
19 the content of the press release?

20 A. Yes. I told him I didn't think this would
21 hold up as any kind of misconduct. It would be
22 slightly embarrassing the way all helicopter usage
23 had been slightly embarrassing for twenty years.
24 But it wouldn't be a big deal beyond being an

1 irritant if we tried to make it a big deal.

2 Q. Did you discuss that with anyone else?

3 A. I don't recall. I guess in a general sense,
4 somehow David Nocente agreed with me. I don't
5 know if he saw this, but he was at some point in
6 the loop and he agreed that it wouldn't make sense
7 to do anything proactive like this.

8 Q. Did you reach out to him during the
9 discussion with Mr. Dopp?

10 A. I had ^{ve}~~A~~ a vague sense. I had a conversation
11 with him, but I don't remember. I had a vague
12 sense that David agreed with me that this was a
13 mistake to do anything proactive on this matter.
14 I don't remember if I reached out to him or if
15 Darren had spoken to him. Somehow I remember he
16 agreed that this was not really the right thing to
17 do.

18 Q. And "this matter" you are referring to is
19 the statement, the press release statement of Mr.
20 Dopp?

21 A. Yes, their proactive effort, affirmative
22 effort to release it.

23 Q. And, did Darren express any viewpoint?

24 A. I think he thought we should do it.

1 Q. And, at the end of your meeting or
2 conversation was there a final resolution as to
3 what was going to happen?

4 A. Yes. We weren't going to do it.

5 Q. Who made that determination?

6 A. The Governor and I felt that we shouldn't do
7 it, and that was it. I don't think Darren --
8 there wasn't an argument. I don't want to
9 misconstrue what these conversations were like.
10 We talked about it, and the Governor felt negative
11 about it, which is the most important factor in a
12 conversation he is a part of. And so did I, and
13 so we didn't do it.

14 BY MS. SULLIVAN:

15 Q. This information in the statement about
16 Senator Bruno's legislative meetings, specifically
17 that they were going to be held at C.V. Starr at
18 12:30 and at the Sheraton at 3:30, what is your
19 understanding as to where Darren Dopp got that
20 information from?

21 A. I don't know.

22 Q. Did you ask him?

23 A. I don't remember asking him. My sense was
24 that he got it pursuant to documents responsive to

1 the press documents -- the press request for
2 documents.

3 Q. It appears that this information would come
4 from the senator's itinerary which you testified
5 would not be released.

6 A. Well, my sense was that he had gotten -- my
7 general sense was that he had started asking for
8 documents pursuant to the document request from
9 the State Police. I don't know who he was dealing
10 with specifically, and he had received this
11 information.

12 Q. So, you are aware at this time that he had
13 received information from the State police about
14 ground itinerary?

15 A. I am aware he received information. I don't
16 know from who.

17 Q. Did you know it was from the State Police?

18 A. I don't recall knowing that specifically. I
19 don't know. I just don't know.

20 BY MR. TEITELBAUM:

21 Q. When you saw Exhibit 30 and the reference to
22 Senator Bruno's itinerary --

23 A. Yes.

24 Q. -- did it raise a question in your mind as

1 to where Mr. Dopp was getting his information?

2 A. I don't recall asking the question. I mean
3 I knew he was gathering documents about the use of
4 the helicopter and ground transport.

5 Q. And, at that time had you made the
6 assumption that he was getting it from the State
7 Police?

8 A. I don't recall that. I don't recall having
9 any knowledge at that time. From what was going
10 on since then --

11 Q. The statement in the second paragraph about
12 the aircraft policy, the state plane and
13 helicopter may be used only for official state
14 business, it seems to me that is not what was your
15 understanding; I am correct?

16 A. ^{The statement is} ~~That is~~ not accurate. That wasn't the
17 policy. To be clear, on the form you have to
18 attest that there will be official state business
19 but not ^{" only."}

20 Q. Not ^{" only?"}

21 A. That is my understanding.

22 Q. And during the conversation among yourself
23 and the Governor and Mr. Dopp leading to this
24 draft of a press release, when Mr. Dopp said that

1 he wanted to go forward with it you expressed the
2 view that you didn't think that in the end of
3 days, I guess, that there would be a finding of
4 inappropriate official conduct; is that correct?

5 A. Yes.

6 Q. And, you shared that with Mr. Dopp?

7 A. Yes.

8 Q. And what was Mr. Dopp's response to that,
9 other than he wanted to go forward? Did he say
10 anything in response?

11 A. I don't remember any direct response to that
12 point.

13 Q. Other than he wanted to go forward with it,
14 did he present a rationale for doing so in light
15 of what you told him your understanding of the
16 policy was?

17 A. No. Let's say -- I was trying to make this
18 point earlier. It wasn't -- I don't remember the
19 exact words, but it wasn't like an argument where
20 Darren was just arguing with us on finding ways to
21 do it. He was just -- he raised this, and
22 typically raised this as a possibility. He
23 brought this to my attention and to the Governor's
24 attention one way or another. And I had my

1 opinion and the Governor had his opinion and we
2 said okay, just drop it. It wasn't a sort of
3 advocacy kind of conversation.

4 Q. I understand. As your counsel commented
5 earlier on, you may not know what's in Mr. Dopp's
6 mind. It's certainly something Mr. Dopp's sense
7 -- So, I'm asking you: Did he say anything which
8 indicated what his thinking was on this, other
9 than that he wanted to go forward with it? He
10 must have said more than that.

11 A. His thinking was that this would be
12 embarrassing to us when this came out that he had
13 used the helicopter and engaged in what seemed to
14 Darren transparently political purposes and that
15 we would be embarrassed. That I recollect, he
16 didn't give a level of, okay, what are the
17 regulations? What is the law? It was just when
18 it comes out it will be embarrassing to us,
19 especially in light of the current move ^(?) about
20 official transport and the attention to it. And I
21 think he was overall concerned that we would be
22 perceived as not having gotten the message or
23 understood the lessons as to what had gone on in
24 the past six or seven months.

1 Q. Is it fair to say that after the decision
2 was made by the Governor to not go forward with
3 this issue that the Governor -- in other words,
4 did you have an understanding that the issue was
5 essentially a dead issue?

6 A. Yes, it was.

7 Q. And, did you have any knowledge as to
8 whether the Governor thought it was a dead issue?

9 A. I didn't discuss it with him. But based on
10 the conversation, he should have believed it was a
11 dead issue.

12 Q. You said in earlier testimony that one of
13 the statements that was made by the Governor and
14 with yourself was that what Mr. Dopp should do is
15 fulfill the FOIL in an appropriate way. What do
16 you mean by "in an appropriate way"?

17 A. Just do whatever you would normally do with
18 a press inquiry, you know, gather the information
19 and FOIL it appropriately.

20 Q. Did you know at this point in time, mid May,
21 did you know that Dopp had begun gathering
22 documents?

23 A. I believe so, yes. I don't know how
24 specifically I knew it. I knew there has^d been an

1 inquiry. I knew he was working on the inquiry.

2 Q. Did you know that he was gathering documents
3 from the State Police?

4 A. I don't recall knowing that in detail. I
5 don't typically, or ever really, engage in
6 specifics with regard to how a FOIL is being
7 responded to.

8 BY MS. TOOHER:

9 Q. This discussion, the mid May discussion, did
10 you have any conversations with Marlene Turner at
11 that time concerning Senator Bruno's use of the
12 plane or any change in light of this statement?

13 A. I don't recall any.

14 Q. And, had you had any prior conversations
15 with anyone concerning Senator Bruno's use of the
16 plane just prior to the statement?

17 A. I don't recall any. The original -- at some
18 point I had a conversation with Darren about the
19 inquiry about a media request on Bruno's plane
20 use. That's all. That's all I recall.

21 Q. When you got the statement you were not
22 aware that Darren was putting this together?

23 A. I now know there is an e-mail to me about --
24 that Darren said we're gathering materials or

1 something like that. But that didn't stick in my
2 head and I didn't even remember it when I saw the
3 e-mail.

4 Q. Did you have any discussions with the
5 Governor about Darren now gathering documents?

6 A. Not that I recall.

7 (Commission's Exhibit 42 was marked for
8 identification.)

9 Q. I am going to show you what has been marked
10 as Commission Exhibit 42, which appears to be an
11 e-mail from "Lawrence" to Richard Baum on 5/15
12 2007. Can you identify this document?

13 A. It's an e-mail from the Governor to me.

14 Q. And on the subject: "An idea about J.B. I
15 want to discuss with you." Do you recall what
16 that was?

17 A. No.

18 Q. J.B. would be --

19 A. Joe Bruno.

20 Q. And it's just prior to the statement that is
21 provided to you from Mr. Dopp.

22 A. All I can tell you is that this was a
23 contentious time where there is a pitched argument
24 going on about legislation between the Governor

1 and Senator Bruno and Speaker Silver as well. In
2 context, I wouldn't be surprised if he just said:
3 I have an idea about Joe Bruno. My guess is that
4 it related somehow to that day-to-day
5 back-and-forth by the media.

6 Q. Do you know if Mr. Dopp had reached out to
7 the Governor in advance of your discussion about
8 the statement?

9 A. Not that I know of.

10 (Commission's Exhibit 43 was marked for
11 identification.)

12 Q. Showing you what has been marked as
13 Commission's Exhibit 43, this is another e-mail
14 from "Lawrence" dated now May 16, at 6:49 p.m.,
15 again to Richard Baum. Can you identify this
16 document?

17 A. It's an e-mail from the Governor to me.

18 Q. Do you recall receiving this document?

19 A. Yes.

20 Q. And, the first line of the e-mail, "I want
21 to punch back at him." Do you know who "him" is?

22 A. Joe Bruno.

23 Q. And, "He's making personal attacks and I am
24 really going to go after him at some point." Do

1 you know what the Governor was talking about?

2 A. We were in -- the subject of the public
3 debate that was going on was about campaign
4 finance reform, and it was pretty heated. And
5 instead of debating the merits, Bruno was
6 attacking Governor Spitzer's fundraising practices
7 and trying to make him out to be a hypocrite for
8 raising money in ways that were either unethical
9 or running contrary to what we were trying to ban
10 under the law that we had proposed. Bruno was
11 saying we were trying to stop campaign finance
12 reform.

13 Q. And, what was your understanding of "I want
14 to punch back at him"?

15 A. Well, I think my understand is what ensued
16 in the e-mail. We wanted to show that Senator
17 Bruno himself had fundraising practices to answer
18 for.

19 Q. And, then, the next day you received the
20 statement from Darren Dopp which seems to question
21 Senator Bruno's fundraising activities. Did you
22 discuss that as a way to "punch back" at the
23 senator?

24 A. No.

1 MR. REICH: I'm sorry. Which e-mail are
2 we talking about?

3 MS. TOOHER: We're talking about 43.

4 MR. REICH: What was the question again?

5 MS. TOOHER: Would you read the question
6 back, please.

7 (The requested portion was read.)

8 MR. REICH: I guess if we were in a
9 deposition I would object to the form of the
10 question. Go ahead.

11 A. What that meant, punching back, the way for
12 me to answer it is to tell you the title that was
13 on this e-mail. He wanted -- Senator Bruno was
14 saying that, without getting into too much detail,
15 Governor Spitzer was ~~buckling~~^{bundling} contributions,
16 raising money for LLCs, giving people access in
17 return for contributions, all of which are in
18 different ways banned by the law we were
19 proposing. And he ^(Spitzer) wanted to publicize the extent
20 of the money he ^(Bruno) was raising from 1199 which is a
21 union that is the biggest supporter of Senator
22 Bruno and give out the money that I think is what
23 most rational people feel is excessive; legal but
24 excessive. And I wrote back to him that I didn't

1 really think it was basically on point to discuss
2 the 1199 because that wasn't what Senator -- when
3 I said things he has done that we can publicize,
4 my point was Senator Bruno himself had done the
5 things even in greater degree that he was
6 criticizing Governor Spitzer for doing in
7 violation of the law we were proposing. That's
8 the discussion we had about "punching back." And
9 the Governor essentially seemed to agree that that
10 was the right point. And, no, I never discussed
11 the subsequent day's issue as a way of punching
12 back.

13 Q. The next day you get a statement concerning
14 what appears to be fundraising improprieties by
15 the Senator from Mr. Dopp; is that correct?

16 A. Yes.

17 Q. And, the prior day --

18 A. Just a minute. It's not fundraising
19 improprieties; it's improprieties in the use of
20 the state aircraft.

21 Q. One of the improprieties in use of the state
22 aircraft I think you mentioned earlier one of
23 which was going to the Sheraton Hotel where he
24 knew a Republican fundraiser was being held?

1 A. Yes.

2 Q. I just was inquiring as to whether the issue
3 of utilizing this type of activity in the campaign
4 finance discussion was brought up in the context
5 of discussing this statement.

6 A. I don't remember that being -- I don't
7 remember that coming up. And from my perspective
8 the long story was that statement --
(?)

9 Q. "That statement" being Commission 30?

10 A. Right. It wouldn't have been responsive to
11 the charges Senator Bruno was making against
12 Governor Spitzer about the LLCs and all of that
13 stuff. It wouldn't have been on point the way
14 that I describe^d here with the debate.
^

15 BY MS. SULLIVAN:

16 Q. Just one other point, a question about the
17 statement by Darren Dopp. You said that Mr. Dopp
18 thought that the story would be embarrassing to
19 the Governor's Office. Was there any
20 consideration given to denying the use of the
21 plane to Senator Bruno?

22 A. Yes. I believe that is implicit here. They
23 are proposing that we deny the use of the plane
24 and put out the statement saying we are going to

1 look into it, look into the matter.

2 Q. So, as you went forward on subsequent trips
3 was that considered?

4 A. No. I don't remember any discussion.

5 BY MS. TOOHER:

6 Q. You indicated earlier that after discussion
7 of the statement, Commission's 30, that in your
8 mind this was a dead issue.

9 A. Yes.

10 Q. Did you relay that specifically to Mr. Dopp?

11 A. I didn't say: This is a dead issue. We
12 just made a decision together. We were on the
13 phone. He didn't -- you know, he was done with
14 it, from my perspective.

15 Q. Was the "dead issue" the statement or the
16 subject covered by the statement?

17 A. You know, his direction after that phone
18 call was just do a FOIL.

19 Q. Did you look into the issue of the
20 helicopter and the airplane use after you had
21 reviewed the statement from Mr. Dopp?

22 A. No. I don't remember ever -- Senator
23 Bruno's use of the helicopter?

24 Q. Yes.

1 A. I don't recall ever looking into it.

2 Q. Do you recall -- did you ever talk to
3 Marlene Turner following the statement about the
4 use of the helicopter or the use of the state
5 aircraft?

6 A. I don't remember ever talking to her. I
7 don't believe so.

8 Q. Did you ever request information from her on
9 the use of the helicopter or use of the plane?

10 A. I mentioned that I remember when ^{Tasked for information} Governor ^{about}
11 Spitzer ^{is use.} ~~asked for that information.~~ About Senator
12 Bruno, no, not that I remember.

13 Q. What information does Marlene Turner keep
14 about the use of the plane or the helicopter, to
15 your knowledge?

16 A. I don't know. I assume she keeps those
17 forms. But beyond that, I don't have any
18 knowledge. I have no idea.

19 (Commission Exhibit 44 was marked for
20 identification.)

21 Q. I am going to show you what has been marked
22 as Commission's Exhibit 44, an e-mail from Marlene
23 Turner of May 23, 2007 at 1:09 p.m. The subject
24 is the airplane folder. Can you identify this

1 document?

2 A. It's an e-mail from Marlene to me.

3 Q. In the body of it, "Suzanne faxed me all the
4 info." Do you know --

5 A. I'm not certain. I think this could have
6 been the info I requested about the Governor's use
7 of the helicopter.

8 Q. What is "the airplane folder"?

9 A. I don't know. I assume it's the information
10 that she was putting together on the Governor's
11 use of the helicopter.

12 Q. Did she provide the airplane folder to you?

13 A. I don't believe so. I don't remember
14 receiving a folder. I should say -- I don't
15 remember. I could have received a folder. I
16 don't remember.

17 Q. Have you ever reviewed a folder of airplane
18 information in the executive chamber during the
19 May period?

20 A. I reviewed the Governor's usage, as we
21 discussed. I don't remember if it was a folder or
22 phone message that Marlene read to me or something
23 like that.

24 Q. Did you look at documents?

1 A. I don't know. I just don't remember.

2 Q. Do you know --

3 A. I have no recollection of looking at like
4 maybe documents like itineraries or anything like
5 that. I might have looked at a list of dates, or
6 maybe she read a list of dates to me over the
7 phone or sent me an e-mail. I don't know. I'm
8 assuming that is what this is referring to. But
9 beyond that, I couldn't tell you.

10 (Commission's Exhibit 45 was marked for
11 identification.)

12 Q. I am showing you a document that has been
13 marked as Commission's Exhibit 45. And this is an
14 e-mail from Darren Dopp to Richard Baum on May 23,
15 2007 subject: S.P. records. Can you identify
16 this document?

17 A. It's an e-mail from Darren to me.

18 Q. Do you remember receiving this document?

19 A. No.

20 Q. You mentioned earlier that there was a
21 communication from Darren concerning Bill Howard
22 having certain records. Is this that
23 communication?

24 A. Yes. I gave a prior estimation as part of

1 the document production. That's what it's
2 referring to.

3 Q. "Bill H." Do you know who that refers to?

4 A. I assume it's Bill Howard.

5 Q. And the records that exist going way back,
6 "itineraries." Do you know what that refers to?

7 A. I assume that was the use of the aircraft
8 and the ground transport.

9 Q. And, up above, the subject is: S.P.
10 records. Do you know what that would be
11 referencing?

12 A. State Police records.

13 Q. So, this appears to be an e-mail from Darren
14 referencing State Police records and itineraries
15 showing where the individual was taken and who was
16 in the car.

17 A. Um-hmm.

18 Q. Do you know who that is referencing?

19 A. I assume it's referencing any use of it
20 because it says "the individual." But I think in
21 this case it was referencing the document request
22 regarding Senator Bruno's use, Governor Spitzer,
23 and Speaker Silver's use.

24 Q. And, "Bill has the last two trips in his

1 possession." Do you know what that refers to?

2 A. I assume it means Bill physically has the
3 documents pertaining to the last two trips in his
4 possession.

5 Q. Do you know who was involved in the last two
6 trips?

7 A. No. I assume it's Senator Bruno from
8 reading this, but I don't know.

9 Q. And you testified earlier that after you had
10 reviewed the statement with Darren Dopp that it
11 was your understanding that the problematic issue,
12 as Darren perceived it, that Senator Bruno's use
13 of the plane was a dead issue, but Darren Dopp is
14 apparently still sending you e-mails concerning
15 Senator Bruno's travel. Do you know why he would
16 be doing that?

17 A. Because he was fulfilling the FOIL -- or the
18 document request. He was telling me -- what was
19 the date -- this was May 30th; is that right?

20 Q. May 17th.

21 A. I think he's telling me what he had been
22 told; okay, just fulfill the FOIL.

23 Q. And, did he keep you apprised of the FOIL
24 responses as he continued working on the FOIL?

1 A. I don't believe so. I don't remember being
2 notified in any way beyond now that I see this
3 e-mail.

4 Q. Did he typically keep you apprised of FOIL
5 responses?

6 A. Not typically. On a sensitive matter he
7 would tell me that there was a request or what the
8 fulfilling of the request would involve.

9 Q. And, the next line of the e-mail, "I think
10 there's a new and different way to perceive R.E.
11 media." Do you understand what that means?

12 A. Like I said, I didn't really remember the
13 e-mail when I first saw it. And I have always
14 assumed it involved the media issue I had at the
15 time with Darren which was I was unhappy with the
16 way the press was covering these meetings about
17 public debates and legislation with the leaders in
18 the different chambers. And I was, like I said,
19 unhappy with the press and unhappy with the way
20 Darren ^{had handled it and} felt like we hadn't done a good enough job
21 on making our positions clear. So, I've always
22 assumed that's what he was referring to. I know
23 in the Soares' report he said he was referring to
24 the idea of turning all of this over to the

1 Inspector General or something like that. I
2 remember that discussion. I don't remember that
3 as a media strategist^{y.}. I don't quite get it as a
4 media strategy. So, I think he meant one thing
5 and I assumed another -- kind of like ships
6 passing in the night.

7 Q. Did you ever have a discussion with him
8 concerning the State Police records and the media
9 in late May?

10 A. No. I don't recall that doing that.

11 Q. And, if you were just reading the e-mail
12 what would make you think that the "new and
13 different way" to perceive in the media would have
14 anything to do with a different subject matter
15 other than the State Police records?

16 A. It's a different line, different paragraph.
17 We frequently go back and forth on a lot of
18 different things. Typically, we are discussing
19 several different things at once. He would send
20 an e-mail typically on two or three different
21 things. Reading that, ^{(?) garbled} I'm not too crazy about the
22 specific words. But I don't remember a media
23 strategy about the State Police records.

24 Q. Were there other e-mails around this time

1 frame concerning the leaders meeting?

2 A. I'll bet there were. I don't remember
3 specifically. But I sent frustrated e-mails to
4 reporters and things like that.

5 Q. Is there anything you can point to in this
6 e-mail that would indicate your recollection that
7 ties that comment to the leaders meeting?

8 MR. REICH: Just let me be sure I
9 understand the question. The questions is: Is
10 there anything in this e-mail that does that?

11 MS. TOOHER: Correct.

12 MR. REICH: You can answer.

13 A. All I can tell you -- the only thing I can
14 imagine it referring to is -- I don't know of a
15 media strategy at that time beyond leaders
16 meetings. The second paragraph also but, no,
17 nothing specific about leaders meetings.

18 Q. But hadn't Darren presented you with a media
19 strategy just the week before on an issue relating
20 to the records on the use of the aircraft?

21 A. I had closed out that issue, I felt.

22 Q. I understand that. But "a new and different
23 way" to proceed, couldn't it reasonably be
24 interpreted to relate to the prior media strategy

1 contained in the statement?

2 A. No. As I said, it sounds like he meant one
3 thing and I interpreted it in another way. I
4 believe I interpreted it in light of my concerns,
5 and he interpreted it in light of his concerns.
6 My concern was that different media strategy
7 pertaining to that. And my concern was the media
8 strategy pertaining to the leaders meetings. And
9 I wasn't really thinking of a media strategy in
10 terms of a helicopter at that point.

11 BY MR. TEITELBAUM:

12 Q. With respect to Exhibit 45, it says that --
13 the last sentence is "Will explain tomorrow." Did
14 anything happen after this e-mail where an
15 explanation was provided to you?

16 A. I don't remember ever having multiple
17 discussions at the leaders meetings. Nothing down
18 to -- I wouldn't say flights or arguments, but
19 various discussions about them.

20 Q. Let me run this theory by you and ask you
21 whether -- what your reaction is to it. One
22 possible interpretation of Exhibit 45 is that
23 previously with respect to the May 17th document
24 it would involve the Governor and the executive

1 chamber in putting out a press release which you
2 and the Governor ultimately concluded would not be
3 done. And, here Mr. Dopp was possibly proposing
4 sending documents to the press in the absence of a
5 press release and have them run with the story.
6 Was Dopp proposing that?

7 A. I don't recall that. I think he said in the
8 D.A.'s report, in Soares' report that he was
9 proposing giving documents to the Inspector
10 General.

11 Q. I understand but. I understand where the
12 District Attorney might have come out on this.
13 But we are now in a relatively short time frame, a
14 difference of six or seven days. And I'm just
15 asking you whether Dopp was proposing what I have
16 just described. I am not asking you whether you
17 realized it then. I am asking you sitting here
18 now.

19 A. Look, I understand how you could read this.
20 And certainly -- what you are saying doesn't
21 contradict the reading. I just don't remember
22 that.

23 Q. And did you learn anything since this
24 Exhibit 45 was sent to you which would support the

1 theory that I have just described to you?

2 A. That he wanted to just hand it to the press?

3 Q. In order to get into the press the senator's
4 use of state aircraft and in a critical way.

5 A. You mean in the investigations that have
6 gone on or --

7 Q. Right. Between this period of time, mid
8 May, and today, yes.

9 A. I don't know of any additional facts that
10 were received. I don't know of any additional
11 facts. The I.G. claimed -- and I know that there
12 are -- subsequent to this I received an e-mail
13 from Bill Howard and Darren saying now is the time
14 to go with the story, or something like that, and
15 it fits in. You know, it doesn't contradict what
16 you're saying.

17 Q. The thing that strikes me about 45 is this
18 level of detail. What I mean by that is when Dopp
19 writes to you and says the records exist going way
20 back, did you know at that point what records he
21 was referring to?

22 A. I think -- as I remember the e-mail, I think
23 I assumed that it was the records of --
24 transportation records.

1 Q. Had there been a discussion prior to 45
2 between yourself and Dopp and yourself and Howard
3 concerning the matter of State Police records?

4 A. Well, I think when we talked about the
5 release of the statement a few days prior to this,
6 implicit in that is that there were records. I
7 know that Darren had begun gathering information
8 and that's what stimulated that concern and that
9 precipice. Whether they were State Police
10 records, I just don't know in that detail.
11 Sitting here, I guess I don't know in what -- I
12 suppose that's where they came from because the
13 State Police -- I know they knew about the
14 transportation. But I don't know at what level I
15 understood that at that point.

16 Q. Was there anything that preceded this
17 Exhibit 45 which would indicate to Dopp that you
18 wanted to know about itineraries which would show
19 the individual was taken and who was in the car?

20 A. Anything that I would have said to him?

21 Q. Anything you said to him or anything that
22 you know of which would cause him to give you that
23 piece of information.

24 A. No, nothing.

1 Q. And the same thing with the -- the same
2 question with respect to the sentence, "Bill has
3 the last two trips in his possession." Do you
4 know of anything that occurred prior to Exhibit 45
5 being sent to you that would cause Mr. Dopp to
6 give you that piece of information?

7 A. I am not -- I don't recall anything. It
8 wouldn't be untypical on a sensitive matter for
9 him to tell me what's going to happen in regard to
10 a sensitive matter, a FOIL or a document request.

11 Q. Did it occur to you at the time that you
12 received 45 that Mr. Dopp was attempting to
13 resurrect the issue that had died?

14 A. To the extent I thought about it, I don't
15 remember thinking that.

16 Q. Did it occur to you subsequently, as you
17 look back?

18 A. As I look back -- as I look back the e-mails
19 I received subsequent to this seemed to be
20 indicating that.

21 Q. Do you know -- did you authorize the
22 resuscitation of the issue?

23 A. No.

24 Q. Do you have any information that would cause

1 you to believe that the Governor did?

2 A. No.

3 Q. In light of what you just said, is it fair
4 for us to conclude that in Dopp trying to
5 resuscitate the issue and go forward with it he
6 was acting on his own?

7 A. Well, I don't know if I perceived it at the
8 time as trying to "resuscitate" as opposed to
9 giving the right information.

10 Q. I want to be clear because I know that there
11 is a concern about what you knew then and what you
12 learned later, and so forth. I am saying is it
13 fair to conclude -- for this Commission to
14 conclude that in light of what you told him and
15 what the Governor told him on May 17th that what
16 you learned he was doing afterwards, that he was
17 acting on his own?

18 A. Acting on his own --

19 Q. In other words, without the Governor's
20 authorization or without anybody else's
21 authorization.

22 A. I don't know of anything that would lead me
23 to believe that he was doing anything aside from
24 what he had been told, which is just to fulfill

1 the FOIL request. And, that's different from
2 saying forget the issue. But nothing here or in
3 other subsequent e-mails led me to think he was
4 doing anything different from what we had decided
5 in the phone call which was, you know, be passive,
6 do the FOIL request.

7 Q. My question is: Did you ever learn
8 information that would cause you to perceive that,
9 in fact, Dopp was attempting to revive an issue
10 that had been --

11 A. Beyond those e-mails, no. I can't say that
12 he never brought it up again, that issue. I don't
13 remember any specific discussions, though. In a
14 general sense, as you saw in that e-mail, it was
15 that we should be practical about this. I don't
16 remember any discussion beyond that one.
17 Generally, Dave and I discussed it. But my
18 general sense is he wanted to be practical and I
19 thought it wasn't a big deal. That discussion was
20 on May 17th. I remember, as you sort of fleshed
21 out the memory. Did we ever talk about it again,
22 I don't remember a specific discussion. But we
23 could have had one. I don't remember anything
24 specific.

1 MR. REICH: Can we go off the record?

2 MS. TOOHER: Sure.

3 (Recess taken)

4 MR. REICH: You seem to be indicating,
5 and I want to fix this. I think the question is
6 to the extent that Dopp may have been trying to
7 reopen the question of being proactive would that
8 have been consistent or inconsistent with the
9 direction he got from the Governor. I think
10 that's what you are asking, at least that's how I
11 understood it. That's the question, but ask it
12 however you want it.

13 MR. TEITELBAUM: Okay.

14 BY MR. TEITELBAUM:

15 Q. Mr. Baum, we are collectively trying to make
16 sure that we have a clear record here. So, let's
17 go back to some of the questions. Was there any
18 point in time when you perceived that Dopp was
19 attempting to reactivate the matter that had been
20 "killed" on the 17th?

21 A. I don't recall beyond the e-mails.

22 Q. To the extent that Dopp was attempting to
23 reactivate the matter, was that inconsistent with
24 the directive that he was given by yourself and

1 the Governor on the 17th?

2 A. Inconsistent because he had been told we
3 wanted to just execute the FOIL request and that's
4 it.

5 Q. And, I want to read to you a portion of the
6 D.A.'s report dated September 21st which is on
7 page 15.

8 MR. REICH: Do we have a copy to put in
9 front of him?

10 MR. TEITELBAUM: Sure.

11 MR. SHEA: (Offering)

12 BY MR. TEITELBAUM:

13 Q. This is a photocopy of the District
14 Attorney's report. And, starting on page 14, at
15 the bottom there begins a discussion of the
16 document that we have marked as Exhibit 45. Just
17 take a moment and read from the reference to the
18 May 23rd Dopp e-mail which is on the bottom of
19 page 14 through the first paragraph on page 15,
20 please.

21 (The interviewee complied.)

22 Q. Quite frankly, I'm confused by this
23 paragraph and I would like your help in clarifying
24 it. What is your understanding of the events that

1 are depicted in that paragraph? And is it an
2 accurate depiction from your perspective? Is
3 there another perspective that you have? Tell us.

4 A. As the paragraph suggests, I think
5 suggested, my understanding is that Darren and
6 Peter Pope had some conversation about referring
7 it to the Inspector General. And Darren then
8 brought Peter Pope's view to me and David Nocente,
9 and then we said forget about it. That's what I
10 think it means.

11 Q. Is that accurate?

12 A. I don't remember that but ^{it doesn't mean} it didn't happen.
13 A lot of discussions were going on in my office
14 very quickly. In essence, I thought the issue was
15 dead. I don't know what this is referring to. To
16 me, this was a dead issue. To the extent this
17 ever came to me, I guess I would have said: I'm
18 not interested; I'm done. And I would have
19 forgotten about it.

20 Q. Did you ever learn whether, in fact, there
21 was a discussion about referring the use of state
22 aircraft by Senator Bruno to the Inspector
23 General? Did you ever hear of that discussion?

24 MR. REICH: Could we be clear about time

1 frames because that matters.

2 Q. Predisclosure of this, prerelease of the
3 FOIL.

4 A. Pre publication of the story in the Albany
5 Times Union --

6 Q. July 1st.

7 A. Right. My general sense is that it came up
8 that at some point we should refer this to the
9 authorities. My guess is that my general
10 recollection of this conversation -- my general
11 sense is that he said to me that we should refer
12 it to the authorities and that Dave and I both
13 thought no.

14 Q. Was that a subject raised before your
15 conversation with the Governor and Dopp on the
16 17th or after?

17 A. I think after. But as I said, as opposed to
18 the conversation with the Governor, I remember
19 that conversation. ^(with the Governor) This was not specific. I
20 remember it was a general question that Darren
21 thought that maybe we should refer it to the
22 authorities. My guess would be after, because it
23 does fit in, for what it's worth, with my general
24 attitude toward the whole thing. I didn't think

1 it was a big deal; that as long as it's used for
2 some governmental purpose it's okay. It makes
3 sense from my perspective and my view of the whole
4 matter at the time.

5 Q. I come back to this thought I have which is:
6 Was Dopp picking on something that had been put to
7 rest and closed?

8 A. I don't know.

9 Q. He reported to you. That's why I am asking
10 you. You're the guy who he reported to.

11 A. We closed out the matter. To the extent it
12 came up a few times subsequent to when we closed
13 out the matter, it didn't stick in my head. It
14 was -- I had closed out the matter. And my view
15 on it was consistent with the publication. It
16 wasn't a big deal. It was not potentially that
17 embarrassing. And we didn't want to do anything
18 on it.

19 Q. When the issue was reported on July 1st did
20 you at that point conclude that Dopp had gone off
21 and continued to pick on this matter contrary to
22 the instructions he had received?

23 A. No, because I believe it had been turned
24 over as a result of the FOIL request by the

1 newspaper.

2 MS. TOOHER: We were contemplating
3 taking a break for lunch at this point.

4 (Luncheon recess: 12:45 p.m. - 2:00 p.m.)

5 AFTERNOON SESSION

6 BY MS. TOOHER:

7 Q. You wanted to clarify something from the
8 morning?

9 A. Yes. ^{MR. REICH:} Let's do it on the record. ^{MR. BAUM:} I just
10 wanted to say when we were talking about -- I
11 guess toward the end about my recollection of
12 Darren bringing up the idea ^{of} bringing this to the
13 Inspector General. When I was in the interview
14 with the District Attorney, you know -- I don't
15 want to say they hit me with that, but they asked
16 me that question, and I didn't remember a
17 particular conversation about it. You know, to
18 some extent it jogged my memory and the report
19 jogged my memory in that it was something that was
20 in the air. When I was asked about it by the D.A.
21 I couldn't say, oh, yeah. Darren had come to me
22 and said: Let's go the I.G., but I have a general
23 or top line sense that the question came up:
24 Let's hand it off to somebody, and I was largely

1 negative about it. But I couldn't tell you the
2 particulars of it.

3 Q. Darren refers in the D.A.'s report to a
4 discussion with Peter Pope in the executive
5 chamber, about handing off to the Inspector
6 General's office.

7 A. Yes.

8 Q. Do you recall that conversation at all?

9 A. I don't recall it, not before, you know,
10 July 1st. There were a host of discussions
11 afterwards on the issue about all of this.
12 Before, no. I don't recollect Peter's
13 involvement. But, as I said, my recollection is
14 just that it came up, the idea of passing off to
15 someone and that, in general, (?) gunkled
this whole thing was
16 sort of opposing idea that there was any kind of
17 legal trouble inherent in what Senator Bruno had
18 done.

19 Q. I got the impression from the D.A.'s report
20 that Darren had had a conversation with Peter
21 Pope.

22 A. Um-hmm.

23 Q. And I also got the impression from the
24 D.A.'s report that you were privy either to the

1 conversation or to the fact that Darren had had
2 the conversation with Peter Pope.

3 A. Correct; that that's what's in the report.
4 I am just saying I don't remember the
5 conversation, the participants, involving Peter
6 Pope or anyone else. I remember that the issue
7 came up: Should we hand it over? And I didn't
8 think it was a good idea and neither did David
9 Nocente.

10 Q. Did you ever do anything within the chamber
11 are you aware of, handing the matter off?

12 A. Do anything?

13 Q. About handing the matter off. Did you speak
14 to anyone in any of the investigatory offices?

15 MR. REICH: Could you just put a date on
16 it? Pre 7/01 or post 7/01?

17 Q. Pre 7/01.

18 A. Pre 7/01, I don't recall a specific
19 conversation about this, as I said. I recall a
20 general sense that it had come up.

21 Q. How did it come up? Who raised the issue?

22 A. I really just don't remember. That's the
23 real answer. I just don't remember who raised the
24 issue, what was the discussion. I knew that it

1 had come up, the possibility that -- the
2 questioning and from the D.A.'s report reminded me
3 that it had come up. But the specifics of Peter,
4 Darren and all that, I just don't remember a
5 meeting or a discussion about it.

6 Q. When you say there was a discussion about
7 it, after that discussion was Darren provided any
8 instruction on this issue?

9 A. In my recollection when it came up I and
10 David in some way were not in favor of giving this
11 over to anybody.

12 Q. And did you give him any direction going
13 forward in this area?

14 A. Beyond I don't want to do anything on this,
15 no, not that I recall.

16 Q. Were there any further discussions with the
17 Governor concerning the issue of Joe Bruno and
18 travel following your directions again to Darren
19 Dopp not to go forward with this?

20 A. I don't recall any with the Governor, no.

21 Q. Did you ever any communications with the
22 Governor on Senator Bruno's travel following this
23 determination not to go forward?

24 MR. REICH: Again, Meave, I'm sorry.

1 Pre 7/01?

2 MS. TOOHER: Yes. For future reference,
3 unless I specifically refer to after July 1st,
4 which we will get to, I am referring to pre July
5 1st.

6 A. I don't recall any.

7 Q. Did the Governor communicate with you about
8 Senator Bruno and travel in e-mail after you had
9 spoken with Darren Dopp?

10 A. About Senator Bruno's travel?

11 Q. Yes.

12 A. I don't recall any conversations about that
13 or discussions or e-mail about that.

14 (Commission's Exhibit 46 was marked for
15 identification.)

16 Q. I am going to show you what has been marked
17 as Commission's Exhibit 46. It's a document
18 captioned "Lawrence" and the date May 27, 2007 and
19 the top time is 11:55 a.m. Can you identify this
20 document?

21 A. It's an e-mail from the Governor to me.

22 Q. And did you receive this e-mail?

23 A. Yes. Judging from this, yes. I don't
24 remember receiving it, but yes.

1 Q. And the thread of the e-mail seems to cover
2 a number of different issues. In the second
3 section up on the thread in a section from
4 Lawrence, again, to yourself, Darren Dopp, and
5 Christine Anderson, "I also want to discuss a post
6 session strategy regarding Bruno and travel
7 generally." What did you take that to mean?

8 A. At that time the session was not going so
9 well, and we believed ^{we were} fairly unlikely to pass the
10 legislation and the legislative program that we
11 wanted to. And the plan was if they ended session
12 without passing our agenda, the Governor would
13 essentially denounce the Senate and Senator Bruno
14 ~~for quoting the term~~ ^{as} "do-nothings" and go around,
15 travel around to their districts and call them out
16 for their failure to act on various what we
17 believed are pressing matters. And that's what
18 happened. The session ended without anything
19 really productive. We had a press conference in
20 the Red Room and denounced the Senate and, in
21 succeeding days, went around to the districts.

22 Q. Did you have any conversations about that
23 subject with the Governor --

24 A. Yes.

1 Q. -- and the travel, generally?

2 A. Yes.

3 Q. And was Darren Dopp privy to those
4 conversations?

5 A. I'm sure he was. I don't remember a
6 specific moment but I'm sure he was. Darren and
7 ~~his wife~~ Christine was on this as well, I'm sure,
8 because she is in charge of the day to day press
9 operations person.^{nel}

10 Q. And Bruno and travel generally; why is it
11 Senator Bruno in particular?

12 A. He is the leader of the Senate, the leading
13 edge of the opposition. It was the strategic move
14 we made. We stood up in the Red Room, as it's
15 called, and said: Senator Bruno and the
16 Republican Senate is unwilling to act. I don't
17 know if it's a quote but, generally, going out to
18 the districts.

19 Q. Is it possible that Darren Dopp could have
20 interpreted this as support for his work in the
21 travel arena with Senator Bruno?

22 A. I can't speak as to how he did interpret it
23 or how he could.

24 Q. But is it possible?

1 A. Here's the thing. Anything is possible.
2 And I understand what you're saying; that there's
3 another kind of travel we are talking about also.
4 I can tell you at this time we were all talking
5 about traveling around to the districts and
6 calling them out, which is a technique the
7 Governor used after the Comptroller fight and
8 after the breakdown on some issues and campaign
9 finance. He went around to some districts and
10 talked about the failures.

11 Q. Exhibit 45, which is four days earlier on
12 May 23rd, Darren is talking about a travel issue
13 which --

14 A. A different travel issue.

15 Q. -- a completely different travel issue. And
16 he is copied on the May 27th e-mail which appears
17 to be addressing Bruno and the travel issue.

18 A. I understand what you are saying.
19 Obviously, you could look at this and think this
20 and think that. I can tell you what I knew it
21 was, and what was also going on at the time, or
22 wasn't going on at the time.

23 Q. Did Darren Dopp ever raise that possibility
24 with you; that he thought the Governor was

1 interested in pursuing the issue of Senator
2 Bruno's travel and the helicopter at this time?

3 A. I don't recall that.

4 BY MR. TEITELBAUM:

5 Q. Did Dopp say anything to you at around the
6 time of the e-mail in which there is a reference
7 to "Bruno and travel generally" which would have
8 indicated to you or be construed the meaning of
9 "travel generally" the way you just testified?

10 A. I don't recall anything like that, no.

11 Q. Another question. If Dopp had construed
12 this e-mail to give him permission to resurrect
13 the travel issue, I take it that would have been
14 continued to have been inconsistent with the
15 instructions that the Governor had given you?

16 A. Yes. It would have been totally
17 inconsistent.

18 BY MS. TOOHER:

19 Q. Did Darren Dopp communicate with you on
20 travel issues beyond the helicopter issues, as far
21 as you remember?

22 A. Meaning like what?

23 Q. Well, you are indicating a separate travel
24 issue.

1 A. On this project or plan, sure. I don't
2 remember a specific discussion, but I'm certain we
3 talked about the prospect of going out to the
4 districts.

5 Q. And did you have other communications from
6 Darren on the helicopter and travel issues after
7 Commission's Exhibit 46?

8 A. I know there were any e-mails after this. I
9 don't remember any other conversations about it.

10 Q. Did the subject of Senator Bruno come up
11 shortly after this communication, Commission's
12 Exhibit 46?

13 A. By Senator Bruno -- I'm sure it came up in
14 some way or another. He was the leader of the
15 opposition to the Governor.

16 Q. Was there media coverage on Senator Bruno
17 during this time frame?

18 A. Yes.

19 Q. Was there any specific media coverage that
20 came to your attention in late May or early June?

21 A. Sometime around then I think there was a
22 story about the federal investigations of him.

23 Q. When the story broke about the federal
24 investigation what was your reaction?

1 A. I don't remember exactly. I guess my
2 reaction was: It's not a good news story.

3 Q. It's not a good news story in what sense?

4 A. It's just, you know, a negative story about
5 a potential federal action against him. But I
6 didn't have any outstanding reaction to it.

7 Q. Did you discuss it with Darren Dopp?

8 A. I'm sure I did, but I don't remember a
9 specific conversation about it.

10 Q. Do you remember the substance of those
11 conversations?

12 A. I am going to guess that -- I don't remember
13 a specific conversation. I think it's entirely
14 possible I would have put it in the realm of
15 office gossip; wow, it's a bad story, or whatever.

16 Q. Did Darren communicate with you via e-mail
17 on the Bruno story on the federal investigation?

18 A. I now know he did. I have seen e-mails, but
19 it didn't stand out to me.

20 (Commission Exhibit 47 was marked for
21 identification.)

22 Q. I will show you what has been marked as
23 Commission's Exhibit 47, a document that starts
24 off: Darren Dopp, 6/03 2007 at 9:12 a.m. Are you

1 familiar with this document?

2 A. Yes.

3 Q. Can you identify it?

4 A. I have seen it previously. It's an e-mail
5 from Darren Dopp to me.

6 Q. Did you receive this e-mail?

7 A. Yes.

8 Q. And, the lowest earliest entry in the
9 communication thread: I guess we know why Bruno's
10 folks have been so jumpy of late." From Darren
11 Dopp to you and the Governor, subject: ATU. Do
12 you know what that is referring to?

13 A. Assuming he is referring to the Times Union
14 story about the federal investigations.

15 Q. And, what makes you say that?

16 A. Well, I remember the story was in the ATU
17 and it was sometime in that time period.

18 Q. And your response to him?

19 A. "Yeah, no kidding."

20 Q. Then he responds to you?

21 A. Yes.

22 Q. What does he say?

23 A. "I think the travel story will fit nicely in
24 the" --

1 Q. What was your understanding as to what he
2 meant by "The travel story"?

3 A. I don't remember receiving it, but my
4 understanding having seen the e-mail is that we
5 should move, finally to move the -- get into the
6 press the story about his belief that Senator
7 Bruno has committed an impropriety regarding the
8 use of helicopters.

9 Q. Did you have a discussion with him on that
10 subject?

11 A. I don't remember one; I don't believe so.

12 Q. What was your reaction when he brought up
13 the travel story yet again?

14 A. The reason I don't remember it because I
15 ^{had} settled this issue, and I got another e-mail. And
16 I just felt it was done. I had closed the matter
17 out previously.

18 Q. At this juncture you have had two
19 conversations with him that the matter is done.
20 And he reports to you. Did you have any
21 discussions with him about his continuing on this
22 path?

23 A. Not that I remember, because I thought he
24 wasn't -- there was no path he was continuing on.

1 He was told just to do the FOIL request and
2 respond to that and not to do anything proactive
3 with the press.

4 Q. From this e-mail it appears that this issue
5 is still not done with Darren Dopp. Is that a
6 reasonable interpretation?

7 A. Yes. He believes we should move the story.

8 Q. Did you have any conversations with anyone
9 in the executive chamber concerning the
10 continuation of the travel story at this time?

11 A. I don't believe I did. I don't remember
12 any.

13 Q. And, did you take any steps to ensure that
14 Darren wasn't pursuing this story?

15 A. No. He had been told not to. He had been
16 told to fulfill a FOIL, and I had no reason to
17 suspect anything otherwise, other than an e-mail
18 on some warnings that I think we should do this.
19 It was a matter that had been closed out,
20 finished. There was no need to reengage and
21 reopen the issue.

22 BY MR. TEITELBAUM:

23 Q. Given the fact that you say that you had
24 told Dopp, I think more than once, that this story

1 is not to be pursued, did it raise a concern in
2 your mind at the time that Dopp was raising this
3 again?

4 A. I don't recall having a concern. It was not
5 something that was relevant to me, and there was
6 no reason to pursue it. And I'm not going to prey
7 on the issue and wonder about what it means.

8 Q. You had testified earlier that the issue of
9 the FOIL request was a sensitive issue because it
10 involved the person of high rank in government;
11 correct?

12 A. Yes.

13 Q. And is it also true that reference to a
14 travel story on 47 was a highly sensitive issue
15 which involved that same person, Senator Bruno?

16 A. Yes.

17 Q. Just given the fact that it was a highly
18 sensitive issue involving a high ranking
19 government person, is there a reason why you
20 didn't tamp this down once again?

21 A. In practice, in my relationship with Darren
22 ^{not} reversing my prior direction was tamping down. I
23 would expect, unless I called him up and said:
24 Oh, you're right. Go for it, we're going to do it

1 -- It's not a military organization but I think
2 it's clear that unless I reverse my prior
3 direction, we're not supposed to do it.

4 Q. Was Dopp's efforts to resurrect this issue,
5 presenting it to you multiple times, presenting it
6 to you in different directions, was that his MO?

7 A. There is nothing in our relationship and in
8 the way the chain was constructed, the way I run
9 it, running these relationships, no one is
10 prevented from expressing something. It's not the
11 kind of place where you can't bring something back
12 or talk about something. So, was there an MO?
13 Yeah, I could see him bringing things back
14 periodically if he didn't agree with what I said.
15 And it would be nothing -- it wouldn't surprise
16 me.

17 Q. I would have thought that something of this
18 significance would have, from his perspective,
19 married the conversation, if he wanted to push it
20 forward, given your prior instructions, was there
21 an attempt on his part to talk to you about this
22 or was it just left at the point of this e-mail,
23 Exhibit 47?

24 A. I don't remember a conversation pertaining

1 to it. I didn't see -- no, I didn't want to
2 reopen the matter. I didn't have a new opinion on
3 it, so I didn't tell him to do anything different.
4 Given it wasn't a military organization -- I told
5 him what to do. Of course, unless I told him to
6 change it, I assumed it wasn't going to change. I
7 didn't mean to say no. I really -- no.

8 Q. I'm trying to get a sense as to whether this
9 issue was for Mr. Dopp a passion. And because of
10 your prior instructions to him but, most
11 particularly, because he had apparently received
12 the advice from Nocente that this was an issue
13 that from Nocente's point of view as counsel to
14 the Governor does not implicate legal wrongdoing
15 on the part of the senator but, nonetheless, Dopp
16 was raising this again. Can you explain that?

17 A. When you lay it out like that, clearly he
18 came back to it a few times. I don't know how you
19 -- I can't characterize it in that respect that it
20 was "a passion" of his. I still have heard enough
21 and have knowledge of the conversations to say
22 that. You know, clearly, he brought it up a few
23 times and he is always looking for --

24 Q. He is looking for a way to pursue it?

1 he said: You have got to do this to nail the guy
2 and I'll take care of him, or something like that,
3 I don't remember a conversation like that.

4 Q. I'm asking you for your perspective on the
5 actions that he took, not what he said.

6 A. Yes. Clearly, he was trying to advance the
7 story into the public. He was trying to get away
8 from an internal FOIL that was processing and get
9 it out to the press in a really negative way. So,
10 obviously he was trying to move it into the public
11 realm quickly on the heels of something else
12 that's bad.

13 BY MS. TOOHER:

14 Q. Did anyone else communicate with you via
15 e-mail on Senator Bruno's story at this time?

16 A. I now know that there's another e-mail from
17 Bill Howard. ~~It was passed across the table.~~
18 It's a similar thing, clearly promoting the idea
19 of advancing the story publicly. But I had the
20 same attitude to it, I believe, which is: This is
21 a done issue as far as I'm concerned and not
22 something that I want to pursue. I didn't mean to
23 get ahead of it.

24 MS. TOOHER: No, that's okay.

1 (Commission's Exhibit 48 was marked for
2 identification.)

3 Q. I will show you Commission's Exhibit 48.
4 And this is an e-mail dated June 3rd at 11:13 a.m.
5 from William Howard to you.

6 A. Yes.

7 Q. Was this the e-mail you were just referring
8 to?

9 A. Yes.

10 Q. Then could you describe it.

11 A. Similar issue, but I don't recall ever
12 speaking to Bill Howard about the possibility of
13 releasing the story. But it seems clear from this
14 that Darren had spoken to him and communicated the
15 conversation I had with Darren. And he's clearly
16 writing that he thinks the timing is right. Move
17 it, because he thinks it will be a negative story
18 coming on the heels of what looks like a negative
19 story that morning in the Times Union.

20 Q. Mr. Howard's e-mail, "the impending travel
21 stuff," -- "impending" seems to indicates that
22 this is about to happen.

23 A. I think he knew, clearly, he was processing
24 -- Clearly, Darren was doing the FOIL through him,

1 we now know. So he knew the FOIL was being
2 compiled, put together. You know, he is also
3 saying, it looks like, let's do it now as opposed
4 to my direction which is just to do the FOIL the
5 way you would normally do it and get it out when
6 it's appropriate to get it out.

7 Q. This e-mail is just to you, though. It's
8 not to you and Darren Dopp?

9 A. Yes.

10 Q. And, it appears from the e-mail that he
11 believes you are aware of the "impending travel
12 stuff"?

13 A. All I can say is that Darren clearly had
14 spoken to him.

15 Q. Did he have some basis for thinking you knew
16 about the "impending travel stuff"?

17 A. I don't remember any basis to it, except I
18 assumed -- I probably assumed when I saw this that
19 Darren had spoken to him.

20 Q. He said, "I think timing right for that
21 move." So, it appears that it's a move that has
22 been defined, if you will.

23 A. I assume he is referring to the conversation
24 that Darren had about making this public.

1 Q. The conversation Darren had had with whom?

2 A. Back on the 17th, I guess, about releasing
3 this publicly.

4 Q. So, William Howard wasn't privy to that
5 conversation; is that correct?

6 A. He was not, no. He wasn't part of the
7 conversation.

8 Q. Do you have any reason to believe that
9 William Howard knew that that was dead, the
10 concept of going forward with the media statement?

11 A. Judging -- I assume Darren told him that. I
12 have no idea. I don't know what Darren told him
13 beyond this e-mail indicates that he knew of the
14 prospect of releasing it publicly.

15 Q. So, you had not had any conversations with
16 William Howard about "killing" that idea?

17 A. I don't recall any.

18 Q. Did you have any conversations following
19 this e-mail with him?

20 A. I don't believe I did. I don't recall any
21 conversations with Darren.

22 Q. So, you took no steps to ensure that Bill
23 Howard and Darren Dopp were on the same wave
24 length on the issue of the travel story?

1 A. Well, Bill Howard would be less significant
2 ~~come~~ to the release because Bill Howard had no
3 capacity. He wasn't in direct contact with the
4 media. As far as I can tell from this, he was
5 compiling information. As I said, it would be
6 completely rational^g for me having said not to do
7 something to assume it wouldn't happen unless I
8 said otherwise.

9 Q. But, at this point you have now received a
10 second e-mail in one day indicating that something
11 you did not wish to happen was still being
12 considered by members --

13 A. They thought it was the right thing.

14 MR. REICH: Wait until she finishes the
15 question.

16 Q. -- by individuals in the executive chamber;
17 is that correct?

18 A. Yes.

19 Q. Would you normally take action in response
20 to this sort of what appears to be misdirection?

21 A. They were just saying -- no, I don't think
22 so, honestly. They were saying -- their opinion
23 is that we should do this.

24 Q. Had you had any prior conversations with

1 William Howard concerning the release of the story
2 to the media?

3 A. I don't believe I did. I don't remember
4 any.

5 Q. So, did you see any need, even now, as you
6 look at these e-mails?

7 A. Do I wish there is there was another e-mail
8 that says, "Bill, stupid idea. Don't do that"?
9 That would make things clearer here. But I would
10 still have to say there is no reason for me to
11 expect that something is going to happen that I
12 don't want to happen because of these two e-mails.
13 The fact that they both say: Timing right, good
14 move, or good timing for travel story, doesn't
15 mean they're doing it or that they're planning on
16 doing it. It means they're giving me their
17 opinion.

18 Q. The comment on the e-mail, "particularly in
19 the tax area," do you know what that refers to?

20 A. I believe I do. But that's just based on --
21 I understand what the tax issue is regarding
22 travel.

23 Q. What is that issue?

24 A. That -- I know about it because there's also

1 an issue with the Attorney General's Office, and
2 ~~they~~^{there} was an issue during the campaign that when
3 you use official vehicles for private purposes you
4 have to claim it as income. And when Governor
5 Spitzer was the Attorney General he had say, okay,
6 20 percent of the car is driving me home, going to
7 a party or something like that, and he had to
8 claim it and compute it as income.

9 Q. And, "There's a problem." Why would that be
10 a problem?

11 A. If you don't pay taxes that's income you
12 didn't claim or pay taxes on it if you didn't
13 claim it, if Senator Bruno didn't claim it.

14 Q. Did you ever explore that area, the
15 potential tax problems for Senator Bruno?

16 A. No. I have no recollection of doing that.

17 Q. Do you know if anyone pursued the potential
18 problems for Bruno in the tax arena?

19 A. Not that I know of.

20 Q. It seems that could present a serious
21 problem for Senator Bruno; would that be correct?

22 A. If he used it for private purposes and
23 didn't claim it as ~~computed~~^{imputed} income, sure, it's
24 considered a problem. You have to pay back taxes.

1 Q. Was there a reason you didn't pursue the tax
2 issue?

3 A. I think I received this e-mail and looked at
4 it quickly. It was something I decided I wasn't
5 going to pay much attention to it. Should I have
6 then said: Let's check on him, I'm not sure I
7 would have because I feel it's his -- we didn't
8 ask for itineraries. That's between him and the
9 Tax Department or IRS or whatever he reports it
10 to. And I probably wouldn't have tried to delve
11 into what he's doing. I have no capacity to
12 because I didn't have the itineraries to see what
13 he had done with the vehicles.

14 Q. This is post-session, June 3, 2007; isn't
15 it?

16 A. I don't believe so.

17 Q. When did the session end?

18 A. On the 23rd, I believe.

19 Q. So, in an earlier e-mail the Governor said
20 he wanted to "punch back" at Senator Bruno.

21 A. Yes.

22 Q. Did you make note of this tax idea as a
23 concept to punch back at Senator Bruno?

24 A. No.

1 Q. Would this have been a potential area to
2 punch back at Senator Bruno?

3 A. I have no idea if that would turn into
4 anything or not, but I didn't pursue it.

5 BY MR. TEITELBAUM:

6 Q. Once again, in 48 the reference to the
7 "impending travel stuff" at least implies to me
8 that William Howard had some understanding that
9 you had some understanding of what he and Darren
10 Dopp were doing with respect to putting together
11 of documents.

12 A. I assume Darren spoke to him after he spoke
13 to me.

14 Q. What was the level of knowledge that you had
15 as of June 3rd as to what Dopp and Howard were
16 doing as opposed to the documents by the State
17 Police?

18 A. My knowledge was basically was what was in
19 the prior e-mail that Bill Howard was collecting
20 the documents pursuant to FOIL; that there were
21 existing itineraries or something like that.

22 Q. Nothing more?

23 A. I don't believe so.

24 BY MS. TOOHER:

1 Q. You mentioned itineraries. Did there come a
2 time when you became aware that the executive
3 chamber was in possession of itineraries of
4 Senator Bruno?

5 A. Yes.

6 Q. And, when was that?

7 A. Right before the FOIL^g was produced or
8 turned over to the Albany Times Union Darren told
9 me he was going to be turning it over. And I
10 said, you know, what is it? And he had it's
11 travel records and itineraries.

12 Q. When you say right before he was responding
13 to the FOIL, had you seen the FOIL request at that
14 point --

15 A. No.

16 Q. -- the FOIL request? Did you ever see the
17 FOIL request?

18 A. No.

19 Q. And when he said he was responding to the
20 FOIL request what was your understanding as to
21 what that FOIL request was?

22 A. I don't believe I ever had a detailed
23 understanding of what the specifics of it were;
24 the times, the dates, or anything like that. But

1 my sense is it was for the records for the use of
2 the helicopter and ground transportation.

3 Q. And, did you have any understanding as to
4 whose records they were?

5 A. I guess I assumed, or was told they were the
6 State Police's.

7 Q. Were you shown any documents at that time?

8 A. I don't believe I was.

9 Q. You were told that it included itineraries,
10 as you just testified?

11 A. Yes.

12 Q. Did you ask Darren where he had obtained the
13 itineraries?

14 A. I don't recall. I don't know.

15 Q. I'm sorry?

16 A. I don't know.

17 Q. It was your understanding that Senator
18 Bruno's itineraries were not in the possession of
19 the executive chamber, though; is that correct?

20 A. Correct.

21 Q. And, you testified earlier that Ken Riddette
22 from the Senate had told you that Senator Bruno
23 wasn't turning over his itineraries; is that
24 correct?

1 A. Correct.

2 Q. Did you mention that discussion at all to
3 Darren when you were discussing the documents that
4 are now being produced?

5 A. I don't believe I did. I don't remember
6 telling him in that discussion.

7 Q. Did it cross your mind at all that he was
8 now in possession of the itineraries that the
9 Senate had her earlier indicated they would not
10 turn over?

11 A. No. Typically, in the sort of sense of
12 things, Darren Dopp would say, you know: We have
13 got a request. And when he was about to turn it
14 over on a sensitive matter, instead of turning it
15 over, he would say it's going to be X, X and X it
16 might come out on the gist of the matter. So, I
17 don't know. If I'm reading the Times Union one
18 morning I would say, "What happened? Where did it
19 come from? No one told me." It was never -- it
20 would never be in our relationship to say: Okay,
21 let's look at the FOIL and see what you gave, that
22 kind of thing.

23 Q. If Darren had approached you with something
24 that was clearly a questionable document, a

1 document that you knew should not be released to
2 the press, a confidential report from the State
3 Police concerning an ongoing criminal
4 investigation but he said: This is what I'm
5 turning over, what would be your response?

6 A. "Don't do that," or, "Talk to the counsel's
7 office."

8 Q. So, when he brought you documents that you
9 had already been told by the Senate they were not
10 willing to produce did you have any reaction at
11 all?

12 A. No. I didn't connect the conversation with
13 Ken Riddette back to that. But it was different.
14 They weren't going to give to us document^s for us
15 to monitor their movements in the executive
16 chamber. FOIL, though, required you to release
17 documents that exist^s in government. I didn't
18 know the State Police was keeping any kind of
19 itineraries. But if there's a document and it's
20 within the purview of ^{the} FOIL ~~the~~ request, it would
21 have to be released whether or not the Senate
22 wants us to have it. If it exists in government
23 and requires release they have to release it.

24 Q. When you say, "it exists in government"

1 under FOIL, what is your understanding as to what
2 FOIL requires released from the executive chamber?

3 MR. REICH: You are asking for his lay
4 person's opinion; correct?

5 MS. TOOHER: Yes.

6 Q. When it requires release from the executive
7 chamber.

8 A. Do you mean of documents in the executive
9 chamber?

10 Q. Yes.

11 A. I don't know precisely whether it means --
12 my sense is that it requires -- I can't even
13 speculate. It requires release of certain
14 documents. I think it requires release of
15 documents from the chamber to outside entities on
16 the matters requested by FOIL, for example. But
17 FOIL requires a range of things. I don't know
18 precisely.

19 Q. Does it require, to your knowledge, the
20 executive chamber to release the documents of
21 other agencies which are not in its possession?

22 A. To my layperson's understanding is that
23 under FOIL it doesn't matter whether the agency
24 releases it or the chamber releases it. But I

1 don't know for sure.

2 Q. Would FOIL require the executive chamber, to
3 your understanding, to release documents from the
4 Legislature?

5 A. We don't possess documents of the
6 legislature. You mean like these documents?

7 Q. Yes.

8 A. I don't know.

9 Q. Was it your understanding that the chamber
10 possessed itineraries of Senator Bruno?

11 A. No. I'm told this came from the State
12 Police by (?) the Albany Times Union.

13 Q. But that was from the State Police; they
14 were not executive chamber documents?

15 A. Correct.

16 Q. Did you ever ask Darren where he got the
17 itineraries from?

18 A. I don't recall, but I think it's a fair
19 assumption that they came -- I figure they came
20 from the State Police.

21 Q. What is that based upon?

22 A. That that's who does executive travel.

23 Q. Did you have any knowledge of the State
24 Police having itineraries?

1 A. Not until then.

2 Q. Until when?

3 A. I got an e-mail that says Bill Howard says
4 they have itineraries going back or something like
5 that.

6 Q. Did you ever ask to see the itineraries?

7 A. No.

8 Q. At any point from the time you received Bill
9 Howard's e-mail saying -- or e-mail saying they
10 have the itineraries until now Darren is showing
11 you the documents he is going to release --

12 A. Not showing me documents, but go on.

13 Q. He is just telling you?

14 A. Yes.

15 Q. -- did you ever ask to see the itineraries?

16 A. No. Not that I recall, no. I don't believe
17 so.

18 Q. Did you ever discuss with anyone in the
19 executive chamber the existence of these
20 itineraries?

21 A. I don't recall ever discussing it with
22 anyone.

23 Q. Did you ever discuss with anybody the
24 propriety of Darren Dopp obtaining these

1 itineraries?

2 A. I don't recall a discussion, no. There is
3 one fairly minor clarification. I believe this
4 discussion I had with Darren was in his office,
5 and the response to FOIL was on his d^esk. I
6 didn't inspect it, but when you said was I in the
7 presence of a document, I was in the presence of a
8 document. I physically saw it; that there were
9 documents there.

10 Q. Were there voluminous documents?

11 A. There was a pile of papers. I don't know.

12 Q. Do you remember was it a pile three inches
13 thick or a pile --

14 A. I don't recall.

15 Q. Do he lift it up and say: These are the
16 documents?

17 A. No.

18 Q. How did you know which documents were those
19 -- I mean you're the one who brought up the
20 subject.

21 A. I just didn't want to not tell the full -- I
22 just remember being in his office and saying:
23 These are the documents to turn over.

24 BY MS. SULLIVAN:

1 Q. Was there any thought to having your officer
2 from the chamber review the documents before they
3 were released?

4 A. I guess^{ed} that the FOIL officer had been in
5 the chain, the mix, the conversation on any
6 documents.

7 Q. So, you wouldn't have left it up to Darren
8 Dopp's discretion as to which documents were
9 released?

10 A. I assume all FOILS went through the FOIL
11 officer. I would never be a person to decide what
12 is produceable and what isn't, if I read the FOIL
13 law or read a summary of the FOIL law.

14 BY MS. TOOHER:

15 Q. Did you ever mention to Darren Dopp that he
16 should check with the FOIL officer on this
17 request?

18 A. No. I assumed ever^y FOIL request went --
19 goes to the FOIL officer.

20 Q. That is when the request is in writing; is
21 that correct?

22 A. I assume any request that comes in is either
23 going to be reviewed by her, and she will be in
24 the decision tree of what is produced. And she

1 would see documents and decide what is responsive
2 and what isn't responsive.

3 Q. Does she review oral requests that the
4 chamber receives?

5 A. I don't know. I just don't know.

6 Q. Is there a process in the chamber for oral
7 FOIL requests?

8 A. Not that I know of.

9 Q. Did you ever ask Darren if he had consulted
10 with the FOIL officer?

11 A. No.

12 Q. And, did Darren ever tell you that he had
13 received a written request?

14 A. I have known for a long time that he had
15 gotten a request. But written, not written, no.
16 I don't recall a conversation about that in
17 particular.

18 BY MR. TEITELBAUM:

19 Q. Did you find out whether the documents were
20 presented to the FOIL officer?

21 A. My sense is now from the report, the D.A.'s
22 report that they weren't.

23 Q. Other than from those reports was there any
24 discussion that you are aware of concerning the

1 fact that the FOIL officer had not been presented
2 with these documents within the executive chamber?

3 A. Not that I know of. The assumption was
4 she's the FOIL officer.

5 Q. I am talking about after July 1, you know.

6 A. Did I understand whether it had gone through
7 her?

8 Q. Your testimony is that you assumed that it
9 had been presented to her like every other FOIL
10 request; right?

11 A. Correct.

12 Q. You say from the reports that have been
13 issued that apparently the FOIL officer had not
14 been presented with the documents. My question is
15 was there a discussion within the executive
16 chamber that you are aware of concerning that
17 fact?

18 A. After July 1st?

19 Q. Correct.

20 MR. REICH: Could you just, for my
21 benefit, answer the question yes or no? And we
22 will go from there, depending on what the answer
23 is.

24 A. No, not until the FOIL report came out.

(?) garbled

1 And, yes, we shared it with David Nocente the
2 codified FOIL in the chamber. One of the
3 recommendation^s of the Attorney General's report
4 was that the FOIL rules in the chamber be sort of
5 written out and explained that everything has to
6 go through a very regimented chain of command
7 before it was released. And that was done after
8 the Cuomo report.

9 Q. Was this a conversation with Mr. Nocente
10 that you took part in?

11 A. After the Cuomo report?

12 Q. Yes.

13 A. Apparently, he took the A.G.'s report and
14 generated a new set of -- we'll call it rules,
15 regulations, and circulated them. Honestly, this
16 entire FOIL question is a lawyer's questions,
17 nothing I deal with beyond the level of what we've
18 been talking about, a heads-up of what is coming
19 my way.

20 Q. Did you have a conversation with Mr. Nocente
21 about this subject after the Cuomo report came
22 out?

23 MR. REICH: Answer the question yes or
24 no, and we'll see where we go from there.

1 MR. TEITELBAUM: No place.

2 A. I don't recall any.

3 Q. The document that was prepared in connection
4 with Mr. Nocente's apparent idea that there needed
5 to be a writing laying out what the procedures
6 are, should be within the executive chamber to
7 deal with flow of documents, did you ever see that
8 document?

9 A. I'm sure I did.

10 Q. And, from your perspective is there anything
11 in that document that was different from the
12 procedures that you understood pertained to the
13 executive chamber in connection with how to handle
14 a FOIL request prior to that document coming out?

15 A. I believe those are the processes that
16 should have been followed and was the obvious
17 process to follow.

18 Q. They were in place but they weren't in
19 writing; is that the idea?

20 A. I don't know whether David wrote anything
21 out when he came in. I have no idea. I
22 understand your question. Yes. To me, they were
23 obviously the processes which you follow. There
24 is a FOIL officer, so obviously -- and she is a

1 lawyer; I'm not a lawyer. So, I'm not going to --
2 there is a ⁹ FOIL which is a legal requirement that
3 you go through a FOIL. There's a FOIL officer;
4 that's what she's there for. I'm sure there was
5 an e-mail in the beginning saying Maria ^h Treisman
6 is our FOIL officer. Give a clear signal to her
7 when there's a FOIL.

8 Q. I'm a little unclear, Mr. Baum. Is there a
9 document that was prepared which laid out these
10 protocols?

11 A. After the Cuomo report?

12 Q. Yes.

13 A. I believe so.

14 Q. Do you have a copy of it?

15 A. I'm sure it's in my e-mail.

16 MR. TEITELBAUM: We would like to see a
17 copy of it.

18 MR. REICH: I don't have access to it,
19 to the official --

20 MR. TEITELBAUM: Does anyone have a
21 copy?

22 Q. Do you know approximately when the document
23 was sent around?

24 A. I believe after the Cuomo report. I believe

1 there was something sent around; I haven't got the
2 time period.

3 MR. REICH: Can we take just a
4 two-minute break?

5 (Recess taken)

6 MS. TOOHER: Can we pull out the
7 itineraries?

8 BY MS. TOOHER:

9 Q. I am going to show you what has previously
10 been marked as Commission's 1, 2, 3 and 4 and ask
11 you if you have ever seen these documents.

12 A. No. No, I don't believe so.

13 MR. REICH: Can you just give me one
14 second?

15 A. I have not seen them before July 1st.

16 Q. Before July 1st. Have you seen them after
17 July 1st.

18 A. I am not sure, honestly. I understand what
19 they are, but I don't believe if I have seen these
20 documents ever.

21 Q. Okay. What is your understanding as to what
22 they are?

23 A. Compilations that were created from
24 information from the State Police.

1 Q. Compilations on what?

2 A. Information concerning Senator Bruno's
3 transportation.

4 Q. And what is your understanding of how these
5 compilations came into being?

6 A. My understanding is someone, either Darren
7 or Bill Howard or somebody, ^{compiled} ~~filed~~ them.

8 Q. I'm sorry?

9 A. That Darren Dopp or Bill Howard compiled
10 this information.

11 Q. That they put the information together
12 themselves?

13 A. Darren or Bill Howard or someone in the
14 State Police, I don't know.

15 MR. REICH: Do you mind just ^{eliciting} ~~listening~~
16 to the basis for the testimony he just gave?

17 MS. TOOHER: Certainly.

18 INTERVIEWEE: Having read the newspaper
19 reports and the reports that have come out since
20 this matter came to light.

21 Q. Have you had any discussions concerning
22 these documents?

23 A. Not specifically, no. I don't recall a
24 specific discussion on these documents.

1 Q. Let me show you what has previously been
2 marked as Commission Exhibit 5 and ask you if you
3 have ever seen this document before --

4 A. No, not -- I don't recall.

5 Q. -- either before or after July 1st?

6 A. No. I don't believe I have.

7 Q. Do you know what this document is?

8 A. It look like itinerary.

9 Q. For --

10 A. For Senator Bruno.

11 Q. Have you ever had occasion to see
12 itineraries from Senator Bruno in your capacity
13 with the executive chamber?

14 A. No.

15 Q. On or about July 1st there was an article in
16 the Albany Times Union concerning Senator Bruno.
17 Are you familiar with this article?

18 A. Yes.

19 Q. And in the context of this article did you
20 ever see the itineraries that I have shown you,
21 Commission's 1 through 5?

22 A. No. I don't believe I have.

23 Q. And, did you read the Albany Times Union
24 article when it came out?

1 A. Yes.

2 Q. Did you have any discussions with anyone in
3 the chamber about the article when it came out?

4 A. Yes.

5 Q. And who did you have discussions with?

6 A. I spoke to Darren that morning, mostly
7 because I was getting on a plane ^{fr} ~~from~~ my vacation
8 to Florida, and I just wanted to touch base with
9 him before -- I figured I would be reading the
10 article and there would be news coverage by the
11 various news organizations. And I just wanted to
12 touch base with him.

13 Q. What was the sum and substance of that
14 conversation?

15 A. I assumed other news organization^s would call
16 and say: Okay. There's an article suggesting
17 something bad. The article suggested actually
18 all but criminality. I think you read it. And I
19 wanted to talk about how we would respond
20 following the media inquiries.

21 Q. When you say "the article all but suggested
22 criminality" how so?

23 A. I don't mean to overstate it. It cited the
24 law. This suggested he had broken the law, you

1 know. It spelled out a lot of stuff. It
2 suggested that it was a violation of some statute
3 that the reporter cited. I don't know if it's a
4 criminal statute, so I shouldn't have said that.

5 Q. And, did you have any reaction to that?

6 A. It was a much more negative story than I
7 expected.

8 Q. And did you express that to Darren?

9 A. I don't remember expressing that at all.

10 Q. Did you express anything concerning your
11 prior discussions on the area of Senator Bruno's
12 travel at that point?

13 A. No. I don't recall having a discussion like
14 that.

15 Q. Did you mention anything about your prior
16 determination that there was nothing wrong in the
17 article?

18 A. No, I don't believe I did. I remember
19 thinking that I still basically believe that he
20 had ^{not} done anything illegal, but the article was
21 certainly framed that there was something wrong in
22 what he had done.

23 Q. Did you ask Darren if he had anything to do
24 with framing that issue?

1 A. No, I don't think I did. My two kids and my
2 wife were in the airport getting a plane at 7:30
3 in the morning, so it wasn't like that.

4 Q. Did you ever communicate with Darren in any
5 other way on the article at that point?

6 A. I don't remember. I believe we spoke with
7 him in an e-mail but I don't remember.

8 (Commission's Exhibit 49 was marked for
9 identification.)

10 Q. Did you communicate with anyone besides
11 Darren on the morning of July 1st concerning the
12 article?

13 A. I may have spoken to the Governor but I'm
14 not sure.

15 Q. In your conversations with the Governor do
16 you recall mentioning anything about the article?

17 A. I don't recall. I don't know.

18 Q. I am going to show you what has been marked
19 as Commission's Exhibit 49. I'll ask you to take
20 a moment to review that document.

21 (The witness complied.)

22 A. Okay.

23 Q. It's a one-page document. The first line,
24 "Richard Baum July 1, 2007, 8:18." At the bottom

1 of the document is the earliest entry, 6:19 a.m.
2 on 7/01. It's an e-mail from Darren Dopp to
3 Richard Baum and Lawrence. Do you recall
4 receiving this e-mail?

5 A. Yes.

6 Q. When asked about the EnRon revolution Uncle
7 Charles, a leading authority on accounting ethics
8 said, "well, it's not good." What did you
9 understand that to mean?

10 A. There was a joke that preceded this about
11 understatements. Someone was told: What do you
12 think of EnRon? And he said: It's not good. And
13 it's the understatement of the year. It was a
14 running like -- no relevance to this.

15 Q. We were curious. And, your response to
16 that, "Wow! He's got a problem," what did you
17 think the problem was?

18 A. It was a very negative news story and
19 everybody was calling and asking about it and
20 asking someone to look into it.

21 Q. And, a little further up in the thread, at
22 7:56 a.m. you are responding again to Darren Dopp,
23 "And tomorrow ground him and refer to the I.G."
24 What did you intend there?

1 A. The article called for action. There is no
2 way to have that article out there and say it's no
3 big deal or something like that. And, we couldn't
4 continue -- and my idea was that given that
5 article, we couldn't say keep using the aircraft.
6 We had to have somebody, an independent body, look
7 into it.

8 Q. But you had already made a determination
9 legally that there was not a basis for a referral
10 to the I.G. on this issue; is that correct?

11 A. Yes, based on my understanding of what this
12 amounted to.

13 Q. Was your understanding changed by this
14 article?

15 A. Fundamentally, no. But the reality is that
16 there is an article in the paper that essentially
17 demanded someone look into this citing actions and
18 citing virtually no excuse, no proper excuse or
19 explanation from Senator Bruno and it cited the
20 law. So, I felt that there was no way we
21 couldn't. We had to have some -- okay. We're
22 going to tell someone to look into it.

23 Q. At this point in time had anything changed
24 in your viewpoint as to Senator Bruno's actions?

1 A. Changed how?

2 Q. In terms of the propriety of those action.

3 A. I still felt that as long as you had some
4 official business you were okay, one was okay with
5 the law. But the article did emanate -- framing
6 it in a different way, and I realize -- we are
7 doing to have to -- the article rightly perceived
8 it in a different frame, a different way. And I
9 realized we were going to have to -- I'm not a
10 lawyer. And, being the article correctly
11 perceived it would create a general clamor to get
12 to the bottom of whether there's anything wrong
13 here. The answer was not going to be: Rich Baum
14 says it's okay. Clearly, someone else had to give
15 an answer.

16 Q. Did you have any discussions with anyone in
17 the chamber concerning whether or not Senator
18 Bruno's actions were appropriate in light of the
19 article?

20 A. Yes. I believe I spoke to Dave either that
21 day or a day or two afterwards.

22 Q. What was that conversation about?

23 MR. REICH: Answer generally what the
24 conversation was about and see where we go from

1 there.

2 A. Just generally, we both felt there was
3 nothing improper. It was generally like, you
4 know, is there anything improper here? Did the
5 article change anything?

6 Q. The top line in the e-mail, the line about
7 death threats and the e-mail, "ATU had been taught
8 in classes for years to come. Can you explain
9 that?

10 A. It was just a model of poor press response
11 to me. And John McArdle tried to suppress it,
12 tried to ^gturn ^tin back on the reporters saying we
13 need police protection because we were having
14 death threats because of the Albany Times Union
15 coverage. It just seemed laughable to me.

16 Q. In what sense?

17 A. The idea that the Albany Times Union
18 coverage is stimulating death threats just doesn't
19 seem -- doesn't ring true to me.

20 BY MR. TEITELBAUM:

21 Q. It was not only you who had come to the
22 conclusion that there was nothing improper in
23 what the senator was doing, but David Nocente
24 also; correct?

1 A. I believe so, yeah.

2 Q. He told you that?

3 A. In a general sense, yes.

4 Q. You had a conversation with him after the
5 article appeared. Can you just describe generally
6 -- he reiterated that to you apparently?

7 A. Not as a legal decision; just as, you know,
8 we both kind of spoke out, you know, as long as
9 you're doing some official use.

10 Q. He is counsel to the Governor, so you don't
11 think he was bringing to bear that issue in his
12 legal skills?

13 A. Sure.

14 Q. So, when the suggestion is from -- well,
15 when the suggestion is he has a problem -- I'm
16 reading 49 now, what do you think? Put out a
17 statement/reviewing and deciding what action to
18 take, that doesn't seem to square with somebody
19 who has come to the conclusion that there is
20 nothing wrong here.

21 A. I spoke to David after this, I believe, the
22 early morning on Sunday. So, the conversation
23 would have happened during the week, probably.

24 Q. After this?

1 A. Yes.

2 Q. Well, you already had a conversation with
3 David back in May?

4 A. Yes.

5 Q. Right. And, your testimony is that from your
6 perspective standing orders were: Don't go
7 forward with an article condemning Bruno for use
8 of the state aircraft because he, from your
9 perspective and Nocente's perspective, he has done
10 nothing wrong; correct?

11 A. Yes.

12 Q. Tell me how this statement squares with the
13 conclusion that formed the basis for those
14 instructions.

15 A. Because there was an article that morning
16 that made a powerful case, despite my opinion and
17 David Nocente's opinion, that something wrong had
18 been done. With an article like that it's almost
19 inconceivable that we wouldn't seek some outside
20 look at and investigate -- and "message" is too
21 strong a word -- refer to someone for an
22 independent evaluation. And, remember also
23 Darren's original view was never crazy or
24 outlandish that we're implicated, too. So, the

1 idea that David Nocente and Rich Baum say don't
2 worry about it just wasn't realistic. Someone
3 would have to take a look at it.

4 Q. There is a suggestion in 49, "Ground him."
5 It is apparent -- that sounds punitive to me.

6 A. It was a colloquialism, a quickness laugh,
7 "ground him" that way.

8 Q. Well, it would be grounding him in that you
9 wouldn't permit him have access to state aircraft;
10 correct?

11 A. Correct.

12 Q. And that was -- and you agree with it.
13 Notwithstanding at that point neither you nor
14 Nocente had changed your mind with regard to the
15 fact that the Governor said the senator was doing
16 nothing improper; is that correct?

17 A. That morning I didn't evaluate how does my
18 original opinion comport with the article that the
19 Times Union wrote. I'm just saying that with that
20 article out there that we are also implicated in
21 wrongdoing would be like saying okay, keep using
22 the helicopter. At this point it wasn't
23 realistic. We have to say -- to use my judgment
24 as the governor's advisor making sure that we look

1 right and do right. You can't let an article like
2 that come out and say, okay, keep using the
3 chopper in the same way and no one is going to
4 look into it.

5 Q. But the matter had already been considered;
6 hadn't it?

7 A. The matters had been discussed, sure.

8 Q. Was releasing that fact it had not been
9 communicated to the press?

10 A. I don't know. We had never -- we had never
11 done like formal opinions. It was just our
12 internal view. That I know of, no one had taken
13 the materials that Darren Dopp had turned over the
14 Times Union and examined them and said: Okay. Do
15 we still think this is all proper? So, at this
16 point we were relying on documents that hadn't
17 really been examined that way that were being
18 published in the newspaper made out to be pretty
19 bad, you know, in the way they were presented.
20 It's a compilation. I think it was very realistic
21 in this situation, despite what we think, to look
22 at it, reevaluate it.

23 Q. That is because, I take it, there were
24 political realities that you had to address?

1 A. I don't know that I would be that cynical.
2 Political realities --

3 Q. I'm not trying to be cynical about it; I'm
4 just --

5 A. No, no. Just a reality in terms of he's the
6 Governor. It's public property. There's a front
7 page article in the Albany Times Union saying it's
8 being misused in violation of a law. You can't
9 shrug it off and say, oh, it's okay; don't worry
10 about it. It's not just a political reality like
11 running for office polls. It's that the public
12 expects you to take something like ^{that} seriously and
13 have someone look at it.

14 Q. Had research been done by the executive
15 chamber on whether or not there is a violation of
16 the penal law, is that right, on what Senator
17 Bruno was doing; isn't that true?

18 A. I don't know.

19 Q. Do you know whether the Senate undertaking
20 caused that research to be done?

21 A. I don't know.

22 Q. Was there a visit to the Manhattan D.A.'s
23 office concerning use of the aircraft by Bruno?

24 A. Before the release?

1 Q. Or after that.

2 A. I don't know any formal -- I know that after
3 the article came out there was some -- I know we
4 were going to be circumspect about it. I know
5 that David spoke to several agencies. I don't
6 know whether he initiated it or they initiated it.
7 And I don't know --

8 Q. Do you know what the purpose was for David
9 Nocente talking to these agencies?

10 MR. REICH: Start with a yes or no.

11 A. Yes. The purpose was to see if anyone was
12 going to be forwarding this material to look into.
13 But I don't know who initiated that or what the
14 substance of the discussions was.

15 Q. You forwarded the material that had been
16 given to the Albany Times Union --

17 A. Correct.

18 Q. -- to see if those materials would indicate
19 that a crime had been committed?

20 A. Correct.

21 Q. Do you know if that was done; in other
22 words, if the materials had been forwarded to
23 someone?

24 A. I think it was, but I don't know which ones.

1 Q. Do you know what the result of that was?

2 A. Nothing that I know of.

3 Q. Was there any reaction from the
4 prosecutorial agencies to the materials?

5 A. I know there was a formal report on this the
6 use of the helicopter. I believe that the D.A.
7 said something. That's all I know. The Manhattan
8 D.A.?

9 Q. Yes. Do you know what the D.A. said?

10 MR. REICH: Can we ^{clarify} ~~talk about~~ which D.A.
11 you are talking about?

12 Q. I'm talking about the Manhattan D.A. In
13 answering my questions concerning this subject you
14 talked about the Governor, how he would be -- how
15 the Governor would be perceived by the public.
16 Before, you referred to "He's got a problem." Is
17 that the Governor --

18 A. No.

19 Q. -- or Senator Bruno?

20 A. Senator Bruno.

21 Q. I take it, he was permitted to continue to
22 use the aircraft because those in the executive
23 chamber who were responsible for considering this
24 matter concluded that there was nothing wrong with

1 his using the aircraft; correct?

2 A. As long as he had attested -- filled out the
3 form and attested, yes.

4 (Commission Exhibit 50 was marked for
5 identification.)

6 BY MS. TOOHER:

7 Q. I am going to show you what has been marked
8 as Commission's Exhibit 50 and ask you to take a
9 look at it. It's an e-mail thread that is
10 virtually identical to Commission's 49 except for
11 the top entry. And, quite frankly, not being
12 savvy enough in the blackberry department, I just
13 assumed perhaps you were responding back and forth
14 faster than -- so that you have might have
15 responded, or Darren Dopp might have responded
16 before he got your response and that's why you
17 ended up with two separate threads. But in any
18 event, the top entry is, "The only twist is the
19 S.P. thing. I think it's worth noting that
20 there's never been a threat assessment."

21 A. Is that from me or him?

22 Q. That's from Darren Dopp to you.

23 A. To me, okay.

24 Q. Again, this is obviously a reference to the

1 Times Union article and the discussion in that
2 area. What is "the S.P. thing"?

3 A. I don't know. It's obviously referring to
4 something in the article. Oh, you know what?
5 I'll bet he means -- perhaps he's referring to
6 what I was afraid to in the prior one, the death
7 threats and that he needs State Police protection
8 for death threats.

9 Q. He says, "I think it's worth noting that
10 there's never been a threat assessment." The time
11 on this is 7:57 a.m. and actually comes before
12 your 8:18 a.m. line about death threats in the
13 ATU.

14 A. I don't if it's responsive -- Obviously,
15 it's not responsive to that. But the only thing I
16 can think of here that he is referring to as "the
17 S.P. thing" is that it's being claimed that he
18 needs State Police protection because of the death
19 threats. And that's why he says, "I think it's
20 worth noting there has never been a threat
21 assessment," which is the typical -- if someone, a
22 member of the Assembly says, you know: Someone is
23 threatening my life, well, the State Police will
24 ask if he needs protection, a threat assessment.

1 Q. How is he aware that there has never been a
2 threat assessment?

3 A. I don't know.

4 Q. Were you aware at that juncture that there
5 had never been a threat assessment?

6 A. I don't believe so. I don't know. I don't
7 remember. I'm not aware of that.

8 Q. Was that issue about a threat assessment and
9 Senator Bruno discussed with you at any time?

10 A. I don't recall ever discussing it.

11 Q. Were you ever privy to conversations where
12 the issue of a death threat against Senator Bruno
13 and the transportation issue were discussed?

14 A. I don't remember anything like that.

15 Q. Did Darren Dopp ever mention to you the
16 issue of security and Senator Bruno's use of the
17 helicopter during this time frame of July 1st?

18 A. On that day, you mean?

19 Q. Before or shortly after.

20 A. Aside from everything we've talked about up
21 to now, I don't believe so.

22 BY MR. TEITELBAUM:

23 Q. Did anybody indicate to you, Mr. Baum, that
24 he or she viewed the security threat to Senator

1 Bruno to be a low one at or around the time of
2 this Exhibit 50?

3 A. I don't remember a discussion about that.

4 Q. You didn't have a discussion about that?

5 A. No, I don't believe so. I think I just -- I
6 don't remember a discussion like that for a threat
7 assessment.

8 Q. You just gave us some testimony about what a
9 threat assessment is. How do you know what a
10 threat assessment is?

11 A. There was a juncture in the matter of
12 Hevesi, whether his wife -- he claimed his wife
13 needed it and whether these people had a threat
14 assessment. He claimed there was -- that it had
15 been evaluated but the State Police claimed there
16 was a low threat assessment.

17 BY MS. TOOHER:

18 Q. And, I assume conversations about this
19 article and the impacts on the chamber went on for
20 some time?

21 A. Sure, yes.

22 Q. You mentioned in both 49 and 50 a referral
23 to the I.G. Was anything ever done on that front?

24 A. I don't know. David would have handled it.

1 I don't know.

2 Q. David would have handled --

3 A. Whether it ^{should} be given to anyone, whether
4 anyone is asking for it.

5 Q. And, was there ever any discussion amongst
6 Dopp, yourself, and other members potentially of
7 the executive chamber about issuing a statement
8 concerning the referral of the matter?

9 A. Probably -- probably. I don't remember. I
10 was on vacation in Florida. I believe there may
11 have been some discussion, but I don't remember.

12 Q. Did you ever have an opportunity to review
13 any documents concerning referral of the matter?

14 A. I don't remember. I may have. I may have
15 been involved in --

16 MR. REICH: Wait until there is a
17 question.

18 MR. TEITELBAUM: Do you want to
19 supplement your response?

20 INTERVIEWEE: It's just what I answered
21 before, no. I just know David oversaw the
22 interaction. I think I had some discussions about
23 it generally, the idea of referring it, as per the
24 e-mail.

1 (Commission Exhibit 51 was marked for
2 identification.)

3 BY MS. TOOHER:

4 Q. Let me show you what has been marked as
5 Commission's Exhibit 51, an e-mail from Richard
6 Baum to Darren Dopp dated July 2, 2007 at 11:19
7 a.m. The caption subject: Statement today. At
8 the bottom of this document it says, "Attachment,
9 Bruno referral document deleted by Richard Baum."
10 Can you identify this document?

11 A. An e-mail from me to Darren.

12 Q. Do you recall sending this e-mail?

13 A. I don't really.

14 Q. Do you know what the Bruno referral document
15 attachment is?

16 A. I don't.

17 Q. When did you delete that document?

18 A. I don't know.

19 Q. And, apparently, Darren Dopp copied the
20 original e-mail for your review to you, to David
21 Nocente, Richard Rifkin, and Peter Pope. Do you
22 recall the statement that was sent to you on or
23 about September 2nd for your review?

24 A. I just don't. I don't recall the content of

1 the statement.

2 Q. Did you have discussions with Richard
3 Rifkin, Peter Pope, and David Nocente about a
4 Bruno referral document on or about July 2nd?

5 A. I don't remember any discussion about it.

6 Q. Do you normally delete the attachments to
7 your e-mails?

8 A. No. I mean I guess I could. Sometimes it
9 might make sense. The blackberry slows down. It
10 gets clogged with attachments, so I'll delete
11 things just so it doesn't get slowed down.

12 MR. TEITELBAUM: Let's take a break; okay?

13 (Recess taken)

14 (Commission Exhibit 52 was marked for
15 identification.)

16 BY MS. TOOHER:

17 Q. I think where we left off, you indicated
18 that the Bruno referral document in your e-mail,
19 Exhibit 51, that you don't recall what that
20 document was. I am showing you what has now been
21 marked as Commission Exhibit 52; again, an e-mail
22 from Darren Dopp on 7/02/07 at 4:14 p.m. to you.
23 Do you recognize this document?

24 A. I don't really remember it, but I remember

1 -- yes, seeing it now, I remember the basic import
2 of it. I don't remember the document. I know
3 there was a statement contemplated.

4 Q. Is this the document that was an attachment
5 to your earlier e-mail, 51?

6 A. I just don't -- I don't know. I just don't
7 know.

8 Q. Commission's 52, do you know what this is?

9 A. It's a response clearly that the Governor
10 had directed Darren to draw up ~~I am~~ ^I responding
11 to Senator Bruno's attack on Governor Spitzer.

12 Q. And this just refers to a number of
13 issues --

14 A. Correct.

15 Q. -- but it does not refer to a particular
16 referral of Senator Bruno or his activities?

17 A. It mentions the use of aircraft.

18 Q. Correct. But, your e-mail, Exhibit 51, is
19 specifically a Bruno referral document.

20 A. Correct.

21 Q. So, you don't know if this is it?

22 A. No, I'm sorry. I just don't know.

23 BY MR. TEITELBAUM:

24 Q. Did there come a time when you moved to the

1 conclusion that Mr. Dopp had done something wrong
2 in connection with this matter?

3 A. Well, certainly when the A.G.'s report came
4 out. Before then, I had been largely -- recused
5 may be a little too strong a word -- but largely
6 purposely left out of the internal back-and-forth
7 with the Attorney General's Office in document
8 production. So, my knowledge was pretty limited.

9 Q. Your reaching a conclusion that Mr. Dopp had
10 done something wrong was based entirely on what
11 was said by the Attorney General, or did you make
12 an independent judgment as well?

13 A. I made a judgment before then. But
14 certainly my attitude on aspects of it were filled
15 in by the Attorney General's report.

16 Q. What did you conclude Mr. Dopp had done
17 wrong?

18 A. I see two things. Number one, in dealing
19 with a political opponent and any kind of police
20 powers or State Police, in this specific instance
21 it is very, very important to do everything in the
22 most legalistic way, to go through the appropriate
23 channels, to go through legal channels and systems
24 that have been set up. And his direct involvement

1 in it and the failure to execute and fulfill the
2 FOIL through those channels was an error in
3 judgment because it undermines the sense that the
4 State Police are different from everyone else and
5 that police powers are held up as impartial and
6 can't be perceived to be used as a way to get at
7 political opponents.

8 And, two, I think regarding FOIL and
9 political opponents and also state police you
10 should only do exactly what the FOIL law requires
11 for these documents. And I don't know if
12 compilation of documents is permitted or
13 contemplated in the FOIL law, but that just going
14 the extra mile before turning over documents
15 similarly undermines the view that the police and
16 our involvement with the police should be only in
17 the most legalistic and appropriate way.

18 Q. How did Mr. Dopp misuse the State Police as
19 you just described it from your perspective?

20 A. I think pulling together the trail of
21 documents that you showed me, and sort of the
22 recreation of itineraries I think is suggesting
23 that we will make the extra effort with the State
24 Police to discredit a political opponent.

1 Q. Have you concluded that Mr. Howard had done
2 something wrong?

3 A. I don't know to the extent who did more of
4 these things. But clearly, Darren Dopp and Bill
5 Howard are both part of putting those documents
6 together.

7 Q. How about Preston Felton? Did you conclude
8 that he had done something wrong?

9 A. I just don't know the answer. I don't know
10 enough about it to know what knowledge he had of
11 the creation of documents.

12 BY MS. TOOHER:

13 Q. On or about July 5th there was a response to
14 the Times Union article in the New York Post
15 issued by Fred Dicker. Are you aware of that
16 article?

17 A. I'm aware of a lot of articles. I would
18 have to see it, I was thinking.

19 (Commission's Exhibit 53 was marked for
20 identification.)

21 Q. I am handing you what has been marked as
22 Commission's Exhibit 53, a July 5, 2007 article,
23 "Police to track GOP foe's movements." Take a
24 moment to review it.

1 MR. REICH: The pages to focus on -- Is
2 there a specific part of this that you want to ask
3 him about?

4 Q. Have you seen this article before, as you
5 look at it?

6 A. Yes.

7 Q. And, there is -- in the second column there
8 is a quote attributed to Mr. Dopp: "'I long
9 thought it was highly inappropriate and it
10 probably was, because recalling that incident the
11 State Police made some changes and, yes, keeping
12 basic records; i.e. logs,' Dopp said."

13 A. Yes.

14 Q. Are you familiar with that statement by
15 Darren Dopp?

16 A. Yes.

17 Q. And, have you ever communicated any reaction
18 on that statement to anyone else in the chamber?

19 A. Yes. I was upset about it and told the
20 Governor.

21 Q. Why were you upset about it?

22 A. I didn't think -- it was essentially
23 inaccurate. It contradicted the other accurate
24 comments that we had made. Because of the

1 ambiguity of the wording it sounded like changes
2 had been made. It seemed possibly changes had
3 been made since this Governor had taken office.
4 But that we had been sitting accurately (phonetic)
5 among you and we had made no changes. We only
6 instituted operating procedures since we had
7 arrived. Because it said, recalling that
8 incident: They made some changes. And it sounded
9 like in some imminent way for some reason that's
10 why they made the changes.

11 Q. And the statement attributed to Mr. Dopp,
12 "Yes, keeping basic records; i.e., logs" -- there
13 are quotes around this statement. Do you know
14 where that statement comes from?

15 A. I am assuming that it's his quote of a
16 conversation or e-mail with Darren Dopp.

17 Q. Do you know whether it was a conversation or
18 an e-mail?

19 A. I believe it was an e-mail.

20 BY MR. TEITELBAUM:

21 Q. Concerning 53, it says here on the bottom of
22 the first column, "Spitzer spokesman Darren Dopp
23 told the Post that the records on Bruno began to
24 be assembled because there was an incident late

1 last year in which Mike Long called and complained
2 about Joe bringing armed troopers to" -- in
3 brackets -- {Long's} fundraising event." Is it
4 the truth that, as far as you now know, the
5 documents began to be assembled because of the
6 complaint by Long?

7 A. I don't believe that is accurate. I don't
8 think it's supported by the two investigations
9 that had^{ve} been done.

10 Q. Are you aware that, in fact, Mr. Spitzer
11 said this? Not Spitzer, Dopp -- I'm sorry.

12 A. Yes. I remember this article.

13 Q. Is it your understanding that, in fact, Dopp
14 told the press what I have just quoted?

15 A. Only from this.

16 Q. Did anybody, to your knowledge, question
17 Dopp about his putting out to the public that
18 statement within the executive chamber?

19 A. Yes. I don't know.

20 Q. If that was misinformation, would that also
21 be something that Mr. Dopp did that was wrong?

22 A. Yes.

23 Q. Do you have any idea why Mr. Dopp would be
24 less than truthful, if he was, in characterizing

1 the reason that documents began to be assembled?

2 A. No. This whole -- It made no sense to me.

3 Q. Was it your belief that the documents began
4 to be assembled because of the FOIL request?

5 A. To the extent I knew anything, I just knew
6 that they had gathered documents pursuant to the
7 law.

8 Q. Does Dopp's explanation as contained in 53
9 cause you to question whether the documents were
10 being assembled in response to a FOIL request?

11 A. Whether the executive chamber was assembling
12 documents?

13 Q. My question is: Does the statement
14 attributable to Mr. Dopp in (Exhibit) 53
15 concerning Long as being the reason for the
16 assembling of documents cause you now to question
17 whether, in fact, documents were being assembled
18 in response to a FOIL request?

19 MR. REICH: Do you understand the
20 question?

21 INTERVIEWEE: I don't understand the
22 question.

23 MR. REICH: If you don't understand the
24 question let him rephrase it.

1 MR. TEITELBAUM: If you don't understand
2 the question I will rephrase it.

3 INTERVIEWEE: My question is this isn't
4 about assembling documents. This is about the
5 State Police practices really. Am I correct? The
6 State Police made some changes and also records;
7 i.e., logs.

8 Q. It says here, "Spitzer's spokesman Darren
9 Dopp told the Post that the records on Bruno began
10 to be assembled because R.A." -- Do you see that
11 at the bottom of the first page?

12 A. Okay, I see that. It's ambiguous what he's
13 talking about.

14 Q. Let me cut to the chase here. If documents
15 were being assembled in response to a FOIL request
16 and Mr. Dopp was being truthful, that's what he
17 would have said; correct?

18 A. Yes.

19 Q. But he didn't say that; correct?

20 MR. REICH: Can I just -- That's what
21 Fred Dicker reports Dopp said.

22 Q. I am not saying Dopp said it. I am saying
23 as contained in 53. Everything that I am saying
24 is as contained in 53, if this is, in fact, what

1 he said.

2 A. There were things Darren said in that time
3 period that obviously don't comport. I just have
4 to say that this quote, I read this as pertaining
5 to the State Police's gathering of the documents,
6 not to the chamber's gathering of the documents.
7 Your point I agree with. There are things that he
8 said that clearly if our understanding now was
9 what he had done, there is no reason he wouldn't
10 have just said the truth if that was the truth --

11 Q. I understand that.

12 A. -- for what it's worth. I think the
13 "assembling" here is referring to the state
14 police.

15 Q. You read it as the State Police units all by
16 themselves and not pursuant to a request?

17 A. I read it as -- recalling the incident --
18 it's parallel. I hate to quibble with you. But
19 Bruno began to assemble because there was an
20 incident late last year which led one caller to
21 complain. And in the next paragraph: Recalling
22 that incident the State Police made some changes
23 in asking to keep basic logs and records.

24 Q. It then says, "Long insisted that he never

1 complained about it."

2 A. Yes. I think the whole story is useless to
3 me and made no sense to me and still makes no
4 sense to me. And this has gone on longer that it
5 should have. And, clearly, it would have been
6 much better to tell the truth if it was the truth
7 that it's responding to a request. And, so I
8 understand that point, yes, it does make you doubt
9 the whole thing that this story which has no real
10 role here. I don't even know where he got it
11 from. It doesn't make a lot of sense.

12 Q. Does this occur to you having read this, and
13 what you just said about Dopp's statements during
14 this period make you question that in fact Dopp
15 caused the gathering of documents in order to get
16 Bruno?

17 A. Clearly, when you look at our whole day here
18 together with all of the information, he was
19 trying to move the story out in the public that
20 was damaging to Senator Bruno. You can't dispute
21 that really.

22 (Commission's Exhibit 54 was marked for
23 identification.)

24 (Recess taken)

1 BY MS. TOOHER:

2 Q. You have in front of you a document that has
3 been marked as Commission Exhibit 54.

4 A. Um-hmm.

5 Q. This is an e-mail from Darren Dopp from
6 FUD [REDACTED]. Do you know who FUD [REDACTED] is?

7 A. Fred Dicker.

8 Q. That's the same Fred Dicker who writes for
9 the New York Post?

10 A. Yes.

11 Q. Have you seen this e-mail before?

12 A. I think I saw part of it in the Post in that
13 story; right?

14 Q. Yes. Were you aware that this e-mail was
15 the basis for the quotes in the Post?

16 A. I am aware there was an e-mail because I
17 remember that there was -- an attachment to the
18 story was an e-mail -- I don't know what you call
19 it, but an e-mail from Darren Dopp with that quote
20 in it. As I commented, I was irritated about it.
21 I remember it clearly.

22 Q. But you have never seen the e-mail in toto
23 before?

24 A. I don't believe I have.

1 Q. Can I ask you some questions about the
2 information in the e-mail?

3 INTERVIEWEE: If I can just take a
4 second to read it, okay.

5 (Pause taken)

6 INTERVIEWEE: Okay.

7 Q. In the first sentence Fred is calling this
8 surveillance a "stretch." Do you know what he is
9 referring to there?

10 A. That was a charge by Senator Bruno and Fred
11 Dicker ^{and Dumen} didn't consider it a surveillance.

12 Q. And the second paragraph, "You need to know
13 the following. Joe's request for S.P. coverage
14 was quite out of the ordinary. It went directly
15 to the local barracks."

16 A. Um-hmm.

17 Q. Is that statement true?

18 A. Not that I know of. I don't know it to be
19 -- No, I don't know. I'm sorry. I don't know it
20 to be true or untrue.

21 Q. Were you ever advised that Joe Bruno was
22 making requests for the State Police out of the
23 ordinary?

24 A. I don't believe so.

1 Q. Were you ever advised that he was making his
2 requests for ground transportation directly to the
3 local barracks?

4 A. I don't believe so.

5 Q. In your discussions prior to July 1
6 concerning Senator Bruno and his use of the
7 helicopter and State Police, did Darren Dopp ever
8 advise you that he was acting outside of protocol
9 or going directly to the local barracks?

10 A. I don't believe so. I knew generally that
11 he was -- that he wanted to have a driver in
12 Manhattan when he was there and I thought it was
13 fine. I'm not sure how or when it came up, but it
14 didn't seem like a big deal to me. He's the
15 Majority Leader of the Senate. If he wants a
16 driver from the State Police, it's okay.

17 Q. So, if Darren was telling that to Fred
18 Dicker and it was not true, would that be wrong?

19 A. Sure.

20 Q. And the security issues, i.e., the death
21 threats came up only this week. Do you know that
22 to be an accurate statement?

23 A. I don't have any knowledge beyond -- of that
24 whole death threat issue. I have no knowledge

1 beyond whatever I've read in the newspaper and now
2 what I read here.

3 Q. And, "I'm told that the logs were kept in
4 part to protect the S.P. who were driving him."
5 And we get to the portion that was quoted in the
6 newspaper. The logs, the documents that were in
7 the Times Union are the documents that they are
8 referring to in the first sentence in this e-mail?

9 A. Yes.

10 Q. Is it your knowledge that those logs were
11 created as a consequence of the Mike Long
12 incident?

13 A. That's not my understanding. But all I know
14 is what you have read in the public reports.

15 Q. Are you aware of any changes that the State
16 Police made concerning the Mike Long report?

17 A. No, nothing beyond Darren's claim in the
18 Post.

19 Q. Did Darren ever relay that information to
20 you that the State Police had made changes in
21 response to a complaint from Mike Long?

22 A. I think that day or the day before, right
23 after this thing came out, he told me that story.

24 Q. Told you --

1 A. You know, that there was this incident with
2 Mike Long kind of thing. I remember telling him
3 basically the developments.

4 Q. But, did he tell you that the State Police
5 made changes as a consequence?

6 A. No. I think he told me about the blowup with
7 Mike Long over the State Police, providing State
8 Police presence at sometimes a political event.

9 Q. What was your understanding of what Darren
10 was telling you about the Long event?

11 A. That the issue had come up before why he has
12 this kind of event detail.

13 Q. Did you have conversations or communications
14 with the Governor concerning this article?

15 A. Yes.

16 Q. What was the nature of those communications?

17 A. I told him that I thought Darren's quote was
18 foolish.

19 Q. When you say "foolish" what do you mean by
20 that?

21 A. Inaccurate, not appropriate. The
22 implication -- we have been saying -- it was my
23 clear understanding that we had not changed
24 procedures since we've been there. And Darren was

1 saying that and the Governor was saying that, and
2 that was my understanding of the truth. Yet, the
3 quote made it sound like there had been changes in
4 the State Police procedure since the new Governor
5 had taken over.

6 Q. Did you reduce that to writing at all?

7 A. Yes. ~~We~~^I had an exchange with the Governor
8 about it.

9 (Commission's Exhibit 55 was marked for
10 identification.)

11 Q. You have in front of you what has been
12 marked as Commission's Exhibit 55, an e-mail from
13 Richard Baum to Lawrence dated 7/06 2007, at 9:02
14 a.m. Is this the communication you were referring
15 to?

16 A. Yes.

17 Q. And, you are discussing the July 5th Post
18 article?

19 A. Yes.

20 Q. And you describe in the second paragraph a
21 response to that article. Item 2, "All that
22 happened here is the S.P. used documents sent by
23 Bruno's office. No other info was generated or
24 was asked for." On July 6, 2007 do you know that

1 to be true?

2 A. Yes, um-hmm.

3 Q. So, you were unaware at that point of the
4 information from the State Police?

5 A. My understanding was that we had only taken
6 -- we had only passed on documents from Senator
7 Bruno's office.

8 Q. So, you were unaware on July 6th that those
9 documents were compilations that had been created
10 by the State Police?

11 A. Yes, exactly.

12 Q. You did not know on July 6th?

13 A. I did not know. Sorry.

14 Q. When did you learn that?

15 A. At some point in this while the internal
16 investigation, while the work with the Attorney
17 General was going on. I think David Nocente told
18 me that.

19 Q. What were you told?

20 MR. REICH: Meave, I've got to say that
21 I just can't ^{let} him answer that question.
22 ^

22 BY MR. TEITELBAUM:

23 Q. Here's the question. Did Mr. Nocente give
24 you advice, legal advice?

1 A. Yes.

2 Q. He was giving you legal advice when he was
3 explaining to you the subject of the recreation of
4 documents or the creation of documents?

5 A. In general, David was acting as my --
6 identified himself as my representative at that
7 time.

8 Q. In connection with what matter was he
9 representing you?

10 A. The Attorney General's office.

11 BY MS. TOOHER:

12 Q. No other info was generated or was asked
13 for?

14 A. Um-hmm.

15 Q. Is it your understanding that Darren Dopp
16 was asking for information in response to a
17 request from the media?

18 A. Yes.

19 Q. So, the statement, "no other info was
20 generated or was asked for," is not accurate;
21 isn't that correct?

22 A. No, it's not accurate.

23 MR. REICH: Can we just clarify? When
24 we say "it's not accurate" you need to clarify

1 what Rich understood at that time. I want to
2 clarify that Rich at that time understood it to be
3 accurate.

4 INTERVIEWEE: I'm not counseling the
5 Governor what to say. I'm telling him what I
6 think is accurate. And that is what I thought was
7 accurate at that moment.

8 BY MS. TOOHER:

9 Q. At that moment you understood that documents
10 had been requested, asked for, pursuant to a media
11 request?

12 A. Yes. "No other info was generated or was
13 asked for" -- when you focus on the "asked for"
14 the implication of what I meant by the sentence
15 was that the State Police used the documents sent
16 by Bruno's office. "No other info was generated
17 or asked for." I think I'm referring -- and
18 countering the quote in there that says --

19 MR. TEITELBAUM: That being the Dicker
20 article?

21 INTERVIEWEE: The Dicker article, yes.
22 That says they were keeping basic records; i.e.,
23 logs.

24 BY MS. TOOHER:

1 Q. In the fourth paragraph down, the e-mail
2 from Darren to Dicker that is reprinted in the
3 Post, "It's a problem. Need to figure out how to
4 explain it away." Can you explain what you mean
5 there?

6 A. It's poorly written, poor language. And
7 what I meant is that the article -- the quote
8 didn't seem accurate to me. I didn't believe it
9 was accurate and also conflicted with prior
10 comments, so we had to figure out how to explain
11 that.

12 Q. Isn't that the explanation contained in item
13 two?

14 A. I believe what I was talking about there, my
15 focus honestly was not that issue. The focus was
16 the implication, as I recall, that we had made
17 changes in standard operating procedure since we
18 arrived. And the exact language in the quote was
19 left ambiguous.

20 (Commission Exhibit 56 was marked for
21 identification.)

22 Q. Just one second.

23 A. Sure.

24 Q. This is, again, regarding your article in

1 the Post. (Indicating Exhibit 56) This is July
2 6, 2007, the same day.

3 A. Yes.

4 Q. And, in the first paragraph you indicate, "I
5 don't know what he was thinking. It's basically
6 the Mike Long claim and, depending on how you read
7 it, an admission that S.P. was doing more than we
8 have been saying. Read closely, he seems to be
9 talking about the previous administration which I
10 think is the answer. They made a big deal of it."

11 A. I was suggesting my concern that it looks
12 like we had made a change when I don't believe we
13 had, because the e-mail says at the end of last
14 year there was this blow-up with Mike Long. And
15 it suggested that with that in mind, the State
16 Police made a change.

17 Q. And you say, "Depending upon how you read
18 it, it's an admission that the State Police was
19 doing more than we have been saying." On July 6th
20 at the time you write this had the "State Police
21 been doing more than we have been publicly
22 saying"?

23 A. Yes.

24 Q. And, you were aware that the State Police

1 was doing more than you had been publicly saying
2 as of July 6th?

3 A. No.

4 Q. So, what would be the admission here?

5 A. As I said, it's not worded perfectly. But
6 the article would be suggesting the State Police
7 were doing more than we have been saying.

8 Q. At the State police was, in fact, doing more
9 than you had been saying.

10 A. In the State Police -- right, because we
11 were staying we were just turning over documents
12 with Bruno's office when, in fact, yes. The
13 answer is yes.

14 MR. REICH: Can you just close off that
15 line by asking him whether he knew that at the
16 time of this e-mail?

17 Q. Did you know that at the time of this
18 e-mail?

19 A. No. I'm frankly not fully up to date on
20 precisely what we were saying. I was in Florida
21 on vacation, so I'm not -- and all this was a long
22 time ago. I don't remember what the -- There were
23 several official statements from the office which
24 I don't know precisely what was in them, what

1 words were used at the various times. So, I'm a
2 little -- remembering isn't perfect on what
3 precisely he was saying, what we had been doing
4 and what the State Police were doing. But my
5 sense is that --

6 Q. This is based on the Post article and what
7 is in the Post?

8 A. Right. I'm just saying -- what I'm saying
9 when you're asking: Was this contradictory to
10 what we have been saying, I don't know exactly
11 what we had been saying.

12 Q. You see, "Read closely, he seems to be
13 talking about the previous administration, which I
14 think is the answer." And that, again, is
15 referring to the Posts article in Exhibit 53
16 concerning Dopp e-mail.

17 A. Yes.

18 Q. So, is this the answer for how to explain
19 the Dicker e-mail?

20 A. Yes. That would be -- well, that's my
21 explanation for how to explain what's really going
22 on here in this thing; that the Long -- whatever
23 it was -- which does seem that there was something
24 about Mike Long; I don't know what it was --

1 occurred in the last administration. And any
2 changes made were made in the last administration
3 and not in the current administration.

4 Q. Were you aware of any changes that had been
5 made in the prior administration?

6 A. In response to the Long thing?

7 Q. Yes, the Long --

8 A. I think when I spoke to Darren subsequent to
9 that article he told me that what he meant there
10 was the prior administration.

11 Q. Was that prior to your 9:10 a.m. e-mail?

12 A. I assume so. I don't know.

13 Q. In the course of the follow-up and
14 subsequent Attorney General investigation did you
15 give a statement to the Attorney General's Office?

16 A. An affidavit -- I signed a statement.

17 (Commission Exhibit 57 was marked for
18 identification.)

19 Q. Showing you Commission's Exhibit 57, is this
20 the statement?

21 A. This is the statement I signed.

22 Q. Just very quickly, I understood that the
23 second paragraph of the statement, "I understood
24 that Darren Dopp was working with the press on a

1 story about the alleged misuse of state aircraft
2 by Senator Bruno," that's a correct statement?

3 A. Yes.

4 Q. Were you aware that Darren Dopp was working
5 on an internal review of Senator Bruno's misuse of
6 the state aircraft?

7 A. No.

8 Q. Were you aware at any time prior to July 22,
9 2007 that Darren Dopp was working on an internal
10 review or audit of Senator Bruno's misuse of state
11 aircraft?

12 A. I don't remember being told that or knowing
13 that. I don't recall that.

14 Q. "I did not direct the State Police to
15 conduct any surveillance of Senator Bruno and did
16 not direct anyone else to do so." Were you aware
17 of the State Police conducting any surveillance on
18 Senator Bruno?

19 A. No.

20 .. "In addition, you did not direct the State
21 Police to create, recreate, or maintain any
22 records relating to Senator Bruno and did not
23 direct anyone else to do so." Were you aware that
24 Darren Dopp knew that documents were being

1 recreated?

2 A. No.

3 Q. Were you aware that Bill Howard knew
4 documents were being recreated?

5 A. No. I should clarify. At this point when I
6 signed it?

7 Q. Yes.

8 A. I had been told that Darren Dopp had been --
9 I assume you were talking about later.

10 Q. I am talking about at the time you signed
11 the statement, July 22nd.

12 A. Was I aware that Darren Dopp -- I Frankly
13 don't know what I was aware of at that point. As
14 I mentioned, basically, I was excluded from most
15 of this matter. I had certain -- had been brought
16 into the room for one or two moments. I don't
17 know how complete my knowledge was at that point
18 about what Darren had or had not done or Bill
19 Howard. I can tell you prior to July 1st that I
20 didn't know of that.

21 Q. So, you were not aware that these documents
22 were recreations prior to July 1st. And while you
23 may have gained some knowledge prior to making
24 this statement it was not direct knowledge at any

1 time?

2 A. Correct.

3 BY MR. TEITELBAUM:

4 Q. Mr. Baum, when you say you understood Darren
5 Dopp was working with the press on a story about
6 the alleged misuse of state aircraft for Senator
7 Bruno, wasn't Dopp working with the press on a
8 story about the alleged misuse of state aircraft
9 for Senator Bruno contrary to the instructions
10 that you had given Dopp that this issue was dead?

11 A. No. What I mean here is that -- I should
12 have worded it slightly differently. I knew he
13 was working on fulfilling a FOIL request. The
14 subject matter that the reporter was looking at
15 was potentially misuse of state aircraft by
16 Senator Bruno.

17 Q. So, when you used the words "Darren Dopp was
18 working with the press on a story about the
19 alleged misuse of state aircraft by Senator Bruno"
20 you mean complying with a FOIL requests?

21 A. Correct.

22 Q. How did you know in connection with the
23 complying with the FOIL request that it was in
24 connection with a story about the alleged misuse

1 of state aircraft by Senator Bruno?

2 A. That is what Darren Dopp told me; that the
3 reporter that made the request was looking at
4 potential misuse of state aircraft.

5 Q. When did he tell you that?

6 A. I don't remember.

7 Q. Was it before the 17th of May?

8 A. I don't know.

9 Q. Was it during the month of May?

10 A. I don't recall that.

11 Q. Was it during the month of June?

12 A. Probably. I don't recall whether it was May
13 or June, but implicit in the reporter asking for
14 air and ground transport of any political figure
15 ^{is} he is looking into alleged misuse and they're
16 [^] looking to see if it has been misused. But it
17 would be implicit in the request.

18 Q. Was this statement reviewed by David
19 Nocente?

20 A. Yes.

21 Q. And was David Nocente aware that your
22 understanding was that Dopp was working on a FOIL
23 request?

24 A. I believe so.

1 Q. Was Nocente aware that the language that is
2 the first sentence of paragraph two of your
3 statement was to communicate to the reader that ^g_p
4 Darren Dopp was working with the press on a story
5 about the alleged misuse of state aircraft was
6 meant to mean working on a FOIL request?

7 A. I don't know.

8 Q. Was David Nocente the only person who
9 reviewed this document before you signed it?

10 A. No.

11 Q. Who else reviewed it?

12 A. Sean Maloney; I believe Peter Pope.

13 Q. Two attorneys?

14 A. Yes.

15 Q. Did you tell those two attorneys that what
16 you meant by the first line second paragraph was
17 that Dopp was working on a FOIL request?

18 MR. REICH: Let me make a suggestion.
19 Without saying what you told them, you can answer
20 what you think their understanding was. But don't
21 repeat the words. Say what you thought their
22 understanding was.

23 A. Their understanding was that we were talking
24 about his fulfilling the FOIL request by a

1 reporter who was look at the alleged misuse of the
2 state aircraft.

3 BY MS. TOOHER:

4 Q. And did there come a time when you had
5 e-mail communications with the chamber about the
6 underlying facts and circumstances of the whole
7 Attorney General's report and your role in that?

8 A. With the Governor, yes.

9 Q. What was the sum and substance of those
10 communications?

11 A. About my role -- are you talking
12 specifically about my decision whether I should
13 testify or not?

14 Q. The decision as to your position at the
15 chamber and your role.

16 A. Yes. I communicated with the Governor about
17 that.

18 Q. What was the sum and substance of those
19 communications?

20 A. In the fray after the report was released
21 there were natural questions about whether I
22 should stay and whether there should be greater, I
23 guess, what I would call accountability and an
24 open question whether I should stay or not and

1 what would be good for him or make a decision on
2 the merits.

3 Q. And what did your letter cover?

4 A. Whether I should stay.

5 Q. What was the basis for that determination?

6 A. A variety of things; not one particular
7 thing.

8 Q. Were there certain factors you felt the
9 Governor should consider in that determination?

10 A. Yes.

11 Q. Can you share those factors with us?

12 A. I mean in ^{(?) Answer garbled} personnel issues or personal
13 issues have to do with this --

14 Q. That relate to this matter. Those issues
15 that relate to this matter, can you share with us?

16 A. I had become controversial in the weeks
17 after the report was released, not because anyone
18 really had any evidence that I had done any of the
19 actions that anyone had considered improper, but
20 because of my failure to testify under oath to the
21 Attorney General's Office. On the front page of
22 the New York Times and in most papers around the
23 state, you know, articles ^{were} written about me. It
24 was an open -- for that time period I became

1 somewhat of a lightning rod or liability. The
2 same was true for Darren Dopp, but he was no
3 longer working there anymore. But I was taking it
4 every day coming to work. To hold me accountable
5 for that was unfair considering it was not my view
6 that I shouldn't testify.

7 Q. To hold you accountable for what?

8 A. The failure to testify. To allow the
9 failure to testify, to lead to my termination or
10 removal from my current position didn't seem
11 appropriate or fair.

12 Q. Did you relay why you didn't think it was
13 appropriate or fair?

14 A. Yes, because I had wanted to testify.

15 Q. And, did you discuss your testimony here
16 today with anyone else beyond your attorney before
17 coming here?

18 A. Do you mean like all of these things, the
19 details?

20 Q. Your testimony here today; not the subject
21 matter which I'm sure you have discussed --

22 A. Right.

23 Q. -- but your testimony here today, have you
24 discussed that with anyone beyond your attorney?

1 A. No.

2 Q. Did you discuss it with anyone else in the
3 executive chamber?

4 A. Beyond them, no.

5 Q. And did you review any documents with anyone
6 from the executive chamber prior to coming here?

7 A. No.

8 Q. And, are you paying for Mr. Reich's
9 services?

10 MR. REICH: You'll have to explain to me
11 the relevance of that. Tell me the relevance.

12 MR. TEITELBAUM: I will tell you the
13 relevance but I am not going to tell you the
14 relevance now. There is a representation that has
15 been made by the executive chamber. Let's go off
16 the record.

17 (A discussion held off the record)

18 MR. REICH: I'm sorry. I'm ranting as a
19 matter of principle because I don't care about the
20 answer.

21 MR. TEITELBAUM: I understand.

22 MS. TOOHER: Thank you very much for
23 testifying here today. I really appreciate your
24 coming in. I did want to make clear you are here

1 voluntarily and not pursuant to any compulsion.

2 (The interview was concluded at 4:45 p.m.)

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