

1 STATE OF NEW YORK
2 COMMISSION ON PUBLIC INTEGRITY

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4 IN THE MATTER OF AN INVESTIGATION
5
6 INTO THE ALLEGED MISUSE OF RESOURCES
7
8 OF THE DIVISION OF STATE POLICE

9 -----

10 VOLUME II

11 STENOGRAPHIC MINUTES OF SWORN TESTIMONY
12 conducted of DAVID NOCENTI on the 14th day of
13 February, 2008, at the offices of the Commission
14 on Public Integrity, 540 Broadway, Albany, New
15 York, commencing at 11:02 a.m.; before SADIE L.
16 HERBERT, a Shorthand Reporter and Notary Public
17 within and for the State of New York.

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1 APPEARANCES:

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5 NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

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21 BY: PETER J. MOSCHETTI, JR., ESQ.

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

2 MR. TEITELBAUM: Mr. Nocenti, you understand
3 you are still under oath?

4 MR. NOCENTI: Mm-hmm.

5 MR. MOSCHETTI: You have to answer yes or
6 no.

7 MR. NOCENTI: Yes, I do.

8 EXAMINATION

9 BY MS. TOOHER:

10 Q. We're resuming your testimony from the other day, and
11 there are just a few areas that we would like to clean
12 up that we did discuss the other day.

13 A. Mm-hmm.

14 Q. We were discussing the aviation records at one point,
15 and your prior testimony indicated that when the
16 Spitzer administration came into office you had made
17 some changes to the request forms for the aviation
18 procedure. I would like to provide you --

19 MR. MOSCHETTI: Before you go on, also,
20 David had, since he last testified, had an
21 opportunity, I think, to sit and think about some
22 of the questions and maybe look at some
23 documents, and he would like to correct some -- I
24 think two things.

1 THE WITNESS: One is there was a colloquy
2 relating to whether the Governor was informed or
3 advised with respect to referrals of the matters
4 to the DA and to the AG. At the time I indicated
5 I didn't recall any conversations with him. I
6 still don't recall any conversations with him,
7 but in going through some of the e-mails, I did
8 see that there was an e-mail that I had sent to
9 him on the morning of July 2nd noting the
10 legalities of the referrals to the IG and the AG,
11 so he was informed at that time. I still have no
12 recollection of having a conversation with him.
13 That's something I didn't mention when you asked
14 the questions.

15 The second issue was you asked me what time
16 the calls occurred on those referrals. I think I
17 said I thought it was afternoon. Again, in
18 looking at the e-mails, I saw that I sent an
19 e-mail shortly after noon, sort of summarizing
20 the calls. So my guess is, it was probably
21 earlier, before noon that I initiated those
22 calls. So it's a technical issue, but I just
23 thought I would raise it.

24 Q. You just referenced an e-mail that you sent to the

1 Governor concerning the referrals or the legality of
2 referrals, and as you are aware, we've been provided a
3 large number of documents in this case. I don't
4 recall seeing that particular e-mail. Can you narrow
5 it down with some provision?

6 A. Yeah. It would be very early on the 2nd of July, I
7 sent him an e-mail indicating that I had -- I think I
8 had heard on the radio that we were going to be
9 referring the matter to the IG or to appropriate
10 prosecutorial entities, I don't recall which it was.
11 And so I noted that I didn't think the IG was an
12 appropriate entity to refer it to because the IG
13 doesn't have jurisdiction over legislators. So I
14 believe that I mentioned the IG, the AG and the DAs
15 and what those possibilities would be in that e-mail.
16 So when I got to my desk, basically, having heard
17 driving in a news report about it, that I sent him
18 this e-mail sort of summarizing those issues.

19 Q. And do you know if this e-mail was sent directly to
20 the Governor?

21 A. It was sent to --

22 Q. Were other people copied on it?

23 A. It was certainly sent directly to the Governor. I
24 don't recall off the top of my head if other people

1 were cc'd.

2 Q. I know it's asking a lot, do you recall which e-mail
3 of the Governor's it was sent to?

4 A. The laurence@lausp e-mail.

5 MR. TEITELBAUM: We'll check to see if we
6 have the -- that e-mail and the second e-mail --
7 do we have the second e-mail?

8 MS. TOOHER: The second e-mail is --

9 THE WITNESS: I don't know which second
10 e-mail you are referring to?

11 MR. TEITELBAUM: I thought you said -- was
12 it the same e-mail --

13 THE WITNESS: Yeah.

14 MR. TEITELBAUM: -- you looked at with
15 regard to the timing issue?

16 THE WITNESS: There was an e-mail that I had
17 sent to, I think, Rich and Darren sort of like
18 summarizing where things stood following
19 conversations with Soares' office, the AG's
20 office and the Manhattan DA's Office.

21 MS. TOOHER: That e-mail we do have.

22 MR. TEITELBAUM: I remember that e-mail.
23 The first one I don't remember.

24 (Conferring).

1 MR. MOSCHETTI: You might want to tell them
2 that if you are fairly confident.

3 THE WITNESS: Just clarifying. You have
4 both these e-mails, I guarantee that. I only
5 have what you have.

6 MS. TOOHER: As I said, there's been a large
7 volume of documents.

8 THE WITNESS: There's a large volume of
9 documents.

10 MS. TOOHER: It's certainly possible that we
11 would have overlooked one. But we can check on
12 the break -- I don't want to stop now -- and just
13 make sure.

14 THE WITNESS: Okay. Sorry for the
15 interruption.

16 BY MS. TOOHER:

17 Q. That's quite all right. Is there anything else that
18 you wanted to note before we get started?

19 A. No. Only two things that came to mind.

20 Q. I'm going to take you back, then, if you don't mind,
21 to the aviation documents and the changes that were
22 implemented when you came into office, when the
23 Governor came into office. And I'm going to show
24 you -- I'm going to have this marked.

1 (Commission's Exhibits 127 and 128 were
2 marked for identification.)

3 Q. I'm going to show you what's been marked as
4 Commission's 127 and 128 and ask you if you can
5 identify these documents.

6 A. I can only tell you that they appear to be flight
7 request information forms, two different flight
8 request information forms.

9 Q. And it's my understanding that these documents were
10 provided to the Attorney General's Office in the
11 course of their investigation, and the 127 document is
12 a flight request form, which lays out the aircraft
13 request and the purpose of the flight request. And
14 128, you'll note, towards the bottom of the page, has
15 the certification, "I hereby certify that the
16 statements above and the attachments are true and
17 accurate".

18 A. Mm-hmm.

19 Q. Do you know how that certification came to be put in
20 the document?

21 A. Shortly after we took office, among many things we
22 were doing, we were looking to ensure that the
23 aircraft was used for governmental purposes or
24 predominantly governmental purposes, and we thought it

1 would be appropriate just to have an additional check,
2 you know, security or whatever, to add a certification
3 line to the bottom that the requester would sign
4 indicating that the aircraft was being used for
5 official State business.

6 Q. So the certification that's on 128 was added during
7 the Spitzer administration?

8 A. I mean, I know that when we came in, the form that the
9 Pataki administration was using did not have a
10 certification.

11 (A pause was taken in the proceedings.)

12 A. I know that when we came in, the form being used by
13 the Pataki administration did not have a
14 certification. I obviously don't know if they
15 previously had a certification earlier, but I know
16 that we, in 2007, added the certification line.

17 Q. And to the best of your recollection, does 127 reflect
18 the form as you received it from the prior
19 administration?

20 A. I can only say it seems similar. You know, there's a
21 couple different drafts, so I don't know exactly which
22 one 127 is, but it seems similar.

23 Q. Form 128, was that the form that was being used by the
24 Spitzer administration?

1 A. Again, it seems similar to the one we're using because
2 it has a certification on it.

3 (Commission's Exhibit 129 was marked for
4 identification.)

5 Q. You've just been handed a document that has been
6 marked Commission's 129, and it's a four page
7 document, captioned "Aviation Procedures"?

8 A. Mm-hmm.

9 Q. Can you identify this document?

10 A. I believe that this was the document that was provided
11 to us as having been the document most recently used
12 by the Pataki administration.

13 Q. Used for what purpose?

14 A. Well, I believe that this was their informal aviation
15 procedures.

16 Q. And prior to July 1st of 2007, had the Spitzer
17 administration put in a separate aviation procedures?

18 A. Nothing was formalized. There's no written document
19 entitled, "Aviation Procedures" that we had.

20 MR. TEITELBAUM: Is there a written document
21 that the Spitzer administration had prior to
22 July 1st that said, in written form, "Aviation
23 Procedures"? I mean besides what the document
24 was entitled.

1 THE WITNESS: I think the answer to that is
2 no. I believe that there may have been press
3 requests as to what our procedure were, so there
4 might have been like e-mails to reporters saying,
5 you know, here's our procedures and I know
6 certainly that occurred -- I'm fairly certain
7 that occurred after July 1st. As far as a
8 formalization of procedures however titled, I
9 don't recall there being one.

10 MR. TEITELBAUM: Just so that we have a
11 clear record, apart from e-mails that may have
12 been sent out after July 1st or before July 1st
13 to people in the media, was there any document,
14 formal or informal, that was prepared by the
15 Spitzer administration with respect to the use of
16 State aircraft?

17 THE WITNESS: The form, certainly, we had a
18 formal form that was used. I don't recall there
19 being a description of, you know, the steps that
20 have to be followed or -- you know, I don't
21 believe there is any form similar to Exhibit 129.

22 BY MS. TOOHER:

23 Q. When we were discussing the aircraft policy the other
24 day -- I'm going to hand you back what was marked as

1 Commission's 123. This was a document which sets
2 forth the State aircraft policy at the top and then
3 possible relevant legal standards below. That
4 document quotes a portion of the State aircraft
5 policy. "As the executive aircraft is to be utilized
6 only if the requesting official's trip is related to
7 State business or such usage facilitates the execution
8 of official duties." I want to draw your attention to
9 Page 2 of the Aviation Procedures Reimbursement for
10 Use of State Aircraft, Section 4-A. When we asked you
11 about 123 the other day, you could not recall what 123
12 was or where they had drawn that standard from. It
13 appears to be virtually identical to the quote on
14 Page 2 of 129. Does that refresh your recollection at
15 all as to where 123 may have come from?

16 A. Look, the two sentences -- I haven't done it word for
17 word -- they seem to be similar. It seems to be a
18 sentence drawn from this document (indicating).

19 Q. But it does not refresh your recollection --

20 A. No.

21 Q. -- as to where 123 may have come from?

22 A. No. I don't know who drafted this, and I don't know
23 where that would have come from.

24 Q. During the period around July 1st of 2007, did you

- 1 have discussions with anyone in the Executive Chamber
2 concerning the aircraft policy as it was in existence?
- 3 A. Certainly after the article came out, there were a lot
4 of discussions, a lot of press interest, a lot of
5 inquiries. So yes, there was a large number of
6 discussions about aircraft policy.
- 7 Q. And at any time did you consult Commission's 129
8 concerning the aircraft policy?
- 9 A. I don't believe I did.
- 10 Q. Are you aware of anyone else in the Executive Chamber
11 consulting Commission's 129?
- 12 A. I believe that -- I don't know. I don't believe that
13 I actually -- I knew this document existed, I don't
14 believe I ever pulled it out and looked at it.
- 15 Q. But did anyone else in the Executive Chamber ever
16 discuss it with you?
- 17 A. You know, there were discussions that there was a
18 document like this, I just don't have a recollection
19 of anyone pointing me to this or discussing this
20 document in particular.
- 21 Q. In discussing the aircraft policy within the Executive
22 Chamber in the July 1st time frame, who did you have
23 those discussions with?
- 24 A. I would have had them, probably, with Rich, Darren.

1 Q. Rich?

2 A. Baum, Darren Dopp, you know, other press officers.
3 There was a lot of questions that were coming in at
4 the time, so...

5 Q. Did you have discussions with Richard Rifkin during
6 that time frame?

7 A. I could well have. It's the same as the answer I gave
8 you last time, Richard was a go-to person on these
9 kinds of issues, he has dealt with aircraft policy
10 stuff in the past. I think there was some issue with
11 respect to the informal advice that he had given with
12 respect to use of aircraft when he was the Executive
13 Director of the Ethics Commission, so my best guess
14 would be that I probably talked to him, just like I
15 had -- I would have talked to him before July 1st, but
16 I just don't have a specific recollection of
17 actually -- I think it was a conversation that I had
18 with him.

19 Q. When you say there was some issue about Richard's
20 participation in the formation of the policy while he
21 was with the Ethics Commission; what was that issue?

22 A. I believe when he was the Executive Director of the
23 Ethics Commission he had had communications with the,
24 then, Counsel to the Governor, who was Jim McGuire

1 regarding the permissible use of the aircraft, and I
2 believe it was his opinion, based on the Ethics Law
3 and the other laws, that as long as there was a
4 governmental use of the aircraft, it was permissible
5 to use the aircraft for -- permissible to use the
6 aircraft as long as there was a governmental use.

7 Q. So as long as there was, I'm going to say, any
8 governmental use?

9 A. Well, I don't know about any. I don't think he
10 necessarily got there. I think last time we talked
11 about, you know, a continuum of, you know, going to
12 Hawaii and taking a five minute phone call, versus
13 going to Buffalo and taking five minutes to have a
14 consultation with somebody for political purposes. So
15 there's obviously a continuum. I don't know where he
16 would have drawn the line on that continuum. But I
17 know that there was discussions about he having given
18 the advice to the Executive Chamber about its use of
19 the aircraft.

20 Q. And when did you first discuss this issue with Richard
21 Rifkin?

22 A. I mean, I'm sure -- again, I'm sure I had
23 conversations with Richard prior to July 1st, just
24 because he was the ethics person. I can't recall any

1 particular conversation. And I'm sure I had
2 conversations with him after July 1st. In a
3 particular -- I believe there was at least one e-mail
4 where he was reminding people of his -- the fact that
5 he had sort of been the one that had set that policy.
6 I don't remember when on July 1st -- when after
7 July 1st that was.

8 (Commission's Exhibit 130 was marked for
9 identification.)

10 MR. MOSCHETTI: This is why you should not
11 guess when they're asking you questions. Don't
12 make any assumptions.

13 Q. You've been provided a copy, what's been marked as
14 Commission's 130. It appears to be a one page
15 document, an e-mail from Richard Rifkin to Darren Dopp
16 copied to David Nocenti. Can you identify this
17 document?

18 A. It appears to be an e-mail from Richard to Darren with
19 a cc to me regarding the use of State planes.

20 Q. And is this the e-mail you were referring to a moment
21 ago in your testimony?

22 A. Yes.

23 Q. Are you aware of any other earlier e-mails from
24 Richard Rifkin concerning the aircraft policy to you?

1 A. I don't recall.

2 Q. And did you have conversations with Richard prior
3 to -- Richard Rifkin prior to this e-mail concerning
4 the aircraft policy?

5 A. Again, are you asking did I have any or do I have a
6 recollection of it?

7 Q. Did you have any conversations with Richard concerning
8 the aircraft policy?

9 MR. MOSCHETTI: I think he just testified
10 that he had.

11 A. I believe I had conversations after July 1st and
12 before July 13th with Richard Rifkin regarding the
13 aircraft policy. Sitting here, I can't, you know,
14 remember the conversations or the sum and substance of
15 them.

16 Q. Did you discuss with Richard Rifkin Senator Bruno's
17 use of the aircraft and the aircraft policy?

18 A. Again, you are asking me to give you specifics of a
19 conversation I don't recall.

20 Q. Prior to this e-mail?

21 A. I believe that after July 1st and before July 13th, I
22 had conversations with Richard Rifkin. This was all
23 in the aftermath of the article coming out, so -- but
24 I don't have a specific recollection of a

- 1 conversation, so I can't say for certain as to
2 whether, you know -- I would just have to be guessing
3 as to what the conversation included.
- 4 Q. In your experience with Richard Rifkin in the
5 Executive Chamber, would he be the person you would go
6 to on ethics issues?
- 7 A. On many ethics issues, yes.
- 8 Q. Who is the Ethics Officer for the Executive Chamber?
- 9 A. Richard Rifkin is.
- 10 Q. And the issue of the misuse of the aircraft, would
11 that come under the area of ethics as far as the
12 Executive Chamber?
- 13 A. He was the Ethics Officer with respect to ethics
14 issues for Executive Chamber employees, but, frankly,
15 that was sort of a -- you know, there are many people
16 who -- not many, but there were other people,
17 including myself, who would deal with ethics issues as
18 they arose. If there's an issue that came up that I
19 felt the need to consult with him on, I would consult
20 with him on it.
- 21 Q. Is it generally known within the Executive Chamber
22 that Richard is the Ethics Officer?
- 23 A. Yes.
- 24 Q. Do you know what generated Commission's 130?

1 A. I do not.

2 Q. Were there any discussions between you and Darren Dopp
3 about consulting with Richard on the aviation policy
4 during this time frame?

5 A. I don't recall.

6 Q. And was there any follow-up to this e-mail?

7 A. Again, I don't recall.

8 Q. Did you ever discuss with anyone else in the Executive
9 Chamber Richard's role in the crafting of the existing
10 ethics policy?

11 A. I don't recall that either.

12 Q. Did Mr. Odatto ever make further inquiries concerning
13 Richard Rifkin's role in the policy?

14 A. I don't recall.

15 Q. Did anyone ever advise you that Mr. Odatto was aware of
16 Richard Rifkin's role in the ethics policy?

17 A. I don't know.

18 MR. TEITELBAUM: In your conversations or
19 communications with the Albany County District
20 Attorney, the Manhattan District Attorney and the
21 Attorney General, did you convey the policy or
22 opinion that's set forth in Exhibit --

23 MS. TOOHER: 130.

24 MR. TEITELBAUM: -- 130?

1 THE WITNESS: I don't believe I did.

2 MR. TEITELBAUM: Why?

3 THE WITNESS: They were short conversations
4 to talk about the fact that the article had come
5 out, that it related to the potential misuse of
6 the aircraft and to determine whether they wanted
7 to have the material sent to them. There was not
8 a legal discussion of what the standards were
9 back in the -- you know, whenever these
10 conversations would have taken place.

11 MR. TEITELBAUM: I'm not clear on your last
12 part of the sentence. Is the policy that's
13 reflected in 130 a policy that was not in effect,
14 according to your understanding, during the
15 months of May and June of 2007 with respect to
16 the use of State aircraft?

17 THE WITNESS: (Pause.)

18 MR. TEITELBAUM: In other words, that you
19 could use the State aircraft, as I read this --
20 and correct me if you don't read it the same way,
21 you'll correct me -- that you could use the State
22 aircraft to attend political functions so long as
23 when you use that State aircraft, you are also
24 doing government work?

1 THE WITNESS: I have to answer it the same
2 way I answered it before, which is it depends on
3 how much the State functions are and how much the
4 governmental work is. There certainly is a line
5 that would be drawn, in my view, when you would
6 cross the line and have too much political work,
7 and therefore, make the use of the aircraft
8 illegal.

9 MR. TEITELBAUM: But as I've understood your
10 testimony at our last session, Mr. Nocenti, that
11 line that you are now referencing is really not
12 delineated with any specificity; is that fair to
13 say?

14 THE WITNESS: That is fair to say.

15 MR. TEITELBAUM: Did you share that fact
16 with the law enforcement authorities that you
17 contacted?

18 THE WITNESS: We did not have a discussion
19 of, you know, where the law line is drawn on the
20 use of aircraft, how much -- you know, whether
21 it's predominant, you know, majority, you know,
22 substantial, you know, peppercorn.

23 MR. TEITELBAUM: Did you share with them the
24 notion that there was a continuum?

1 THE WITNESS: There was no discussion at
2 all, to my recollection, of where the line --
3 what the legal standard would be.

4 MR. TEITELBAUM: Did there ever come a time
5 where either yourself or, to your knowledge,
6 anybody with the Executive Chamber had a
7 discussion with law enforcement authorities that
8 were contacted about that subject?

9 THE WITNESS: I know I sent an e-mail to Ben
10 Lawsky after being briefed on the contents of the
11 AG's report where I -- I'd say, expressed some
12 surprise at where I understood their opinion was
13 as to where that line might be drawn.

14 MR. TEITELBAUM: What do you understand them
15 to be saying and why were you surprised?

16 THE WITNESS: I understand that this was
17 Richard Rifkin's opinion, you know, in probably
18 the late 1990s. In the -- obviously, in the fall
19 of 2006, there was a case involving Alan Hevesi
20 and the use of a State driver and car for his
21 wife, including a report including an inquiry by
22 the Ethics Commission relating to those uses. I
23 believe I actually expressed the continuum theory
24 to Ben Lawsky as to what would be legal or

1 illegal. And actually, I had been led to believe
2 that the report might indicate that, you know,
3 any use of the aircraft for governmental purposes
4 would make it legal, and I expressed surprise at
5 that.

6 MR. TEITELBAUM: Did you ever hear the
7 policy with respect to the use of State aircraft
8 and this notion of a continuum be expressed that
9 it -- an ounce of government-related work can
10 justify a pound of nongovernmental work. Do you
11 recall --

12 THE WITNESS: I don't recall it being
13 formulated that way.

14 MR. TEITELBAUM: Would that comport with
15 your understanding of the policy?

16 THE WITNESS: It would not.

17 MR. TEITELBAUM: Was the policy, at least as
18 you understood it, communicated to members of the
19 Executive Chamber after Governor Spitzer took
20 office?

21 THE WITNESS: I mean, I know I had
22 discussions after we took office as to how we
23 were going to handle the use of the aircraft.
24 The Governor uses the aircraft much, much more

1 than anybody else, and we decided to have a
2 policy that there would have to be predominant,
3 which I believe to mean well over 50 percent, of
4 governmental work before he would use the State
5 aircraft.

6 MR. TEITELBAUM: And was over the
7 50 percent -- does that mean in terms of time or
8 distance for which the plane was used?

9 THE WITNESS: There was no determination of,
10 you know, how that -- again, it's not
11 50 percent -- predominant was, I think, the word
12 that was used.

13 MR. TEITELBAUM: But in terms of calculating
14 predominance, are we talking about miles or are
15 we talking about time?

16 THE WITNESS: There was no measuring stick
17 that would be used. You would look at the usage
18 and make a determination as to whether it was
19 predominantly being used for governmental
20 purposes or not.

21 MR. TEITELBAUM: Would you agree that the
22 policy, as you articulated it, was ambiguous?

23 THE WITNESS: I will agree that there was no
24 mathematical precision to what predominant was.

1 But we certainly wanted the primary purpose to be
2 governmental before we let the aircraft be used.

3 MR. TEITELBAUM: Was there any communication
4 with persons on the staff of other elected
5 officials who were using the aircraft concerning
6 the policy as you have just articulated it?

7 THE WITNESS: I don't --

8 MR. TEITELBAUM: Let me be more specific,
9 let me be more specific.

10 Did anybody tell Senator Bruno or Senator
11 Bruno's staff that in order to use the State
12 aircraft properly, the predominant purpose of the
13 use had to be governmental?

14 THE WITNESS: I don't recall having a
15 conversation with Senator Bruno's staff. I don't
16 know if other people had such conversations.
17 It's possible that I had a conversation about the
18 use of the aircraft. I don't recall any.

19 MR. TEITELBAUM: How about other elected
20 officials who would be using it? Was there
21 conversation with the Lieutenant Governor's staff
22 or the Lieutenant Governor where that was
23 articulated, that policy?

24 THE WITNESS: I do not know. I do not know.

1 But we would know where the Lieutenant Governor
2 was going and what he was doing, so we would
3 easily be able to assess that.

4 BY MS. TOOHER:

5 Q. Who was responsible for assessing that?

6 A. Well, Marlene Turner would get the requests and would
7 see where the Lieutenant Governor was going and she --
8 I guess she would sometimes consult with me on use of
9 the State aircraft. I don't know if anyone was -- any
10 particular individual was responsible. Obviously, if
11 it was 99 percent governmental use, she would make
12 that determination, and she would consult with me as
13 needed.

14 Q. And what would she use to make that determination?

15 A. A review of the use of the aircraft to determine what
16 the purposes were.

17 Q. What documentation was provided to her?

18 A. I believe that she would generally know the Lieutenant
19 Governor's schedule. We make a schedule available to
20 the public, just like we do to the Governor.

21 Q. And if she had questions, she would come to you and
22 ask you?

23 A. I know that she has come to me in the past on use by
24 the Governor or Lieutenant Governor, so I don't know

1 if I was the only person that she would consult on
2 these issues.

3 Q. Did she ever come to you concerning Senator Bruno's
4 use of the aircraft?

5 A. I don't recall.

6 Q. You don't recall if she ever came to you or --

7 A. I mean, she may have, I just don't recall any
8 particular instance sitting here.

9 Q. And was the policy concerning predominant use relayed
10 to the Lieutenant Governor's Office?

11 A. I do not know.

12 Q. Was the policy concerning predominant use ever reduced
13 to a writing?

14 A. Not to my knowledge.

15 Q. And were other members of the Executive Chamber aware
16 of this predominant use policy?

17 A. I'm sure Rich Baum was, I know Marlene was, I know the
18 Governor was. Not that many people in the Executive
19 Chamber used the State aircraft, so it doesn't really
20 become an issue for those other individuals.

21 Q. And when you say you are sure concerning Mr. Baum and
22 Marlene Turner and the Governor, how do you know that?

23 A. I know that they were all party to discussions early
24 on in the administrations as to how we were going to

1 be utilizing the State aircraft and what rules we were
2 going to use for the Governor.

3 Q. And what was your understanding of how that was
4 relayed to them?

5 A. I believe I had conversations with them where we
6 talked about what rule we were going to apply and we,
7 you know, through a consensus determined that there
8 had to be a predominant governmental purpose.

9 Q. And if I told you that there was other evidence that
10 indicates that the policy, as laid out by Richard
11 Rifkin, concerning the some governmental use was the
12 understanding of other staff in the Executive Chamber,
13 would that be at odds with your understanding?

14 A. I mean, it depends on which other staff you are
15 referring to. You know, if, again, you are asking for
16 when we would allow the Governor to use the aircraft,
17 my understanding was that it would have to be a
18 predominant use of -- predominant governmental use.
19 So without knowing who it was or --

20 Q. What about Senator Bruno?

21 A. We simply required Senator Bruno to provide
22 specification of what the aircraft was being used for
23 and to certify to that. My understanding is that they
24 would just provide the information necessary for the

1 form.

2 Q. Now, Senator Bruno has been in his position with the
3 majority prior to the Spitzer administration; is that
4 correct?

5 A. That is correct.

6 Q. And he had been using the State aircraft prior to the
7 Spitzer administration; is that correct?

8 A. That is also correct.

9 Q. And the policy that Richard Rifkin articulated had
10 been in place prior to the Spitzer administration; is
11 that correct?

12 A. I mean, I know Richard Rifkin provided an opinion to
13 Jim McGuire regarding what, you know -- what was the
14 permissible use under the Ethics Law. I do not know
15 what policy the Pataki administration actually used.
16 There is, as you know, these written procedures, which
17 says, the aircraft is to be utilized only if the
18 official's trip is related to State business; it
19 doesn't say how much. So I don't know from this
20 document or from other sources what their actual
21 policy was with respect to allowing the Governor,
22 former Governor to use the aircraft.

23 Q. But as far as Senator Bruno's experience with the
24 aircraft, there was no new written policy to guide him

1 from the Executive Chamber?

2 MR. MOSCHETTI: I don't think he can answer
3 that.

4 (Conferring.)

5 A. I can only say that we did not reduce to writing a new
6 aircraft policy, to the best of my recollection.

7 Q. And you don't have any information at this juncture
8 that the predominant usage policy was relayed to
9 Senator Bruno; is that correct?

10 A. The predominant usage policy was how we were going to
11 allow the Governor to use the aircraft. We didn't
12 want the Governor to be next to the line of legality.
13 There had been at that time no specification of
14 exactly where that line was drawn, even assuming you
15 can draw a line under the law. So our view was the
16 Governor had to be using the aircraft for
17 predominantly governmental purposes.

18 Q. Did you have a viewpoint on Senator Bruno's use of the
19 aircraft?

20 A. I would leave it to Senator Bruno's counsel to
21 determine Senator Bruno's use of the aircraft.

22 Q. Did you have any discussions with Senator Bruno's
23 counsel on his use of the aircraft?

24 A. Again, I don't recall any. I may have; I may not

1 have. I don't know.

2 MR. TEITELBAUM: Did you have an
3 understanding of what standard Governor Bruno's
4 office -- pardon me -- Senator Bruno's Office was
5 applying with respect to his use of the State
6 aircraft?

7 THE WITNESS: No.

8 MR. TEITELBAUM: Why wasn't Senator Bruno's
9 Office informed concerning the predominant use
10 standard as you articulated it?

11 THE WITNESS: I don't know if they were or
12 they weren't.

13 MR. TEITELBAUM: Who in the Executive
14 Chamber would have been charged with the job of
15 doing that?

16 THE WITNESS: I don't know that anybody
17 would have been charged with the job of doing
18 that. It's something that it's possible I had a
19 conversation with his counsel on, although I
20 don't recall any. It's possible it's something
21 that Marlene Turner would have discussed with her
22 contacts in the Senate. I just don't know.

23 MR. TEITELBAUM: Marlene Turner was aware of
24 the predominant use policy?

1 THE WITNESS: Yes.

2 MR. TEITELBAUM: When was she made aware of
3 it?

4 THE WITNESS: We -- she was one of the
5 people that we discussed this with in the
6 January, February time frame.

7 MR. TEITELBAUM: Was she informed that that
8 policy applied not only to the Governor?

9 THE WITNESS: It applied to anybody in the
10 Executive Branch that wanted to use the aircraft.

11 MR. TEITELBAUM: And she was told that?

12 THE WITNESS: It was discussed. It's not
13 like -- it was a consensus determination.

14 BY MS. TOOHER:

15 Q. When you say it applied to anyone in the Executive
16 Branch; Senator Bruno is in the Legislative Branch of
17 government?

18 A. Correct.

19 Q. Did it apply to him as well?

20 A. We never asked for a minute-by-minute specification of
21 how the Senator was using the aircraft. You know, we,
22 basically, made a determination that we weren't going
23 to be using the aircraft as a -- you know, that if he
24 came and said he needed the aircraft for governmental

1 purposes and he filled out the form and was laying out
2 governmental purposes, we would allow him to use the
3 aircraft. We did not ask for an hour-by-hour
4 determination to figure out whether he was across the
5 line or not across the line. That's a matter for him
6 and his counsel to resolve.

7 MR. TEITELBAUM: What is the basis for you
8 saying that there was a line concept that applied
9 to Senator Bruno?

10 THE WITNESS: Well, I'm just using it in the
11 terms of legal line drawn. I don't know where
12 that line actually is. There's been no judicial
13 determination of that in any form. Again, it's
14 my view, if I took the plane and went to Hawaii,
15 had a five minute phone call, spent two weeks in
16 Hawaii, that would be illegal, violation of law,
17 Penal Law, whatever laws may apply. It's a
18 continuum, it was it 95 percent of the time, in
19 my view, perfectly legitimate. So there have
20 been no legal determinations, and so we were not
21 asking for a minute-by-minute recitation of when
22 Senator Bruno would be using the aircraft. It
23 was up to him and his counsel to, you know, make
24 their own assessments, just like it's up to them

1 to make assessments on use of any other State
2 equipment.

3 MR. TEITELBAUM: At our last session,
4 Mr. Nocenti, you had said that under the law
5 reimbursement was not required?

6 THE WITNESS: Correct.

7 MR. TEITELBAUM: What law are you referring
8 to?

9 THE WITNESS: It was my understanding that
10 if the Governor was using the aircraft for
11 predominantly governmental purposes and he had
12 other nongovernmental uses of the aircraft that
13 the law did not require him to reimburse.

14 MR. TEITELBAUM: Is there a statute or
15 regulation that you are referring to or relying
16 on?

17 THE WITNESS: Well, the Ethics Law would
18 apply, the commission -- the then Ethics
19 Commission issued a lengthy opinion about use of
20 the aircraft and when reimbursement would be
21 required and then issued a second opinion
22 providing further guidance on that. There's yet
23 to be a judicial determination on that. We
24 decided we would simply follow what the Ethics

1 Commission -- I'm sorry -- the Public Integrity
2 Commission has laid out as the rules, but, you
3 know, I think that your opinion lays out the
4 applicable law.

5 MR. TEITELBAUM: I'm now referring to a time
6 prior to the issuance of the first of those two
7 opinions. During that period, was it your view
8 that reimbursement was not required for the
9 nongovernmental use of the State aircraft?

10 THE WITNESS: Correct.

11 MR. TEITELBAUM: And what was that based on?

12 THE WITNESS: The aircraft had been used for
13 as long as the State has had aircraft. I'm not
14 aware that there was ever reimbursements or any
15 questions about reimbursements in the past. It
16 was only, you know, more recently where the issue
17 arose. But I know that in the Cuomo
18 administration, that there was not a, you know,
19 daily determination of percentage of use or
20 reimbursement. I wasn't in the Pataki
21 administration, but no one ever advised me that
22 they had started to do daily or whatever
23 reimbursement based upon use of the aircraft.
24 And we decided to only use the aircraft for

1 predominantly governmental purposes, and I
2 actually don't see at that -- I don't necessarily
3 believe at the time that such reimbursement was
4 legally required.

5 BY MS. TOOHER:

6 Q. Wasn't there a reimbursement issue concerning the
7 Pataki administration early on in the Spitzer
8 administration?

9 A. There was.

10 Q. And what was your understanding of that reimbursement
11 requirement?

12 A. My understanding is that was a flight that was being
13 used either exclusively or, you know, predominantly
14 for political purposes, so basically requested
15 reimbursement.

16 Q. So there was an existing reimbursement standard with
17 the Pataki administration?

18 A. I don't know -- during the Pataki administration, I
19 can't say for sure, no one told me that they were
20 doing reimbursements.

21 You can't use the aircraft for purely
22 nongovernmental purposes, so certainly there would be
23 a reimbursement requirement there.

24 MR. TEITELBAUM: You mean that if you use

1 the State aircraft for purely political purposes,
2 your understanding was, prior to the issuance of
3 our first two opinions, that that would be
4 permissible if there would be reimbursement?

5 THE WITNESS: I -- my personal view is that
6 you shouldn't be using the aircraft for purely
7 nongovernmental purposes, that was my view, and I
8 certainly would not have allowed the Governor to
9 do that. And if we knew that somebody else was
10 looking to use the aircraft for nongovernmental
11 purposes solely, we would not have allowed the
12 aircraft to be so used.

13 MR. TEITELBAUM: Regardless of
14 reimbursement?

15 THE WITNESS: Regardless of reimbursement.

16 MR. TEITELBAUM: But your understanding was
17 that if the predominant use of the aircraft was
18 for governmental uses, let's say over 50 percent,
19 as you were talking about --

20 THE WITNESS: It would be certainly over
21 50 percent. I'm not sure that even 51, 49 we
22 would have allowed --

23 MR. TEITELBAUM: 75 percent. 25 percent, if
24 there were a 75 percent situation, purely for,

1 let's say, political purposes, would not be
2 reimbursable?

3 THE WITNESS: No, we would -- it was not my
4 view at the time that reimbursement would be
5 required.

6 BY MS. TOOHER:

7 Q. And was the reimbursement aspect of the Chamber's
8 policy on the aircraft ever relayed to Senator Bruno?

9 A. Not to my knowledge.

10 Q. You indicated that you had no awareness of the FOIL
11 request for Senator Bruno's information prior to the
12 July 1 article; is that correct?

13 MR. MOSCHETTI: Can we take a break for one
14 moment, so I can use the men's room.

15 MR. TEITELBAUM: Let's get an answer for
16 this.

17 THE WITNESS: Can you repeat the question.

18 (Thereupon, the following excerpt of the
19 proceedings was read back by the Court Reporter:

20 QUESTION: "You indicated that you had no
21 awareness of the FOIL request for Senator Bruno's
22 information prior to the July 1 article; is that
23 correct?")

24 MR. MOSCHETTI: I believe that was in his

1 testimony. You are repeating the same
2 questions -- let me finish, please. Can I put it
3 on the record?

4 The same questions were asked when we were
5 here for five hours and now you are repeating the
6 same exact question. There is no need for that.
7 I think it's not being done in good faith, I have
8 no idea why you would want him to repeat the
9 answers that he's already given you, other than
10 to try and see there's some inconsistency, and I
11 think that's quite unfair to any witness. So I
12 don't know why we're repeating the same
13 questions.

14 MS. TOOHER: I understand the objection that
15 you are raising, Mr. Moschetti. It's not being
16 asked in bad faith. We are trying to continue
17 the examination of Mr. Nocenti. It's a fairly
18 straightforward question, as you've just
19 indicated, it leads to other questions in the
20 same area. I don't think there's anything
21 objectionable in the nature of the question.

22 MR. MOSCHETTI: Why would you be repeating
23 the same questions now? You concede, it's the
24 same question you asked the last time we were

1 here, and in fact I think it was asked more than
2 once. So now we are here on the separate date
3 asking the same exact questions. I think there's
4 no doubt about that the record will bear that
5 out.

6 MS. TOOHER: It's a simple yes or no answer.

7 MR. MOSCHETTI: Well, what is the purpose of
8 asking the same questions? I see no purpose in
9 it other than to get the witness to --

10 MS. TOOHER: Are you directing your client
11 not to answer?

12 MR. TEITELBAUM: Let me interrupt. Let's go
13 off the record for a second.

14 (A discussion was held off the record.)

15 MR. TEITELBAUM: We're unclear as to whether
16 we have an answer to that question.

17 MR. MOSCHETTI: I'm very clear.

18 MR. TEITELBAUM: We are unclear that there's
19 a Q and A that's the same as the Q that
20 Ms. Toher has just asked. If you want us to
21 review the transcript and take the time to do it,
22 we'll do it. But I think the most expeditious
23 way is to get an answer to this.

24 MR. MOSCHETTI: If you have the transcript

1 with you, I assume that it would take seconds.

2 MR. TEITELBAUM: There's nothing that takes
3 seconds in reviewing 130 page transcript. I
4 suggest that we get an answer to this and move
5 on, so that we don't waste anybody's time. This
6 is not a trap, we're not trying to trap
7 Mr. Nocenti. It's really a very straightforward
8 question, and if we've asked it before, we
9 apologize.

10 MR. MOSCHETTI: I don't find it
11 straightforward when it's been asked before on a
12 number of occasions.

13 THE WITNESS: Should we take a break?

14 MR. TEITELBAUM: Take a break.

15 (A break was taken in the proceedings.)

16 MR. MOSCHETTI: The reason that I am
17 concerned about the nature of the repetitive
18 questions is that the last time we were here at
19 the conclusion of Mr. Nocenti's testimony, I
20 believe we were told that we had completed the
21 questions running from January to July 1st and
22 the release of the article by the Times Union and
23 at the next session we would be going into the
24 issue concerning the 20th, 21st and 22nd of July.

1 And so I do note that there's been an hour of
2 questioning and we're not anywhere near that
3 area. Now, I think the next question poses an
4 area that we've already been through and that's
5 why I think these questions are repetitive.

6 MR. TEITELBAUM: Well, let me put on the
7 record the old adage that no good deed goes
8 unpunished. I didn't have to tell you, Counsel,
9 what subject matter we were going to be pursuing
10 today and we made no guarantees that we would not
11 be probing issues that concerned this
12 investigation that occurred prior to the
13 July 22nd episode. And if your understanding was
14 that we had represented to you that no questions
15 would be asked concerning matters that predate
16 the July 22nd episode, then you were under a
17 misimpression.

18 MR. MOSCHETTI: First of all, it's not a
19 punishment. It's an acknowledgment that the
20 questions are repetitive.

21 MR. TEITELBAUM: I didn't say punishment.

22 MR. MOSCHETTI: No, in your little
23 statement, that no good deed goes unpunished.
24 The point is -- and it's not a question of one or

1 two or a few questions, it's an hour now of
2 questioning.

3 MR. TEITELBAUM: These questions have not
4 been asked before.

5 MR. MOSCHETTI: It's the same subject matter
6 we spent four and half hours testifying, and some
7 of them, as I sit here, my recollection of the
8 record, are repetitive.

9 MR. TEITELBAUM: I don't agree with that,
10 but I'm going to check to see whether the
11 question, the pending question now was asked.
12 Would you like me to do that?

13 MR. MOSCHETTI: We know it's asked because
14 Counsel in her question is telling us that it was
15 asked. I believe her statement was that
16 Mr. Nocenti in fact testified the last time.

17 MR. TEITELBAUM: We are sure spending a lot
18 of time on this.

19 (A discussion was held off the record.)

20 BY MS. TOOHER:

21 Q. Was there a point at which you were requested by the
22 Attorney General's Office or the Inspector General's
23 Office to inquire of the Chamber as to prior FOIL
24 requests concerning Senator Bruno's use of the

1 aircraft?

2 A. Yes.

3 Q. And what was the circumstances of that?

4 A. I believe one of those two offices -- you said Senator
5 Bruno's use, I believe that one of those two offices
6 asked me for any FOIL requests relating to use of the
7 aircraft.

8 Q. And what did you do in response to that request?

9 A. I believe I sought to gather any FOIL requests and
10 provide them to whichever investigatory entity had
11 asked for them.

12 Q. And did you find any FOIL requests?

13 A. I did.

14 Q. What was it that you had located?

15 A. I don't recall.

16 (Commission's Exhibit 131 was marked for
17 identification.)

18 Q. I'm showing you what's been marked as Commission's 131
19 and ask if you can identify this document?

20 A. This is an e-mail that I sent to Kris Hamann sending
21 her six FOIL requests for flight manifest records.

22 Q. And I believe in the first line of the e-mail, it
23 indicates they start with the Odatto request on 6/27
24 and the rest come thereafter?

- 1 A. Correct.
- 2 Q. Is that a reflection that you could not find any
3 before the 6/27 date?
- 4 A. That is correct.
- 5 Q. And have you ever discovered in the records of the
6 Executive Chamber a FOIL request prior to the 6/27
7 Odato request concerning aircraft records?
- 8 A. I don't believe I have.
- 9 Q. And did you ever discuss with Darren Dopp whether or
10 not there were FOIL requests prior to the 6/27 Odato
11 FOIL request?
- 12 A. I'm sure I've had conversations with Darren about that
13 during this time period.
- 14 Q. And did he indicate if he had a different
15 understanding than that?
- 16 A. He never advised me that there was a formal written
17 FOIL request prior to the Odato request.
- 18 Q. And did you ever inquire of Richard Baum if he was
19 aware of a prior FOIL request?
- 20 A. I don't recall asking Rich Baum that.
- 21 Q. And did you ever speak to Bill Howard about whether or
22 not he was able to locate a prior written FOIL
23 request?
- 24 A. I don't know that Bill Howard was looking for them,

- 1 and I don't recall having a conversation with him
2 about it.
- 3 Q. What did you do in terms of responding to Kristine
4 Hamann's request?
- 5 A. I believe I went to our FOIL Officer and asked for any
6 FOIL requests, and I may have asked Darren as well,
7 because he may have gotten requests from reporters.
- 8 Q. And did you speak to anyone else?
- 9 A. I don't recall.
- 10 Q. And do you know when the Governor became aware of the
11 materials that were released prior to the -- or in
12 response to the June 27 Odatto FOIL request?
- 13 A. What do you mean by "became aware of the materials"?
- 14 Q. The materials that were being released to or had been
15 released to Mr. Odatto?
- 16 A. I believe that prior to July 1st, he was aware that
17 documents were being provided to Mr. Odatto. As to
18 whether, you know -- I believe prior to July 1st he
19 was aware that documents were being provided to
20 Mr. Odatto.
- 21 Q. And what was that knowledge based on?
- 22 A. I believe the Governor actually said it publicly that
23 he knew that information was being provided in
24 response to the media requests.

- 1 Q. Do you know when he saw the documents that were
2 provided?
- 3 A. Personally, I don't know if he ever saw the documents.
- 4 Q. But you know he was aware of the information?
- 5 A. I don't know what you mean by the information.
- 6 Q. The --
- 7 A. I know that he -- he said publicly that he had been --
8 that he believed that Darren was responding to media
9 requests, that documents were going to be provided and
10 that there was going to be a story. So he certainly
11 knew that documents were being provided prior to
12 July 1st.
- 13 Q. Did you have conversations with the Governor in this
14 regard?
- 15 A. I didn't have any conversations with him about this
16 prior to July 1st, other than, to the best of my
17 recollection, the May 17th conference call, which I
18 believe took place in Rich Baum's office.
- 19 Q. At a certain point in time there was a subsequent FOIL
20 request from Mr. Odatto, were you aware of that
21 request?
- 22 A. Yes.
- 23 Q. And can you tell me what you know about the
24 circumstances of how that request arose?

1 A. I believe that Darren sent me an e-mail indicating
2 that Jim Odatto was looking for additional documents
3 and asked me what he should do. And I believe I told
4 him to have Odatto send in a FOIL request.

5 Q. And did you have any conversation with Darren
6 concerning that request?

7 A. I actually do not recall.

8 (Commission's Exhibit 132 was marked for
9 identification.)

10 (Conferring.)

11 MS. TOOHER: I apologize.

12 BY MS. TOOHER:

13 Q. You have in front of you Commission's -- what's been
14 marked as Commission's 132. Can you identify this
15 document?

16 A. It's an e-mail from me to Darren Dopp with a cc to
17 Mariya Treisman informing Darren that, in my view, Jim
18 Odatto should send us a new FOIL request, and it's in
19 response to an e-mail Darren sent to me and Mariya.

20 Q. And what was your understanding as to why there should
21 be a new FOIL request?

22 A. My understanding is contained in Darren's e-mail to
23 me. He says that Jim Odatto stopped by to ask for
24 records for the month of June, informed me that he had

1 obtained records from January to May and asked me how
2 to proceed. He asked whether the fact that there are
3 ongoing reviews effects our ability to respond, and so
4 I told him that if he -- essentially, if he wanted
5 more documents, he should FOIL them.

6 Q. In the last sentence of Darren's e-mail to you, he
7 seems to think the previous FOIL request covers his
8 current request. Did you review the June 27th FOIL
9 request --

10 A. No.

11 Q. -- prior to making this recommendation?

12 A. No.

13 Q. And if Mr. Odatto's prior FOIL request had covered the
14 month of June, would it be necessary for him to make a
15 subsequent FOIL request?

16 A. By that time, I knew that the request had come in on
17 June 27th we generally treat a request as being as of
18 the date that they come in, so at a minimum, it
19 wouldn't have covered all of the documents, or
20 wouldn't have covered all of the potential documents.

21 Q. But it would have covered up to and including
22 June 27th?

23 A. It would have, but I don't -- we would treat a FOIL
24 request as covering any documents we have up to the

- 1 receipt of the FOIL requests, so that would be
2 June 27th.
- 3 Q. And as of the July 10th date, had you had an
4 opportunity to review the response to the FOIL
5 request?
- 6 A. I'm sure I -- I know I received them, I'm sure I at
7 least looked through them, looked at them, so yes.
- 8 Q. And were any records for the month of June included in
9 that FOIL request at that time?
- 10 A. I don't recall.
- 11 Q. And did you ever discuss the July 10 FOIL request with
12 anyone else? You indicated you discussed it with
13 Darren and with Mariya?
- 14 A. Are you talking about -- because there was,
15 subsequently, a July 10th FOIL request. I don't
16 recall. I don't know if it was sent to me at that
17 time or whether it was just sent to Mariya.
- 18 Q. Did Mariya Treisman ever discuss the July 10th FOIL
19 request with you?
- 20 A. I don't recall.
- 21 Q. And during negotiations with the Attorney General's
22 Office, was there discussions concerning the July 10th
23 FOIL request with anyone?
- 24 A. Again, I don't recall.

1 Q. Did you reach out to either Sean Maloney or Peter Pope
2 concerning the July 10 FOIL request?

3 A. I know we were having some -- I know there was some
4 internal discussions about the July 10th FOIL request,
5 I know it was a subject in the OAG's report. I
6 actually -- I know that the AG's Office had briefed us
7 on the contents of the report, so to the best of my
8 recollection, there was some discussion as to the
9 genesis of the July 10th request.

10 Q. And do you know what the sum and substance of that
11 discussion was?

12 A. I know an issue had been raised as to what was the
13 reason for the July 10th request.

14 Q. And did you provide your knowledge in that regard?

15 A. I don't recall.

16 (Commission's Exhibit 133 was marked for
17 identification.)

18 Q. I'm showing what's been marked as Commission's
19 Exhibit 133 and ask if you can identify this document?

20 A. I'll just take a minute to read it.

21 Q. Sure.

22 A. (Pause.)

23 It's an e-mail from me to Sean Maloney and Peter
24 Pope on July 22nd asking Sean to forward to the AG's

1 Office an -- to Linda Lacewell in the AG's Office an
2 e-mail that I believe he had sent to other people in
3 the AG's Office on the 21st and -- you know, telling
4 her we would respond to her third question at our,
5 then scheduled, 11:00 o'clock call and indicating that
6 it would be helpful to know the genesis of Jim Odat's
7 second FOIL request.

8 Q. And why were you inquiring as to the genesis of the
9 second FOIL request when you had generated it?

10 A. Well, I did not generate the second request. I had an
11 inquiry from -- Jim Odat's was asking for additional
12 documents, Darren Dopp asked me how he should proceed,
13 and I indicated that he should submit a FOIL request,
14 so --

15 Q. Well, you were aware, then, of the genesis of the
16 second FOIL request?

17 A. I actually don't know if I recalled at the time that
18 exchange with Darren on the 10th.

19 Q. But you did have that exchange with Darren on the
20 10th?

21 A. I had that exchange with Darren on the 10th, and I
22 actually think that I didn't recall it at the time.

23 Q. And after the exchange with Darren on the 10th, there
24 was a subsequent FOIL request from Mr. Odat's?

- 1 A. There was a subsequent FOIL request from Mr. Odató.
- 2 Q. And did Darren ever advise you that he had told
3 Mr. Odató that you or counsel or lawyers in the
4 Chamber had requested the second FOIL request?
- 5 A. I don't recall if he told me that or not.
- 6 Q. Did you ever become aware that he had relayed that
7 information to Mr. Odató?
- 8 A. I believe that I've seen an e-mail from Darren to
9 Mr. Odató indicating that the lawyers thought a second
10 request was necessary.
- 11 Q. And in Commission's 133 there's a request for making
12 Dopp and Baum available for interviews, it appears to
13 come from Linda Lacewell in the Attorney General's
14 Office?
- 15 A. Mm-hmm.
- 16 Q. Can you identify who Linda Lacewell is?
- 17 A. I believe she's an attorney in the Attorney General's
18 Office.
- 19 Q. What was her role in the investigation?
- 20 A. She was one of the attorneys who was working on the
21 investigation for the Attorney General's Office.
- 22 Q. And was this the first request that you had received
23 concerning the interview of Mr. Dopp and Mr. Baum?
- 24 A. I believe that the first request was on the 21st.

- 1 Q. And who did that come from?
- 2 A. Somebody in the AG's Office. I don't recall who.
- 3 Q. Was that request made of you?
- 4 A. I don't recall who.
- 5 (Conferring.)
- 6 A. Just to correct, it was either the 20th or the 21st.
- 7 It might have been the 20th. The 21st was a Saturday,
- 8 so I believe it was Friday the 20th, was the first
- 9 request.
- 10 Q. Was that request made of you?
- 11 A. I don't recall who they made the request to.
- 12 Q. Who was in contact with the Attorney General's Office
- 13 at that juncture, on the 20th, from the Executive
- 14 Chamber?
- 15 A. Sean, Peter and I were all in contact with the
- 16 Attorney General's Office during the general time
- 17 period.
- 18 Q. Was anyone else from the Executive Chamber?
- 19 A. Not to my knowledge.
- 20 Q. And when that request was relayed to the Chamber on
- 21 the 20th, who was advised as to the request?
- 22 A. I know that Sean, Peter and I knew of it, and I
- 23 believe that we advised Lloyd Constantine. I don't
- 24 specifically recall when we advised the Governor.

- 1 Q. And did you advise Mr. Baum and Mr. Dopp?
- 2 A. I don't personally remember advising them. I know at
3 some point they were advised of that. So when you say
4 "did you advise", I mean, they were advised by one or
5 the other of us. I just don't recall who had specific
6 conversations.
- 7 Q. Do you know when they were first told of the request
8 for interviews?
- 9 A. I do not.
- 10 Q. Do you know if they were told on that Friday, the
11 20th?
- 12 A. I know the request came in late. I can't say for
13 certain whether we told them on the 20th or the 21st.
- 14 Q. And did either Mr. Baum or Mr. Dopp ever indicate a
15 desire to testify before the Attorney General?
- 16 A. Mr. Dopp certainly did.
17 I know I had conversations with Rich Baum about
18 it. I don't recall whether he said that he wanted to
19 testify or not.
- 20 Q. When did you have conversations with Mr. Baum?
- 21 A. Either on the 20th or the 21st. Probably the 22nd as
22 well.
- 23 Q. And what was the sum and substance of those
24 conversations?

- 1 A. Sum and substance was that it was our recommendation
2 that he not testify and that we submit sworn
3 statements instead.
- 4 Q. And did Mr. Baum have an opinion in that regard?
- 5 A. I know that he felt that at a minimum he wanted to do
6 a sworn statement. I don't recall his view as to
7 whether he wanted to testify or not.
- 8 Q. And did he discuss this with you directly?
- 9 A. Yes.
- 10 Q. That he wanted to provide a sworn statement?
- 11 A. Yes.
- 12 Q. And did he discuss it with anyone else in the
13 Executive Chamber, to your knowledge?
- 14 A. I don't know who else he discussed it with.
- 15 Q. And was there a reason that you felt Mr. Baum should
16 not be testifying?
- 17 A. Prior to receiving the request for Darren Dopp and
18 Rich Baum to testify, the AG's Office had informed us
19 that they had essentially concluded that there was no
20 criminal conduct and no illegal, you know, violations
21 of law involved. There were -- we were in discussions
22 with respect to how the matter was going to be
23 concluded. It was a unique situation as it was. The
24 Attorney General's Office is the lawyers for the

1 State, they represent the State in numerous matters,
2 they represent the Governor, even in his individual
3 capacity, so having authorized our own lawyers to do
4 an investigation and having been concluded that there
5 was no illegal conduct, no violations of law, it was
6 my view at that point that it would be preferable
7 simply to give them statements that addressed the
8 central issue of -- that they were looking at,
9 specifically the surveillance issue, but not to have
10 them go ahead and testify.

11 MR. TEITELBAUM: Did the gover- -- I'm
12 sorry. Did the people at the Attorney General's
13 Office indicate to you or, to your knowledge,
14 anybody else at the Executive Chamber why they
15 wanted to take the testimony of Darren Dopp?

16 THE WITNESS: I believe I had a conversation
17 with the Attorney General in which he indicated
18 that -- there was a parallel investigation going
19 on with the Inspector General, the Inspector
20 General had asked for Darren's testimony. I
21 think they had indicated that they wanted to be
22 interviewing the people the IG would be
23 interviewing, and so I know that -- Darren
24 certainly, and then towards the end of that time

1 period, we provided them with a couple of
2 e-mails, I believe between Bill Howard and Rich
3 and/or Darren, and I think that also -- I believe
4 they indicated that also played a role in their
5 desire to have them testify.

6 MR. TEITELBAUM: During the conversations
7 that occurred beginning that Friday the 20th of
8 July, when the request was made --

9 THE WITNESS: Mm-hmm.

10 MR. TEITELBAUM: -- was the IG conducting an
11 ongoing investigation at that point?

12 THE WITNESS: Yes.

13 MR. TEITELBAUM: And had Darren Dopp
14 testified before the IG at that point?

15 THE WITNESS: No.

16 MR. TEITELBAUM: And would your answer be
17 the same for Mr. Baum?

18 THE WITNESS: Mr. Baum had also not
19 testified.

20 MR. TEITELBAUM: It was your understanding
21 that by the 20th the Attorney General's staff and
22 the Attorney General had concluded that no
23 violations of law had occurred?

24 THE WITNESS: Correct.

1 MR. TEITELBAUM: And the statements that
2 were being proposed by the Executive Chamber
3 concerning Dopp and Baum, did that first arise at
4 the point in time that the request was made for
5 testimony on the 20th?

6 THE WITNESS: Well, we discussed it
7 internally and, obviously, there were a variety
8 of options to consider and sworn statements was
9 one of the things that we considered.

10 MR. TEITELBAUM: Had the sworn statements
11 been raised with the Attorney General prior to
12 the 20th?

13 THE WITNESS: I do not recall.

14 MR. TEITELBAUM: Is it your recollection
15 that the sworn statements were raised in
16 connection with the request for testimony which
17 first occurred on the 20th of July?

18 THE WITNESS: Yes.

19 BY MS. TOOHER:

20 Q. Who was responsible for drafting Mr. Baum's statement?

21 A. I don't think that anyone in particular was
22 responsible for it. My best recollection is that Sean
23 Maloney did the first draft.

24 Q. And do you know approximately when that was?

- 1 A. I do not know when he did that first draft.
- 2 Q. And was Mr. Baum provided with a copy of his
3 statement?
- 4 A. Of Mr. Baum's statement?
- 5 Q. Yes.
- 6 A. Yes. He was shown a draft as well.
- 7 Q. Did he participate in the initial drafting?
- 8 A. I don't believe he participated in the initial
9 drafting, no.
- 10 Q. Did he participate in revising the statement?
- 11 A. I know that there were a couple of drafts. There was
12 at least one draft in a file. I don't know if there
13 were intermediary drafts. I'm sure I had
14 conversations with him. I don't recall whether I was
15 proposing changes that he was okay with or he was
16 proposing changes to me to suggest to change the
17 draft.
- 18 (Commission's Exhibit 134 was marked for
19 identification.)
- 20 Q. You've been provided what's been marked as
21 Commission's Exhibit 134. Can you identify this
22 document?
- 23 A. This is an e-mail that I sent to Rich Baum on the 22nd
24 sending him a draft statement.

1 Q. Was this the first communication you had had with
2 Mr. Baum concerning the draft statement?

3 A. No. I'm sure I talked to him about the fact that we
4 wanted to do a statement in advance of sending him a
5 draft.

6 Q. Was this the first version of the statement that you
7 had forwarded to Mr. Baum?

8 A. To the best of my recollection, this is the first
9 written version that I had sent to him.

10 Q. And did you have conversations with him about the
11 statement at that time?

12 A. I believe that I did.

13 Q. And what was the sum and substance of those
14 conversations?

15 A. I believe I sent him the draft and talked to him
16 about, you know, what he thought of it.

17 Q. And what was Mr. Baum's reaction to the draft?

18 A. I don't recall. I don't recall. I know there was a
19 later draft. I don't specifically recall what he said
20 one way or the other on this.

21 (Commission's Exhibit 135 was marked for
22 identification.)

23 Q. You've been provided a copy of what's been marked as
24 Commission's 135 and I'll ask you if you can identify

- 1 this?
- 2 A. The e-mail that I sent to Rich Baum also on the 22nd
- 3 entitled, "New version".
- 4 Q. And 134 was sent at 11:06 a.m.?
- 5 A. Mm-hmm.
- 6 Q. And 135 was sent at 11:07 a.m.?
- 7 MR. TEITELBAUM: 11:17.
- 8 Q. 11:17? I apologize.
- 9 A. Mm-hmm.
- 10 Q. It's a fairly short period of time?
- 11 A. Mm-hmm.
- 12 Q. What were the conversations that you had with Mr. Baum
- 13 that generated this second e-mail?
- 14 A. I actually don't recall if there was a conversation
- 15 in-between. It's -- you know, it's possible that I
- 16 sent him something and then, you know, decided to add
- 17 something and sent him a new version. Again, I know I
- 18 had conversations with him about drafts. I can't say
- 19 for certain that I spoke with him between 11:07 and
- 20 11:17, but it is certainly possible that I did so and
- 21 discussed the 11:06 e-mail.
- 22 Q. Were you having conversations with other members of
- 23 the Executive Chamber about this statement during that
- 24 time?

- 1 A. Yes. I was speaking with Sean Maloney and Peter Pope.
- 2 Q. And do you recall the sum and substance of those
3 conversations?
- 4 A. The sum and substance was that we wanted to provide
5 statements to the AG's Office relating to the, you
6 know, core allegations that they were looking into,
7 and so we were drafting up something to do that.
- 8 Q. And as I look at 134 versus 135, the last sentence, "I
9 believed at the time that regularly prepared and
10 maintained itineraries, what I believed to be
11 historical documents were being collected and
12 summarized in response to the media request" --
- 13 A. To a media request.
- 14 Q. -- "to a media request". Did you make that addition
15 to the statement?
- 16 A. I know I e-mailed it, so I definitely typed it in. I
17 don't recall what the genesis of adding that sentence
18 was.
- 19 Q. As you sit here today, what's your understanding as to
20 the meaning of that sentence?
- 21 A. The meaning is that Rich Baum believed, during the
22 May, June time period, that what is described as
23 regularly prepared and maintained documents were being
24 provided in response to the media requests. I believe

1 that is in contrast to some that might be created or
2 recreated.

3 Q. And is that an accurate recitation of what occurred
4 with those records?

5 A. This is, I believe, an accurate recitation of Rich
6 Baum's beliefs.

7 Q. At that time?

8 A. Yes. At that time being -- it says at that time --
9 "at the time", I believe that's the May, June time
10 frame.

11 (Commission's Exhibit 136 was marked for
12 identification.)

13 Q. You've been handed what's been marked Commission's
14 Exhibit 136. Can you identify that document?

15 A. This is an e-mail that I sent to Rich Baum at
16 1:04 p.m. on the 22nd.

17 Q. And the subject of the e-mail is "Revision". Can you
18 take a moment to compare that to 135?

19 A. Okay.

20 Q. Now, as I look at 136 compared to 135, the statement
21 concerning the historical documents being collected
22 and summarized is no longer contained in the
23 statement?

24 A. Mm-hmm.

- 1 Q. Did you have any discussion with Rich Baum concerning
2 taking that statement out?
- 3 A. Again, I was talking to Rich Baum at the time, we were
4 talking about what the statement should say, so I
5 presume we discussed, you know, what should be in or
6 out of the statement.
- 7 Q. Who was making recommendations in terms of the content
8 of the statement?
- 9 A. I know I was talking to Rich and Sean and Peter.
- 10 Q. All about the content of the statement?
- 11 A. Yeah.
- 12 Q. And did Mr. Baum make any recommendations concerning
13 removing content from the statement?
- 14 A. I mean, this is a revision. I'm not so sure I would
15 characterize it as removing content.
- 16 Q. Removing that sentence?
- 17 A. I don't recall whether we said to him, you know,
18 there's another version, whether -- I just don't
19 recall the specific back and forth that would have
20 occurred.
- 21 Q. And was Mr. Baum given final say over the content of
22 his statement?
- 23 A. He was.
- 24 Q. And was that reviewed by anyone else?

1 A. I don't know who else might have reviewed the
2 statement, other than me, Sean and Peter.

3 Q. Were the statements provided to the Governor for
4 review?

5 A. Well, I know that he saw the final versions. I don't
6 know if he saw versions before they were signed. I
7 don't recall whether he saw versions before final
8 changes were made or after final changes were made.

9 MR. TEITELBAUM: Mr. Nocenti, if, from the
10 perspective of the Executive Chamber, the
11 Attorney General had reached his conclusions by
12 July 22nd, why were statements for Mr. Baum and
13 Mr. Dopp being offered?

14 THE WITNESS: We made a determination that
15 because they were going to be -- we knew they
16 were going to be doing a report, they were going
17 to be -- you know, certainly, Mr. Dopp would be
18 referred to in the report, we didn't know at this
19 time whether Mr. Baum would be referred to in the
20 report or not, they were two high level members
21 of the administration, the core questions at that
22 time that we were aware of were the surveillance
23 question and, you know, essentially, you know,
24 what I'll describe is as either the recreation of

1 documents or whatever their standard operating
2 procedures were, and we felt it was appropriate
3 to give them sworn statements setting forth --
4 you know, basically, indicating that they had not
5 directed any surveillance of the Senator, which
6 was the core allegation. I mean, basically, this
7 whole thing started because Senator Bruno had
8 publicly stated that he had -- that surveillance
9 had occurred, the AG's Office told us they
10 concluded that it had not occurred; we were
11 completing the record by providing statements.

12 MR. TEITELBAUM: What was your understanding
13 of the meaning of surveillance in this context?

14 THE WITNESS: I believe that those -- you
15 know, the Senator's public statements -- you
16 know, my understanding was the -- I think the
17 public's general understanding of following, you
18 know, taking pictures of, you know, just
19 surveilling, you know, law enforcement
20 surveillance of the Senator.

21 MR. TEITELBAUM: Would tracking the
22 movements of somebody constitute surveillance?

23 THE WITNESS: If you are following them
24 around and tracking where they're going, I would

1 think that that's surveillance.

2 MR. TEITELBAUM: And did the -- was it the
3 Attorney General's Office that requested the
4 statements, or did they come up in some other
5 way?

6 THE WITNESS: We offered the statements to
7 the AG's Office.

8 MR. TEITELBAUM: What was their reaction?

9 THE WITNESS: They accepted the statements.

10 MR. TEITELBAUM: Did they have a reaction to
11 the statements being offered in lieu of
12 testimony?

13 THE WITNESS: I don't recall that they did.
14 I believe that we told them on a phone call on
15 the 22nd, I believe it was the same phone call in
16 which they advised us what was going to be in
17 their report. I know that they wanted an answer
18 to the question as to, you know, what we would be
19 providing, whether it be sworn statements,
20 testimony or nothing, and so we answered that
21 question.

22 MR. TEITELBAUM: Who at the Attorney
23 General's Office asked that question?

24 THE WITNESS: Asked which question?

1 MR. TEITELBAUM: Could I have Mr. Nocenti's
2 last answer read back.

3 (Thereupon, the following excerpt of the
4 proceedings was read back by the Court Reporter:

5 ANSWER: "I don't recall that they did. I
6 believe that we told them on a phone call on the
7 22nd, I believe it was the same phone call in
8 which they advised us what was going to be in
9 their report. I know that they wanted an answer
10 to the question as to, you know, what we would be
11 providing, whether it be sworn statements,
12 testimony or nothing, and so we answered that
13 question.")

14 MR. TEITELBAUM: Who asked the question?

15 THE WITNESS: It was a pending question.

16 MR. TEITELBAUM: Who posed it?

17 THE WITNESS: I don't think there was a who.
18 For example, Commission's Exhibit 133, there's an
19 e-mail from Linda Lacewell that went to me, to
20 Ben Lawsky, to Ellen Biben, cc'ing Peter Pope and
21 Sean Maloney asking some, quote, "pending
22 questions", unquote, including whether you are
23 making available Dopp and Baum for interviews. I
24 know that I had conversations with Ben Lawsky

1 about it, so, you know, it was just one of the
2 outstanding issues that was being closed down.

3 MR. TEITELBAUM: No, I understand that they
4 had asked whether you all would be producing Dopp
5 and Baum for testimony. What I'm trying to focus
6 on now is the question as to whether you would be
7 producing them for testimony or providing sworn
8 to documents or neither of those? Who -- was
9 that a pending question?

10 THE WITNESS: I think the pending question
11 is, are we making Dopp and Baum available for
12 interviews. We offered the sworn statements in
13 lieu of that. I believe I had a conversation
14 with Ben Lawskey about that. You know, the two
15 things that were, you know -- I mean, it was a
16 pending question. I guess I'm not quite sure
17 what you are driving at.

18 MR. TEITELBAUM: Did you have an indication
19 that, from the Attorney General's, perspective
20 statements in lieu of testimony was satisfactory?

21 THE WITNESS: Satisfactory for what, I guess
22 is the question?

23 MR. TEITELBAUM: For their purposes?

24 THE WITNESS: It was my understanding that

1 they had a preference for testimony, but they
2 accepted the statements and concluded their
3 report.

4 MR. TEITELBAUM: When you say "accepted the
5 statements", do you mean physically accepted the
6 statements, or accepted the statements in that
7 the statements were an acceptable submission in
8 lieu of testimony?

9 THE WITNESS: All I can tell you is that
10 they received them, I thought they were accepting
11 them. In many ways, that's just semantics. They
12 did not say to us, we don't consider this
13 sufficient, we want to have testimony.

14 BY MS. TOOHER:

15 Q. When did they indicate to you that they would be
16 willing to accept statements, the Attorney General's
17 Office?

18 A. I know certainly on the 22nd they indicated that they
19 were accepting the statements. I don't recall if I
20 had, you know, prior conversations, but certainly on
21 the 22nd.

22 Q. And how was that relayed to you?

23 A. Again, I believe that we informed them on the call on
24 the 22nd, the conference call at 2:00 o'clock. I may

1 have had prior conversations with Ben Lawsky about it.
2 Again, they did not indicate to us that that was not
3 acceptable. So I don't recall whether there was a
4 formal, you know, "we hereby acknowledge", type of
5 statement.

6 (Commission's Exhibit 137 was marked for
7 identification.)

8 Q. Mr. Nocenti, you've been provided a document marked
9 Commission's 137. Can you identify this document?

10 A. It's an e-mail from Sean Maloney to Terry Kindlon,
11 subject, "Statement", 5:33 on the 22nd.

12 Q. Who is Terry Kindlon?

13 A. He was Darren Dopp's lawyer.

14 Q. And this e-mail was sent to Mr. Kindlon and copied to
15 you at approximately 5:30 p.m.?

16 A. Mm-hmm.

17 Q. It seems to indicate that you -- "We've received
18 confirmation from the Attorney General's Office that
19 they'll accept sworn statements including one from
20 Darren"?

21 A. Mm-hmm.

22 Q. Do you know, in relation to the 5:33 p.m., on the
23 22nd, time when Mr. Maloney had received word that the
24 statements were going to be acceptable?

1 A. Again, there was a conference call that began at
2 2:00 o'clock, it went for, you know, a significant
3 period of time. I don't know exactly how long. I
4 don't recall whether there was a subsequent
5 conversation with respect to confirmation or whether
6 he's referring to the discussions on that call.

7 Q. And the conference call at 2:00 o'clock, who
8 participated in that call?

9 A. From our end, it was me, Sean and Peter, and I'm sure
10 that Ellen Biben and Linda Lacewell were on the call
11 on their end. I don't actually recall who else was on
12 the call from their end.

13 Q. Did Richard Baum participate --

14 A. No.

15 Q. -- in that telephone call?

16 What about Lloyd Constantine?

17 A. I don't believe Lloyd was on that call.

18 Q. Was anyone else in the Chamber at that time
19 participating in those discussions?

20 A. I believe, to the best of my recollection, it was
21 Sean, Peter and I in my office.

22 (Commission's Exhibit 138 was marked for
23 identification.)

24 Q. You've been provided what's been marked as

- 1 Commission's 138. Can you identify this document?
- 2 A. It's an e-mail that Rich sent to the Governor on
3 July 28th.
- 4 Q. And did you receive a copy of this e-mail?
- 5 A. I did.
- 6 Q. And can you tell me in sum and substance what the
7 subject matter of this e-mail is?
- 8 A. The subject matter of this e-mail is a discussion was
9 had with respect to the possibility that Rich Baum
10 would be moved from being Secretary to the Governor to
11 some other position.
- 12 Q. I want to draw your attention to Paragraph 4, which
13 indicates, "When David called me into the office last
14 Saturday", and the date of this e-mail is Saturday the
15 28th?
- 16 A. Mm-hmm.
- 17 Q. So the prior Saturday. Would that have been you,
18 David Nocenti?
- 19 A. Yes, that would be me.
- 20 Q. And "to lay out the plan going forward"; what was that
21 plan?
- 22 A. The plan was to -- that the AG's Office was going to
23 be issuing a report, that we would be taking -- you
24 know, potentially taking some disciplinary actions

- 1 against individuals, the IG's Office would be closing
2 its investigation as well, and, basically, how this
3 matter was going to be concluded.
- 4 Q. And the e-mail goes on, "I said that I had nothing for
5 fear from testifying, that I was willing to do so and
6 that my failure to testify would make my position
7 untenable". Did Mr. Baum relay that to you at the
8 Saturday meeting?
- 9 A. I believe that he did.
- 10 Q. That he wanted to testify?
- 11 A. That he was willing to testify.
- 12 Q. And he continues, "Everyone there pushed me very hard
13 to go along with the path that was being laid out"?
- 14 A. Mm-hmm.
- 15 Q. Who is "everyone"?
- 16 A. I don't recall who -- I actually don't recall the
17 Saturday meeting, I don't recall who was in the
18 meeting. I know this refers to Lloyd being in a
19 meeting on the 21st, so I'm sure I was at the meeting.
20 I don't recall -- I can't picture even where the
21 meeting was.
- 22 Q. When Mr. Baum relays "pushed me very hard", what do
23 you think he's referring to?
- 24 A. Look, there's a couple of ways this matter could have

1 been concluded; one would have been to have him
2 testify, another would have been to have him not
3 testify. It was my view, and I'm sure I expressed it
4 to Rich that the AG having concluded and the IG having
5 concluded that there was no illegal conduct, it would
6 be better just to have them conclude the matter
7 without testifying.

8 Q. Did you push him very hard in that direction?

9 A. I know I stated my view. I don't recall the meeting,
10 I don't know what was said, so I can't describe it as
11 being very hard or not.

12 Q. Did anyone else speak to Mr. Baum during this?

13 A. I don't recall the meeting, I don't even recall who
14 was there, and I certainly don't recall what people
15 said to each other.

16 MR. TEITELBAUM: "Pushed very hard" conveys
17 to me that there was some resistance from
18 Mr. Baum; did he have resistance to the plan that
19 was being laid out?

20 THE WITNESS: Again, I don't recall this
21 meeting in particular. He felt that he -- he was
22 certainly willing to testify. He absolutely felt
23 that he wanted to do a sworn statement of some
24 sort, so, you know, like any time you are in a

1 meeting where people are expressing different
2 views, he, you know -- we were laying out a view
3 and he was expressing his view about it.

4 MR. TEITELBAUM: Mr. Nocenti, just -- I
5 don't want you to tell me what the content is of
6 the redacted version -- the redacted portions, I
7 just want you to tell me what the subject matter
8 is.

9 THE WITNESS: The subject matter is other
10 issues relating to, you know, in broadest terms,
11 Rich Baum's performance as Secretary to the
12 Governor.

13 MR. TEITELBAUM: Does it have anything to do
14 with the matter of the use of the State Police?

15 THE WITNESS: It does not.

16 BY MS. TOOHER:

17 Q. Further down in that paragraph, "At a minimum, I
18 needed to do" -- "I said that at a minimum I needed to
19 do a sworn statement. At that point Lloyd objected to
20 my presence and I was ejected." Do you remember a
21 meeting where Mr. Baum was asked to leave by
22 Mr. Constantine after indicating he wanted to provide
23 a statement?

24 A. I know that we were having discussions -- look, there

1 were a lot of meetings that weekend, a lot of
2 discussions that weekend and the week leading up to
3 it. I believe I was at a meeting when Lloyd had
4 expressed the view that to the extent we needed to
5 talk about Rich, we should talk about Rich without
6 Rich in the office. I just -- I, frankly, don't
7 remember this Saturday meeting.

8 Q. The language in Mr. Baum's e-mail seems fairly
9 forceful. Was Mr. Baum -- did he express that he was
10 disgruntled or unhappy about signing this statement to
11 you?

12 A. He absolutely wanted to sign, he absolutely wanted to
13 submit the sworn statement, he did not want to have
14 the matter concluded with nothing from him on the core
15 allegations.

16 Q. And do you know if anyone else had discussions with
17 Mr. Baum to persuade him to sign the statement?

18 A. Well, I don't know that he needed persuasion to sign
19 the statement.

20 Q. Did Mr. Baum have an attorney at that time?

21 A. He did not.

22 Q. You are being provided a copy of what's been
23 previously marked Commission's Exhibit 57. Can you
24 identify this document?

- 1 A. This is Rich Baum's statement.
- 2 Q. This is his final statement as submitted to the
3 Attorney General's Office?
- 4 A. Yes, it is.
- 5 Q. And you notarized this statement for him?
- 6 A. I did.
- 7 Q. And that was done on the 22nd?
- 8 A. It was.
- 9 Q. And where was this statement notarized?
- 10 A. I believe it was notarized in Rich's office.
- 11 Q. And was anyone else present when you notarized the
12 statement?
- 13 A. I don't believe so.
- 14 Q. And there were other -- there was another statement
15 provided to the Attorney General's Office from the
16 Executive Chamber; is that correct?
- 17 A. That is correct.
- 18 Q. And who provided that statement?
- 19 A. I think I simultaneously e-mailed both statements to
20 the AG's Office.
- 21 Q. And who executed the other statement?
- 22 A. Darren Dopp.
- 23 Q. And how was the determination made that Mr. Dopp would
24 provide a statement?

- 1 A. It was, again, all in the same discussions that we
2 were having on Friday the 20th. They had asked for
3 them to testify, we decided to offer sworn statements
4 in lieu of testimony, so that's what we ended up
5 offering.
- 6 Q. And had Mr. Dopp indicated a desire to testify?
- 7 A. Mr. Dopp did indicate a desire to testify.
- 8 Q. And did you discuss that issue with Mr. Dopp?
- 9 A. I did, yes.
- 10 Q. What were those discussions?
- 11 A. Well, the only discussion that I recall with Darren on
12 that issue was a meeting in my office with Darren,
13 Peter Pope, Sean Maloney and Terry Kindlon.
- 14 Q. And what was the sum and substance of that
15 conversation?
- 16 A. I had sent Terry Kindlon a draft statement for Rich,
17 he -- for his review, he sent back the final version,
18 which was changed in some -- to some extent. I put
19 that on letterhead, and I believe that he was asked at
20 some point to -- actually, I think it was Commission's
21 Exhibit 137, Sean Maloney indicated that we needed to
22 have it executed that evening and asked them to come
23 to my office.
- 24 Q. And was that the first meeting that you had where they

- 1 came in to execute it, or was there a prior meeting?
2 I'm just confused.
- 3 A. I don't -- I think that was the first time I had
4 actually met Terry Kindlon. I know that there were
5 discussions that Sean and Peter had had with Darren
6 and Terry, but I was not a party to those
7 conversations.
- 8 Q. Had Mr. Dopp relayed to you directly, prior to your
9 meeting with Mr. Kindlon, his desire to testify before
10 the Attorney General?
- 11 A. He may well have, I just don't recall it.
- 12 Q. Were you aware of Mr. Dopp's personal relationship
13 with the Attorney General?
- 14 A. Yes.
- 15 Q. And had he discussed that with you in terms of his
16 testimony?
- 17 A. I don't recall that. I don't recall that.
- 18 Q. You don't recall having a conversation with him in
19 that regard?
- 20 A. You know, I know I had been talking to Darren during
21 this time period. I don't recall having a
22 conversation with him about his personal relationship
23 with the Attorney General. It even could have come up
24 in the meeting with Terry, I just don't -- you know, I

1 don't recall -- I don't recall actual words that were
2 said in that meeting, you know, so -- but, you know,
3 I'm aware of Darren's relationship, I just don't
4 remember talking to him about it at this time.

5 Q. What did Darren articulate as the reason that he
6 wanted to testify?

7 A. I believe that Darren's view was that he could
8 explain -- we had told -- withdrawn.

9 There were conversations that Sean and Peter had
10 with Terry and with Darren. He was certainly aware of
11 what the AG's Office was telling us with respect to
12 what the report was going to find. I believe that he
13 didn't agree with those findings and he wanted to go
14 and testify to, sort of, explain everything.

15 Q. What was relayed to him as what the findings were
16 going to be?

17 A. We just had a, you know, hour and half, I don't know
18 how long it was, conversation where they had laid out
19 their -- the AG's belief that there was no
20 surveillance, there was no violations of law, but
21 proper practices weren't used. They felt that the --
22 they surmised that the FOIL request may have been a
23 pretext -- I know that that's a word that they used --
24 I know that they made recommendations with respect to

1 use of the State aircraft. I don't believe we knew
2 exactly what the report was going to say, something
3 about, I believe, we should consider whether
4 disciplinary action should be taken, so my guess is
5 that he was aware of the sum and substance of what the
6 report was going to say.

7 Q. Did -- was that relayed to him?

8 A. To the best of my recollection, Sean and Peter had a
9 conversation either with Terry or with Terry and
10 Darren; I don't recall which. It was my understanding
11 that he certainly knew by the time he came into my
12 office, generally, what the report was going to say.

13 Q. And when was the determination made that Mr. Dopp was
14 not going to testify?

15 A. It was sort of a simultaneous, you know -- Dopp, as
16 opposed to Baum, I think it occurred essentially at
17 the same time. We discussed it internally, a
18 determination was made that we would offer the sworn
19 statements instead, the AG's Office didn't object to
20 that, and that's -- you know, not necessarily a
21 particular point in time.

22 Q. And when was that relayed to Mr. Dopp?

23 A. I don't know. Again, Sean and Peter were doing most
24 of the conversations with Darren and his lawyer, so,

- 1 you know, my guess is it would have been -- final
2 determination would have been sometime after the
3 conclusion of the conference call with the AG's
4 Office.
- 5 Q. I'm going to show you what's been previously marked as
6 Commission's 114 and ask you if you can identify this
7 document?
- 8 A. It's an e-mail that Sean sent to me and to Peter on
9 the 21st.
- 10 Q. And the first chain in the e-mail at 10:23 p.m. on the
11 20th from Peter Pope to you and Mr. Maloney, "Do we
12 need to discuss this with DD's lawyer? I think we do.
13 DD cannot just read in the report that we declined to
14 produce him."
- 15 A. Right.
- 16 Q. DD would refer to Darren Dopp?
- 17 A. That's correct.
- 18 Q. It appears from this e-mail that there was a
19 determination Friday evening, the evening of the 20th
20 that Mr. Dopp was not going to testify?
- 21 A. Well, when we received the request, we had internal
22 discussions about it. It was our view that he -- that
23 it would be better not to have these individuals
24 testify. There were certainly conversations that

1 were -- you know, that transpired thereafter about
2 this issue, so there was no final determination, but I
3 know that my immediate reaction upon receiving the
4 request for the testimony was that there was -- it was
5 better not to have them testify, but this was not a
6 final determination by 10:23 p.m. on the 20th of July.

7 Q. Did you have direct conversations with Darren Dopp
8 during this time frame on this issue?

9 A. I mean, I had a lot of conversations with Darren after
10 July 1st until about this time period, when he got
11 outside counsel, I don't recall that I had
12 conversations with Darren. I don't recall whether I
13 had conversations with Darren after that. I believe
14 that Sean and Peter were having conversations with
15 Darren and/or his lawyer.

16 Q. Did Mr. Kindlon indicate to you or anyone that Darren
17 wanted to testify before the Attorney General?

18 A. I don't believe I had any conversations with
19 Mr. Kindlon prior to his coming into my office when
20 Darren was going to sign the statement.

21 Q. Did either Peter or Sean indicate that Mr. Kindlon had
22 advised them that Darren wanted to testify?

23 A. I don't know. I know that Sean and Peter were having
24 conversations with either Terry alone or Terry and

- 1 Darren together. I just, you know...
- 2 Q. Do you know if they were discussing the issue of
- 3 Darren testifying before the Attorney General?
- 4 A. I know that they were discussing the issue of Darren
- 5 testifying, I just don't know who said what to whom.
- 6 Q. Do you know if Mr. Kindlon was ever directly in
- 7 contact with the Attorney General's Office?
- 8 A. I do not know.
- 9 Q. Do you know if Darren Dopp was ever directly in
- 10 contact with the Attorney General's Office during the
- 11 20th to the 22nd?
- 12 A. I don't know that either.
- 13 Q. I'm providing you what's previously been marked
- 14 Exhibit 115 and ask you if you can identify this
- 15 document?
- 16 A. This is a draft statement that I sent to Terry Kindlon
- 17 at 1:00 o'clock on the 22nd.
- 18 (Commission's Exhibit 139 was marked for
- 19 identification.)
- 20 Q. You've been provided what's been marked as
- 21 Commission's 139. I'm going to ask if you can
- 22 identify this document?
- 23 A. This is an e-mail that Terry Kindlon sent to me on the
- 24 22nd, sending me, basically, Darren's final statement.

- 1 Q. And this is at 1:43 p.m.?
- 2 A. Correct.
- 3 Q. Did you have conversations with Mr. Kindlon during
4 this time frame concerning the content of the
5 statement?
- 6 A. I don't believe I did.
- 7 Q. Do you know if he was discussing the contents of the
8 statement with anyone else at the Executive Chamber?
- 9 A. I do not know.
- 10 Q. And were you aware of the revisions that Mr. Kindlon
11 was making in terms of the content of the statement?
- 12 A. I know that the final version differed from the
13 version that I had sent to him.
- 14 Q. And what was your understanding as to what those
15 differences were?
- 16 A. You know, I would have to go line by line and read
17 them.
- 18 Q. Well, in sum and substance, did anyone relate to you
19 what Mr. Kindlon was trying to achieve in making these
20 changes?
- 21 A. No.
- 22 Q. If we compare Commission's 115 with Commission's 139,
23 the second paragraph on Commission's 139 commences, "I
24 received requests for information relating to the use

- 1 of State aircraft by public officials from members of
2 the media."
- 3 A. Mm-hmm.
- 4 Q. Did Mr. Kindlon insert that language?
- 5 A. You mean, as opposed to Darren or as opposed to --
- 6 Q. Well, the changes that are provided by Mr. Kindlon in
7 his statement --
- 8 A. Yeah.
- 9 Q. -- those were changes that he relayed to you?
- 10 A. I sent him an e-mail with a particular version; he
11 sent back an e-mail that had a different version, so
12 any changes would have been made, you know, by him or
13 whoever he was talking to at the time.
- 14 Q. And the change that he had "received requests for
15 information", was there ever any discussion concerning
16 that change to the statement?
- 17 A. I don't recall having any discussions with Terry
18 regarding the statement, you know, the changes to the
19 statement. He sent me an e-mail that was different
20 from what I had sent to him, it said "final", so I
21 accepted that as the final version.
- 22 Q. Did you have discussions with anyone else in the
23 Executive Chamber about the changes?
- 24 A. I mean, I may have talked to Peter and Sean about the

1 fact that it was different, but I don't recall, you
2 know, parsing the words.

3 Q. And in the last sentence, the changes in the content,
4 "I fully recognize" in Commission's 115 is changed to
5 "I now recognize that any requests for State Police
6 records relating to those travels should have been
7 handled through different channels". And in
8 Commission's 115, "I regret the appearance of
9 impropriety that was created by the manner" is changed
10 to "I regret any appearance of impropriety that was
11 created". It seems to be a more generic statement;
12 did you have any discussions with anyone in the
13 Executive Chamber concerning those changes?

14 A. I don't recall having conversations about the changes.
15 My guess is that I would have informed Peter and Sean
16 that we had a new version, that there was differences.
17 We may have discussed them; I just don't recall.

18 Q. Did you forward these changes to the Governor?

19 A. I'm sure that I sent the Governor a -- you know,
20 Darren's final statement. I don't recall exactly what
21 time I did it.

22 (Commission's Exhibit 140 was marked for
23 identification.)

24 Q. You've been provided what's been marked as

- 1 Commission's Exhibit 140 and I ask you if you can
2 identify this document?
- 3 A. This is an e-mail from the Governor to me responding
4 to an e-mail that I sent to him forwarding Darren's
5 final statement.
- 6 Q. And the e-mail that you sent to the Governor is at
7 10:49 on July 22nd, and his response to you is at
8 1:52 p.m. on July 22nd, but the language in the
9 statement you provide is the language that's set forth
10 in the 1:43 version from Mr. Kindlon. Can you explain
11 that?
- 12 A. Yes. I do not believe that I sent this to the
13 Governor at 10:49 a.m. Eastern Standard Time.
- 14 Q. Can you explain why it would indicate --
- 15 A. For whatever reason, sometimes on e-mails, it has
16 Greenwich Mean Time and sometimes it has other times.
17 The time on the e-mail is not necessarily always
18 Eastern Standard Time.
- 19 Q. And so the time that he responds to you, the 1:52 p.m.
20 which correlates more with the e-mails that go back
21 and forth --
- 22 A. Mm-hmm. I have to assume that that was 1:52 p.m.
23 Eastern Standard Time.
- 24 Q. Do you know when you sent the revised statement in

- 1 accordance with the response that you got?
- 2 A. After I received it from Terry Kindlon.
- 3 Q. So sometime after the 1:43 time frame?
- 4 A. Yes.
- 5 Q. And had you had prior discussions with the Governor
6 concerning Darren's statements?
- 7 A. I mean, I had had conversations with him during the
8 day. I don't recall having conversations about
9 exactly, you know, what his statement -- the words in
10 the statement used, other than that we were -- he was
11 putting in a statement indicating that he had never,
12 you know, directed a surveillance program, or
13 whatever, you know, was in the various versions.
- 14 Q. Well, this is -- the subject matter on your e-mail to
15 him was a "New revised DD statement"?
- 16 A. Mm-hmm.
- 17 Q. Had you sent him prior versions of the statement?
- 18 A. I don't recall.
- 19 Q. And had the Governor ever indicated that he thought
20 Darren might have some misgivings about giving a
21 statement?
- 22 A. Not to me.
- 23 Q. And did you provide the statements to anyone else?
- 24 A. Which statements? I have a lot of statements in front

- 1 of me.
- 2 Q. Did you provide the final statements of Darren Dopp
3 and Richard Baum to anyone else in the Executive
4 Chamber?
- 5 A. I may have given them to Lloyd Constantine. I don't
6 recall.
- 7 Q. Did you have any conversations about the content of
8 this statement at that time?
- 9 A. This is at 1:43 and 1:52. We were going to have a
10 2:00 o'clock conference call with the Attorney
11 General's Office, so I just -- you know, we were doing
12 a lot getting ready for that call, so I just, you
13 know, don't recall at that time. I don't think we
14 sent it to anybody else.
- 15 Q. At the 2:00 o'clock conference call, did you relay to
16 the Attorney General's Office that you were providing
17 the statements?
- 18 A. I believe that we did.
- 19 Q. Were they provided copies of the statements in
20 advance?
- 21 A. No.
- 22 Q. Were they provided the statement during the day on the
23 22nd?
- 24 A. Yes.

1 Q. The final executed statements or a draft of them?

2 A. I believe we gave them the final executed statements.

3 Q. And that was on the 22nd?

4 A. Yes, it was.

5 (A discussion was held off the record.)

6 (A lunch break was taken from 1:22 p.m. to
7 1:53 p.m.)

8 (Thereupon, the following excerpt of the
9 proceedings was read back by the Court Reporter:

10 QUESTION: "At the 2:00 o'clock conference
11 call, did you relay to the Attorney General's
12 Office that you were providing the statements?

13 ANSWER: "I believe that we did."

14 QUESTION: "Were they provided copies of the
15 statements in advance?"

16 ANSWER: "No."

17 QUESTION: "Were they provided the statement
18 during the day on the 22nd?"

19 ANSWER: "Yes."

20 QUESTION: "The final executed statements or
21 a draft of them?"

22 ANSWER: "I believe we gave them the final
23 executed statements."

24 QUESTION: "And that was on the 22nd?"

- 1 A. It took place in my office.
- 2 Q. And who else was present?
- 3 A. It was me, Sean Maloney, Peter Pope, Darren Dopp and
4 Terry Kindlon.
- 5 Q. And that was the total number in attendance at the
6 meeting?
- 7 A. Yes.
- 8 Q. And you said that Darren wanted and expressed that he
9 wanted to testify. Did anyone from the Executive
10 Chamber speak to him directly on that issue at the
11 meeting?
- 12 A. There was a conversation among the five of us during
13 that meeting.
- 14 Q. And Mr. Kindlon was present during these
15 conversations?
- 16 A. Yes.
- 17 Q. And what was the sum and substance of those
18 conversations?
- 19 A. I mean, actually, I thought Darren was coming over
20 just to sign the statement and to have it notarized.
21 When they got there, I don't know who initiated it,
22 but I presume either Darren or Terry initiated the --
23 wondering whether this was the right course of action,
24 submitting a signed statement as opposed to having him

- 1 go in and testify, and he was of the view that he
2 wanted to go in and testify.
- 3 Q. "He" being Darren Dopp?
- 4 A. He being Darren Dopp.
- 5 Q. What did he say in that regard?
- 6 A. I don't recall anyone's words. Sum and substance, I
7 think that he was expressing that he thought he could
8 just go in and explain it. Again, I believe that he
9 knew in sum and substance what the report was going to
10 be saying, and I believe that he wanted to go in and
11 just, you know, tell his story, is the best way to
12 describe it.
- 13 Q. Who did he want to speak with, was it anyone in
14 particular?
- 15 A. It was my understanding that he wanted to go and, you
16 know, testify, so I don't exactly know who was taking
17 testimony.
- 18 Q. Did he indicate any desire to speak to the Attorney
19 General directly himself?
- 20 A. I actually do not recall if that was mentioned or not.
- 21 Q. And did anyone indicate to Darren at that time that
22 the Attorney General's Office had a desire to
23 prosecute him?
- 24 A. No.

- 1 Q. Did the subject of potential prosecution come up
2 during the meeting at the time that Darren executed
3 this statement?
- 4 A. Again, I don't recall specifics. It was my view at
5 the time, it remains my view, that Darren's
6 activities, you know, couldn't lead to prosecution,
7 that there was -- the AG's Office was being very
8 aggressive in their interviewing of witnesses. They
9 had indicated to us that there were differences of
10 testimony between Bill Howard and Preston Felton. I
11 know that Bill Howard actually needed to correct
12 something in his testimony or wanted to correct
13 something in his testimony with the AG's Office. They
14 had indicated to us that, you know, any time you have
15 inconsistent testimony, there is always the potential
16 for perjury or a perjury charge, as opposed to just,
17 you know, innocent differences of recollection. We
18 were specifically told that the AG's Office was not
19 doing a perjury investigation, but I believe there may
20 have been some discussion during the meeting of, you
21 know, the practical foibles of going in and
22 testifying.
- 23 Q. And what was your understanding as to what those
24 foibles were as they related to Darren?

1 A. Well, any -- I mean, any time you go in to testify, as
2 I'm doing right now, somebody else could say something
3 different and it could lead to an investigation, you
4 know, of the differences in the opinion. So you know,
5 as a general rule, you know, I have come to the
6 conclusion that since they had already concluded there
7 was no illegal conduct and that there was no
8 wrongdoing but they were going to make recommendations
9 for changes, there was no need for the testimony. But
10 I believe that there was a discussion at that time
11 about the aggressiveness of the AG's Office and that
12 was something he should consider in deciding whether
13 he wanted to testify or not.

14 Q. In terms of the aggressiveness of the AG's Office, was
15 that towards Mr. Dopp, in terms of the pursuit of
16 their investigation?

17 A. No. I don't believe he had had any interactions.
18 They -- Bill Howard had told me, and I believe others,
19 that they had been aggressive in his testimony. I
20 heard, I actually don't remember from whom, that the
21 Attorney General had called Preston Felton to
22 apologize to him as to the way he was treated when he
23 testified, so that was --

24 MR. TEITELBAUM: Let me ask this question,

1 Mr. Nocenti: Was the subject of a possible
2 criminal prosecution of Dopp raised at the
3 meeting that we're talking about because of the
4 actions that he took --

5 THE WITNESS: I don't know that there was a
6 discussion.

7 MR. MOSCHETTI: Let him finish his question.

8 MR. TEITELBAUM: -- that the actions that he
9 took with respect to the State Police gathering,
10 creating informations, and so forth?

11 THE WITNESS: Just, I need the question --
12 the premise --

13 MR. TEITELBAUM: Yes.

14 THE WITNESS: I don't believe there was a
15 discussion of the AG's Office prosecuting
16 Mr. Dopp.

17 MR. TEITELBAUM: Let me reformulate the
18 question.

19 Did the subject of a prosecution of Dopp
20 arise during that meeting because of what he had
21 done during the months of May and June with
22 regard to the State Police?

23 THE WITNESS: No.

24 MR. TEITELBAUM: And was Dopp told by

1 anybody at that meeting, in your presence or to
2 your knowledge, that the submission of a
3 statement would avoid any potential prosecution
4 of him, in words or substance?

5 THE WITNESS: No, because there was no
6 discussion of potential prosecution. We had
7 already been told by the AG and the IG that they
8 had found no criminal conduct.

9 MR. TEITELBAUM: And did Dopp or his lawyer
10 say during that meeting that Dopp did not agree
11 with the first part of the underlined sentence in
12 Commission's 74, "I now recognize that any
13 requests for State Police records relating to
14 those travels should have been handled through
15 other channels"?

16 THE WITNESS: No.

17 MR. TEITELBAUM: And did Dopp at all state
18 during that meeting in words or substance that he
19 disagreed with the statement that there may have
20 been an appearance of impropriety?

21 THE WITNESS: I believe that Darren said
22 that he didn't do anything wrong, but that, to
23 me, is different from regretting any appearance
24 of impropriety. To my knowledge, he did regret

1 any appearance of impropriety.

2 MR. TEITELBAUM: Did somebody tell Dopp at
3 that meeting that there was an appearance of
4 impropriety for what he did?

5 THE WITNESS: We knew that the AG was
6 putting out a report that was going to be
7 critical talking about, you know, re-creation of
8 records, potential politicization of the State
9 Police, failure to send FOIL requests over to the
10 State Police, allegations of pretext. There were
11 no question that there were appearance issues. I
12 mean, there was no question that there were
13 appearance issues.

14 MR. TEITELBAUM: My question is: Did
15 anybody tell Dopp at that meeting that he created
16 an appearance of impropriety by what he had done?

17 THE WITNESS: I don't recall.

18 MR. TEITELBAUM: In words or substance?

19 THE WITNESS: I don't recall.

20 MR. TEITELBAUM: Was there any mention by
21 Dopp or his lawyer at that meeting that there was
22 something not accurate in Commission's 74?

23 THE WITNESS: Absolutely not.

24 MR. TEITELBAUM: Okay.

1 BY MS. TOOHER:

2 Q. Did Mr. Dopp discuss with his attorney in your
3 presence his desire not to sign the statement in the
4 form that it -- in the final form?

5 A. There was never a discussion of Darren not wanting to
6 sign the statement in its present form. There was
7 discussion as to whether he should submit a statement
8 or he should testify. There was never a discussion as
9 to changing the statement in any way.

10 Q. Did Darren ever make a statement that he considered
11 the wording of Commission's 74 to be disingenuous?

12 A. I have no recollection of him saying that. If he had
13 said that, I would have asked him, you know, why.
14 Because my understanding was this was his statement
15 that he and his lawyer had, you know, redrafted.

16 MR. TEITELBAUM: Just so the record is
17 clear, Mr. Nocenti, is it that you have no
18 recollection of it or he didn't say that in front
19 of you?

20 THE WITNESS: Well, everything I'm
21 testifying to is to my own recollection.

22 MR. TEITELBAUM: I understand.

23 THE WITNESS: He -- I mean, I --

24 MR. TEITELBAUM: We're all lawyers, and we

1 understand the statement between --

2 THE WITNESS: Right.

3 MR. TEITELBAUM: I have no recollection of
4 saying that and he didn't say it in front of me.

5 THE WITNESS: Let me answer it this way.
6 There's no way I would have had Darren sign a
7 statement that I felt that he felt was not
8 truthful.

9 BY MS. TOOHER:

10 Q. Were any conversations had with Mr. Dopp outside the
11 presence of his attorney on July 22nd?

12 A. Not with me.

13 Q. Are you aware of anyone in the Executive Chamber
14 having conversations with Mr. Dopp outside the
15 presence of his attorney on July 22nd?

16 A. I am not.

17 MR. TEITELBAUM: How about on the 21st, did
18 anybody ever tell you that either Mr. Pope or
19 Mr. Maloney had conversations with Dopp outside
20 the earshot of his lawyer?

21 THE WITNESS: I know there were meetings. I
22 don't recall them saying that they talked to
23 Darren outside the earshot of his lawyer.

24 MR. TEITELBAUM: And once Terry Kindlon came

1 on the scene, which I believe was the 20th?

2 THE WITNESS: I believe it was the 20th.

3 MR. TEITELBAUM: From -- at that point, what
4 was the relationship from the Executive Chamber's
5 perspective between Executive Chamber lawyers and
6 Darren Dopp?

7 THE WITNESS: I don't know, I mean -- could
8 you repeat the question.

9 (Thereupon, the following excerpt of the
10 proceedings was read back by the Court Reporter:

11 QUESTION: "at that point, what was the
12 relationship from the Executive Chamber's
13 perspective between Executive Chamber lawyers and
14 Darren Dopp?")

15 THE WITNESS: I don't know that the hiring
16 of Terry Kindlon changed that. We made clear to
17 everyone -- or it was my understanding that it
18 had been made clear to everyone that we were not
19 representing them in their personal capacity.
20 It's up to the individual to decide, do you want
21 to get a lawyer or do you not want to get a
22 lawyer. He at some point decided to get a
23 lawyer; that lawyer was Terry Kindlon. I think
24 that didn't change the relationship; we still did

1 not represent him in his personal capacity.

2 MR. TEITELBAUM: Was he urged to get a
3 lawyer by members of the Executive Chamber?

4 THE WITNESS: I was not in the room when
5 that was discussed, you know.

6 MR. TEITELBAUM: What's your understanding?

7 THE WITNESS: My understanding was that we
8 told him that there would be, likely, some
9 disciplinary action. At that point our interests
10 diverged and he should seriously consider whether
11 he wants to get his own lawyer.

12 MR. TEITELBAUM: Disciplinary action towards
13 him?

14 THE WITNESS: Correct.

15 MR. TEITELBAUM: By the Executive Chamber?

16 THE WITNESS: Correct.

17 MR. TEITELBAUM: When was he told that?

18 THE WITNESS: Probably around the 20th. I
19 don't know exactly. It could have been earlier,
20 I just don't know.

21 MR. TEITELBAUM: When had the Executive
22 Chamber come to a decision that it was going to
23 discipline him?

24 THE WITNESS: I mean, it was something that

1 was discussed from the 20th to, basically, the
2 22nd. The possibility of discipline and the
3 decision of discipline are two different things.

4 MR. TEITELBAUM: And the possibility of
5 discipline was first raised when?

6 THE WITNESS: You know, it was in the -- it
7 was -- there were discussions with the Attorney
8 General's Office as to how the matter was going
9 to be resolved. They were going to issue a
10 report that was going to be critical, they gave
11 us some idea of what that was going to say before
12 the 22nd, there was a discussion of us
13 potentially taking some disciplinary action, we
14 discussed that internally and at some point it
15 had enough fruition to warrant talking to Darren
16 about that and indicating he may want to get
17 private counsel.

18 MR. TEITELBAUM: And that -- those
19 conversations within the Executive Chamber
20 occurred not earlier than the 20th?

21 THE WITNESS: Well, the AG's Office informed
22 me that they were -- they had found no
23 criminality -- or informed us that that they had
24 found no criminality prior to the 20th. There

1 was initial conversations about -- with the AG's
2 Office about how this matter could then be
3 resolved going forward. So it was before the
4 20th that there was a discussion of the
5 possibility of some disciplinary action with
6 respect to unnamed individuals, which was
7 discussed internally. I just don't recall when
8 exactly we had internal discussions.

9 MR. TEITELBAUM: Was Dopp told on the 22nd,
10 in your presence or to your understanding, that
11 he would have to take a professional hit and live
12 to fight another day, words to that effect?

13 THE WITNESS: I do not recall that or words
14 to that effect being said, but, again, I don't
15 recall, really, anyone's words at that meeting.

16 MR. TEITELBAUM: Well, the concept that he
17 would --

18 THE WITNESS: I do not.

19 MR. TEITELBAUM: -- he would be punished,
20 but he would live to fight another day?

21 THE WITNESS: I do not recall that being
22 said.

23 MR. TEITELBAUM: In words or substance?

24 THE WITNESS: Yeah. I can't say that it

1 wasn't. I don't recall.

2 BY MS. TOOHER:

3 Q. Was that concept ever discussed in meetings with other
4 members of the Executive Chamber, that Darren was to
5 take the hit?

6 A. Not that I recall.

7 Q. And was it ever relayed to you by anyone in the
8 Executive Chamber that Mr. Kindlon had raised the
9 issue of Darren felt he was taking the hit?

10 A. Again, I don't recall. It could have been something
11 he mentioned at this meeting, I just -- you know, it
12 was a while back, I just don't recall what people
13 specifically said.

14 Q. But that concept, that Darren would be taking a hit on
15 this, was that brought up in discussions with other
16 members of the Executive Chamber?

17 A. I do not recall.

18 (Commission's Exhibit 141 was marked for
19 identification.)

20 Q. You've been provided what's marked as Commission's
21 Exhibit 141. I'm going to ask you if you can identify
22 this document?

23 A. I believe that these are notes of Sean Maloney.

24 Q. And have you seen these notes before?

- 1 A. I have.
- 2 Q. In what context?
- 3 A. Just in a document production context.
- 4 Q. And the notes seem to indicate the date 7/22 along the
5 side and various time frames. Looking to the content
6 of the notes, do you have any information as to what
7 these notes reflect?
- 8 A. I can tell you what the words say. They're not my
9 notes. One thing that's headed, "TC with Terry
10 Kindlon", there's one, "David's call with Lawsky",
11 there's one with "TC/Report Briefing", that seems to
12 be the last.
- 13 Q. So do you have any understanding as to what these
14 notes reflect?
- 15 A. I believe that these are Sean Maloney's notes of two
16 telephone calls and a meeting.
- 17 Q. And this would be during the July 22nd time frame?
- 18 A. Yeah. There are three dates on them, all July 22nd.
- 19 Q. On the second page, July 22nd at 2:00 p.m., it says,
20 "OAG, Lawsky, Lacewell, Biben", is that Jerry --
- 21 A. Goldfeder.
- 22 Q. -- "Goldfeder, Maloney, Nocenti, Pope"?
- 23 A. Mm-hmm.
- 24 Q. Were those the individuals that participated in the

1 conference call?

2 A. I know that Sean, Peter and I participated, I know
3 that Linda Lacewell and Ellen Biben participated. I
4 now see that it says Lawsky and Goldfeder, you know,
5 so I presume that they were on the call as well. But
6 I believe that Ellen Biben and Linda Lacewell did most
7 of the talking.

8 Q. So it would be a fair interpretation of this document
9 that these are Mr. Maloney's notes during the relevant
10 time frame?

11 A. I believe this is his handwriting, these are notes
12 that, I believe, have been represented to me as his
13 notes and they're dated on July 22nd. I'm not quite
14 sure what the question you are asking me is.

15 Q. That's sufficient.

16 On the first page of the notes, 7/22, 11:30 a.m.
17 there's the TC with Terry Kindlon?

18 A. Mm-hmm.

19 Q. Which seems, if I'm reading it correctly, "A, if he
20 needs to take the hit, he'll do it." And then it goes
21 on, "feels that things are being taken out of context
22 and spun". Did Mr. Maloney ever relate to you the
23 contents of that telephone call with Terry Kindlon?

24 A. I don't recall.

1 Q. Beyond these notes?

2 A. I don't recall.

3 MR. TEITELBAUM: Did Sean Maloney convey to
4 you that Kindlon told him that Dopp was prepared
5 to take a hit?

6 THE WITNESS: I don't recall him using those
7 words. And you know, Sean was keeping me
8 generally informed of what was going on, but that
9 appears to be Terry Kindlon's characterization
10 of, you know, what he was saying.

11 MR. TEITELBAUM: Well, did -- was it
12 conveyed to you that -- by Maloney that, on the
13 22nd, that Dopp was prepared to accept some kind
14 of treatment that would be adverse to him?

15 THE WITNESS: Darren certainly had been told
16 that we were considering disciplinary action
17 against him. So again, I don't recall -- I know
18 that I was generally being kept informed of the
19 conversations that Sean and Peter were having
20 with Terry and with Darren. I don't recall, you
21 know, the specifics that you just referred to.

22 MR. TEITELBAUM: Was it conveyed to you on
23 the 22nd by Maloney that he was informed that
24 Dopp would accept disciplinary action?

1 THE WITNESS: I mean, I don't know what you
2 mean by "accept".

3 MR. TEITELBAUM: Would not contest it.

4 THE WITNESS: I don't recall ever having any
5 conversations with anybody about someone
6 contesting disciplinary action.

7 MR. TEITELBAUM: Were you told by Maloney
8 that it was Dopp's position that the facts
9 surrounding his conduct were being taken out of
10 context?

11 THE WITNESS: You are using words, I don't
12 know -- recall those words.

13 MR. TEITELBAUM: I don't mean the precise
14 words; I mean in substance.

15 THE WITNESS: My general understanding of
16 Darren's position was that he felt that he didn't
17 do anything, you know, improper. I believe that
18 that was his position.

19 (Commission's Exhibit 142 was marked for
20 identification.)

21 Q. You've been handed what's been identified as
22 Commission's 142. I'm going to ask you if you can
23 identify these documents?

24 A. This is somebody else's notes. I actually don't

- 1 recognize the handwriting.
- 2 Q. If I told you that they were identified to us as Peter
3 Pope's notes, would that refresh your recollection as
4 to whose handwriting it might be?
- 5 A. It doesn't -- I mean, I don't know Peter's handwriting
6 well enough, but he's the only other person that I
7 know of that was talking to Terry Kindlon on July
8 22nd, so that would not surprise me.
- 9 Q. And I would just note that these notes also contain
10 the similar statement, concerning, "if he has to take
11 the hit, he will". Did Mr. Pope at any time relay
12 that concept to you?
- 13 A. Peter and Sean were keeping me informed of their
14 conversations with Kindlon. I just don't recall
15 whether they used those words in the way they kept me
16 informed. I just, you know, don't know.
- 17 Q. What about that concept, that Darren would, in effect,
18 be the person to bear the brunt of the Attorney
19 General's investigation; was that discussed?
- 20 A. I don't know that "be the person to bear the brunt" is
21 an accurate representation of what occurred. A
22 determination was made that he and Bill Howard had
23 clear lapses in judgment and a decision was made to
24 take disciplinary action against them. A decision was

1 not to take any disciplinary action against Preston
2 Felton and those were all the -- those were the three
3 people that were being looked at for disciplinary
4 action.

5 Q. And I understand that, but what I'm asking you is a
6 little different. And when I say the concept of "bear
7 the brunt", those are my words; I'm not looking to put
8 them in anyone's mouth.

9 A. Mm-hmm.

10 Q. But take the hit, be the responsible party, be the
11 up-front person that who is being given responsibility
12 for his actions, was that concept ever discussed
13 amongst you, Peter Pope, Sean Maloney during that
14 July 22nd time frame?

15 A. Again, I did not think of it in those terms. Because
16 being the "up-front person" makes it sound like
17 there's other undisciplined people behind that. It is
18 quite possible that they told me that he has -- you
19 know, that he said, quote -- I'm quoting from
20 Commission 142 -- "if he has to take the hit, he
21 will", I just don't recall.

22 Q. Did you ever believe that Darren Dopp was taking the
23 hit?

24 A. Darren Dopp was disciplined for his lapses in

1 judgment. I don't know what you mean by "take a hit".

2 Q. Did you ever feel that Darren Dopp was being made to
3 take greater responsibility in this than his actions
4 merited?

5 A. Well, in the aftermath of all of this, my view became
6 that he ended up with much worse consequences than he
7 merited.

8 Q. And what were those consequences?

9 A. Well, he ended up -- you know, we were initially going
10 to suspend him for an indefinite period of not less
11 than 30 days and then two months later, he was no
12 longer working for the Executive Chamber. He also
13 took a very large, you know -- it was in the press,
14 you know, he took a large -- the adverse consequences
15 to him were much greater than the discipline imposed.

16 Q. Have you had any discussions with Mr. Dopp since
17 July 22nd concerning the actions, the disciplinary
18 actions and the Attorney General's report?

19 A. I have.

20 Q. And did Mr. Dopp relay to you his feeling that he had
21 been made to take the hit or suffered undue
22 consequences concerning the report?

23 A. He certainly expressed to me his view that he suffered
24 undue consequences for his conduct. Again, I -- you

1 know, "take the hit" makes it sound like you are
2 taking a hit for somebody else, like you are stepping
3 in -- I don't recall him saying -- using those words
4 to me.

5 Q. In terms of the statements that Mr. Dopp and Mr. Baum
6 gave to the Attorney General's Office, what was your
7 understanding of the use to which the Attorney
8 General's Office was going to put those statements?

9 A. I didn't know for sure. It was my understanding -- I
10 didn't know whether they were going to mention them in
11 the report or not. It was my understanding that they
12 were going to use the fact that they had received
13 them, in part, to respond to questions as to why they
14 had not interviewed Darren and Rich.

15 THE WITNESS: Can I ask a question? Do you
16 have another bottle stashed back there somewhere?

17 MR. SHEA: Actually, this has not been
18 opened.

19 THE WITNESS: Thank you.

20 BY MS. TOOHER:

21 Q. When did you become aware that they were not going to
22 be using the statements in the report?

23 A. After I read the report.

24 Q. And when did you first read the report?

- 1 A. I know that I quickly read a draft of it on the
2 morning of the 23rd, and then I know that I read it in
3 the -- you know, more closely, whether it was that day
4 or the next day, it was shortly thereafter.
- 5 Q. And was there negotiations with the Attorney General's
6 Office as to including the statements as part of the
7 report?
- 8 A. There weren't negotiations. It was obviously their
9 decision as to whether to put it into the report or
10 not. They had led me to believe that they weren't
11 going to be, I believe the word that I used was
12 either, parsed or dissected or both, in the report.
13 They were accepting the statements, but it wasn't
14 going to be a focal point of their report.
- 15 Q. Were there issues that were negotiated as part of the
16 report?
- 17 A. I don't know what you mean by "negotiated". We
18 basically -- they told us they were going to be
19 issuing a report, they were looking for us to do a
20 statement; not a Darren Dopp or Rich Baum statement,
21 but a statement from the Governor. They wanted to
22 know how the Governor was going to react to the
23 report. We wanted to know essentially what the
24 contents of the report was going to be in order to

1 figure out what our reaction was going to be, so there
2 was the -- there was a lot of discussions back and
3 forth in the last couple days leading up to the actual
4 release of the report.

5 Q. And was there any discussion of you providing certain
6 things to the Attorney General's Office in exchange
7 for them making note of those things in the report?

8 THE WITNESS: Could you read the question,
9 again.

10 (Thereupon, the following excerpt of the
11 proceedings was read back by the Court Reporter:

12 QUESTION: "And was there any discussion of
13 you providing certain things to the Attorney
14 General's Office in exchange for them making note
15 of those things in the report?")

16 A. That's a hard question to answer. They certainly
17 wanted to know what we were going to say about the
18 report. There was some discussion about how they were
19 going to -- whether they were going to characterize
20 our cooperation and how they were going to
21 characterize it. We strongly objected to any
22 implication which we thought would be false, that we
23 had not cooperated with the investigation. They told
24 us they were contemplating putting such a section in.

1 We strongly objected to the inclusion of that, and
2 there was discussion with respect to how -- you know,
3 whether that was going to be in or whether it was not
4 going to be in, and that was connected in some ways to
5 how we were responding to the report.

6 Q. I want to draw your attention back to 141,
7 Mr. Maloney's notes.

8 A. Mm-hmm.

9 Q. And on the bottom section where he refers to "David's
10 call with Lawsky"?

11 A. Mm-hmm.

12 Q. David would be you, David Nocenti?

13 A. Yes.

14 Q. And Lawsky would be whom?

15 A. Ben Lawsky.

16 Q. And Mr. Maloney sets forth, "We each have goals", and
17 then sets forth four different goals: "You want
18 accuracy, you want a result, we want finality, over
19 tomorrow, we'll issue a statement, we want you to be
20 silent on cooperation". Do you recall having that
21 discussion with Mr. Lawsky concerning those issues?

22 A. Yes.

23 Q. And then B: "We're offering sworn statements from
24 Baum and Dopp denying the allegations, and in Darren's

1 case, expressing some contrition. We think that will
2 be helpful." Were these ongoing negotiations that you
3 were having with the Attorney General's Office?

4 A. I don't know what you mean by "ongoing".

5 Q. Discussions?

6 A. This was a call that I had with Ben that immediately
7 preceded the larger call. We knew that they wanted an
8 accurate report, and we also knew that they were
9 looking for a result. We certainly wanted to have
10 this thing be over. We didn't want to, you know, have
11 them issue a report and have continuing investigations
12 go on, and we did not want them to put in the report
13 what we believed would be inaccurate information about
14 cooperation. So we were satisfied if they were silent
15 on it.

16 MR. TEITELBAUM: In 141, it also says that
17 "We'll issue a statement". Does that mean a
18 statement by the Governor?

19 THE WITNESS: Yes.

20 MR. TEITELBAUM: Was the indication that the
21 Governor would issue a generally positive
22 statement about the report?

23 THE WITNESS: I don't know what you mean by
24 "positive". Basically, what was discussed was

1 that they wanted us to accept the findings and,
2 you know -- yeah, I would say positive. Accept
3 the findings, take whatever actions we were going
4 to take, you know, not question the manner in
5 which they had conducted the investigation or,
6 you know, the conclusions that were reached.

7 MR. TEITELBAUM: And did you say to Lawskey
8 that they would get such a statement if they were
9 silent on cooperation, or words to that affect?

10 THE WITNESS: No.

11 MR. TEITELBAUM: On the second page of 141,
12 Item Number 3-A in the middle of the page, was
13 the" --

14 THE WITNESS: Which item again?

15 MR. TEITELBAUM: 3-A. "Can you give us a
16 representation re: what you'll say about
17 cooperation". Do you see that?

18 THE WITNESS: Mm-hmm.

19 MR. MOSCHETTI: I think it's 3-B.

20 THE WITNESS: 3-A.

21 MR. TEITELBAUM: Was that requested?

22 THE WITNESS: We asked them during the call
23 to tell us what they would be saying about
24 cooperation.

1 MR. TEITELBAUM: And the Executive Chamber
2 was proposing that they be silent?

3 THE WITNESS: Correct.

4 MR. TEITELBAUM: And if the Attorney
5 General's staff was asked or the Attorney
6 General, they would all say that the Executive
7 Chamber cooperated?

8 THE WITNESS: Correct.

9 MR. TEITELBAUM: And then it says, "We're
10 prepared to offer a sworn statement."

11 THE WITNESS: Mm-hmm.

12 MR. TEITELBAUM: Is that correct?

13 THE WITNESS: Yes.

14 MR. TEITELBAUM: And the sworn statements, I
15 think it's plural, as I read it.

16 THE WITNESS: I don't know if there's an 's'
17 on that or not.

18 MR. TEITELBAUM: But those would be the Dopp
19 and Baum statements; correct?

20 THE WITNESS: Yes.

21 MR. TEITELBAUM: In addition to proposing
22 Dopp and Baum statements, wasn't the Executive
23 Chamber also proposing a positive statement by
24 the Governor?

1 THE WITNESS: Correct.

2 MR. TEITELBAUM: And the dropping of any
3 reference in the report to the absence of
4 cooperation, that subject was raised in
5 connection with the proposing of the sworn
6 statements; correct?

7 THE WITNESS: No.

8 MR. TEITELBAUM: Isn't it correct that the
9 dropping of the statement concerning cooperation
10 was raised in connection with a proposed positive
11 statement by the Governor about the report as
12 part of the same discussion?

13 THE WITNESS: It was part of the same
14 discussion, we wanted to know what the report was
15 going to say, sum and substance, including our
16 cooperation. They wanted us to say positive
17 things about the report, including saying that it
18 was fair and accurate, I guess is the best way to
19 describe it.

20 MR. TEITELBAUM: I'm just reading 3-A when I
21 ask about --

22 THE WITNESS: I do not --

23 MR. TEITELBAUM: -- the offering of the
24 statements were raised as part of the same

1 discussion in which the Executive Chamber was
2 asking for a representation about what the
3 Attorney General's people would be saying about
4 cooperation?

5 THE WITNESS: I believe this is a
6 description of what Peter was saying. There was
7 not a connection between the two.

8 MR. TEITELBAUM: And on the last page of
9 141, Item Number 13 says, as I read it, "We find
10 it troubling and counterfactual" -- and that's in
11 quotes, and then quotes, and it says -- "that we
12 didn't cooperate". Was that said during the
13 conversation with the Attorney General's people
14 on the 22nd?

15 THE WITNESS: It was.

16 MR. TEITELBAUM: Was it also said that if
17 the Attorney General's comment about lack of
18 cooperation stays in the report, it's going to be
19 extremely difficult for the Executive Chamber to
20 embrace the report, was that said?

21 THE WITNESS: Correct.

22 MR. TEITELBAUM: And was there a draft that
23 you, the Executive Chamber would received from
24 the Attorney General which had in it a statement

1 that the Executive Chamber didn't cooperate?

2 THE WITNESS: No.

3 MR. TEITELBAUM: Well, so I understand your
4 testimony, the Executive Chamber -- withdrawn.

5 Did the Executive Chamber receive
6 information from the Attorney General's Office
7 that they had a report that referenced the fact,
8 as they saw it anyway, that the Executive Chamber
9 was not cooperating or had not cooperated in the
10 Attorney General's investigation?

11 THE WITNESS: They briefed us on the 22nd
12 about what the report was going to contain --
13 about the report. They also talked about our
14 cooperation. I don't recall if that was going to
15 be in the report or something they said. But I
16 believe it was something they were proposing may
17 be in the report, and it questioned our
18 cooperation, which we felt was inaccurate.

19 (Commission's Exhibit 143 was marked for
20 identification.)

21 BY MS. TOOHER:

22 Q. Mr. Nocenti, I've provided you with a copy of what's
23 been marked Commission's Exhibit 143 and ask you if
24 you can identify that document?

1 A. An E-mail that I sent to Ben Lawskey at 8:19 p.m. on
2 July 22nd.

3 Q. And in the second sentence of the e-mail, "The revised
4 draft of the Governor's statement with the sentence
5 you requested is attached." What is that statement
6 referring to?

7 A. I know that they had seen prior drafts of the
8 statement. I would have to compare the revised draft
9 with the prior draft to know for sure.

10 (Commission's Exhibits 144-146 were marked
11 for identification.)

12 MR. MOSCHETTI: Are you going to take a
13 moment to read those?

14 THE WITNESS: Sure.

15 MR. MOSCHETTI: Do you mind, I'll be right
16 back.

17 BY MS. TOOHER:

18 Q. Mr. Nocenti, can you place these documents, can you
19 identify these documents; 144, 145 and 146?

20 A. They're three drafts of the statement of the Governor.

21 Q. And is this the statement that was prepared in
22 response to the Attorney General's report?

23 A. I don't believe it's the final, but these are drafts
24 of the final.

1 Q. And were these drafts shared with representatives of
2 the Attorney General's Office, to your knowledge?

3 A. I know that at least one of them was. I don't recall
4 if these were or not.

5 Q. Can you identify which of those were shared with the
6 Attorney General's Office?

7 A. You know, I'm not sure I can. I can tell you 145 was
8 not because it's dated July 21st and it appears to be
9 an earlier draft, again -- withdrawn.

10 Since I don't know if they got an earlier draft,
11 I'm looking at Commission Exhibit 143 which attaches a
12 statement, so I believe that the one dated July 21st
13 is not the statement that was attached.

14 Q. To Commission's 143?

15 A. To Commission's 143, that is correct.

16 I cannot tell you -- I can tell you -- give me a
17 moment. (Pause.)

18 The best of my recollection 170 and -- 1170 and
19 1171 were the attachments.

20 Q. So that's 144, Commission's 144?

21 A. Correct.

22 Q. Is what was attached to Commission's 143?

23 A. Mm-hmm.

24 Q. And my review of the difference between 145 and 144 is

- 1 there's a couple of additions. My --
- 2 A. Are you comparing 145 and 144?
- 3 Q. Yes.
- 4 A. Or 146 and 144?
- 5 Q. 145 and 144. The reason I'm doing this is because 143
- 6 refers to the addition of a sentence, so I would infer
- 7 from that that it's an addition of a sentence to the
- 8 Governor's statement.
- 9 A. Right, but --
- 10 Q. Do you know what that reference pertains to?
- 11 A. Again, I don't know if they had seen a prior draft.
- 12 They may have. I don't know if 145 would have been
- 13 the draft that they had seen, so I just don't
- 14 recall -- I had numerous discussions with Ben over
- 15 those few days, so I can't say for certain.
- 16 Q. You can't say for certain what that references to?
- 17 A. No. I know that they wanted the statement to say,
- 18 basically, that the report was accurate and fair, and
- 19 I know that I had discussions with Ben about it, but I
- 20 don't know if there might have been some other
- 21 sentence in here.
- 22 Q. So your understanding of the statement that the
- 23 Attorney General's Office was looking for, as
- 24 referenced in 143, was a statement of the fairness of

- 1 the account?
- 2 A. Well, it says, "The revised draft of the Governor's
3 statement is attached". They certainly wanted to know
4 what the Governor's overall statement was going to be.
5 I knew that they did not want our statement to be
6 critical of their report, and I know that they wanted
7 us to essentially not question the findings of the
8 report. So there was a discussion of those issues.
9 And so when it says in 143, "The revised draft of the
10 Governor's statement" -- this whole thing is the
11 Governor's statement. When it says, "with the
12 sentence you requested is attached", again, I know
13 there were discussions of them specifically wanting a
14 sentence -- specifically wanting a statement to say it
15 was accurate and fair. I just -- I mean, I could have
16 had a conversation with him two minutes earlier where
17 he was mentioning something else, so I just can't say
18 for certain.
- 19 Q. But there is a statement on the second page of
20 Commission's 144 --
- 21 A. Correct.
- 22 Q. -- concerning Attorney General's --
- 23 A. Correct.
- 24 Q. -- report?

- 1 A. And they certainly had asked us to have the Governor's
2 statement say that.
- 3 Q. Say, "I want to thank the Attorney General's Office
4 and the State Inspector General's Office for their
5 efforts and for issuing an expeditious, thorough,
6 professional and fair report"?
- 7 A. Yes.
- 8 Q. In sum and substance, that was a request from the
9 Attorney General's Office?
- 10 A. Sum and substance, that was the request from the
11 Attorney General's Office, with the possible exception
12 of the thanking of the State Inspector General's
13 Office.
- 14 Q. They had not requested a thank you for the State
15 Inspector General's Office?
- 16 A. Not as far as I recall.
- 17 Q. In Commission's Exhibit 146, which is Draft Number 2,
18 on Page 2 in italics there is a discussion concerning
19 Preston Felton, the Acting Superintendent of the State
20 Police?
- 21 A. Mm-hmm.
- 22 Q. Did you have discussions with the Attorney General's
23 Office concerning the discipline in this matter?
- 24 A. Yeah, we had discussions about who we might be taking

1 actions against and Darren, Bill and Preston Felton
2 were the ones that were being discussed, yes.

3 Q. Was there discussion specifically concerning Preston
4 Felton?

5 A. I know that I said to them that those were three
6 people that we were considering taking disciplinary
7 actions against. Even looking at Exhibit 143, at
8 8:19, I had said to Ben, "We're going to meet tonight
9 and in the morning to decide whether the disciplinary
10 sanctions being imposed are appropriate in view of the
11 facts that you outlined today. We're going to
12 probably want to read the report before making a final
13 decision on that", so we, at least at this point,
14 hadn't made any final determinations as to what the
15 disciplines specifically would be or who they would be
16 against.

17 Q. Was the Attorney General's Office having any input on
18 what the disciplinary actions would be?

19 A. I know I discussed with them what we were
20 contemplating. I believe I had a conversation with
21 them where, you know, there was a discussion of, you
22 know, suspensions or demotions. So I don't know what
23 you mean by "input". I had conversations with them
24 about what we expected would be a range of options, I

1 guess is the best way to put it.

2 Q. And what was the Attorney General's response
3 concerning discipline?

4 A. I think it was their view that it was appropriate to
5 take disciplinary actions against individuals who they
6 felt had not -- you know, had taken actions that they
7 did not think were appropriate.

8 Q. And who did they express should be disciplined in this
9 matter?

10 A. I know I had discussions with Ben about Preston
11 Felton, Darren Dopp and Bill Howard.

12 Q. And did they express a desire that those individuals
13 should all be disciplined?

14 A. You know, I know that they expected some disciplinary
15 action. I can't say for sure, you know, whether they
16 felt that all three should be disciplined or, you
17 know, whatever. I believe there was actually some
18 discussion at some point where the report might have
19 recommended discipline against named individuals, but
20 I believe that that did not make its way into the
21 final report.

22 MR. TEITELBAUM: Were the representatives of
23 the Executive Chamber told by representatives of
24 the Attorney General's Office that, at least at a

1 point in time, they were intending to include
2 that there was initial cooperation on the part of
3 the Executive Chamber, at a certain point in
4 time, but that after Felton and Howard testified,
5 they had interviews scheduled with others and
6 found out that the State Police had been notified
7 that the interviews had been canceled?

8 THE WITNESS: On the 20th when they were
9 briefing us on what the report might contain,
10 they indicated that there -- again, I'm not sure
11 if it was going to be in the report, but I
12 believe it was, as opposed to separately stated
13 if asked, again, that there was -- it was going
14 to be a paragraph or something that questioned
15 our cooperation.

16 MR. TEITELBAUM: And that they were
17 contemplating putting in the report that the
18 Executive Chamber was in a feud with the
19 investigation because it slowed it down?

20 THE WITNESS: I believe that is correct.

21 MR. TEITELBAUM: And that the Attorney
22 General's people found that troubling; correct?

23 THE WITNESS: Yes.

24 MR. TEITELBAUM: And that there were certain

1 e-mail requests that were declined by the
2 Executive Chamber?

3 THE WITNESS: I believe they also said that.

4 MR. TEITELBAUM: What e-mail requests were
5 declined?

6 THE WITNESS: I actually don't know.

7 MR. TEITELBAUM: And there was too much time
8 to get answers on the FOIL matter; correct?

9 THE WITNESS: I think it says "FOIL thing".

10 MR. TEITELBAUM: This may say "FOIL thing".
11 I didn't want to say "thing".

12 THE WITNESS: Again, you know, this entire
13 thing transpired between July 5th and July 23rd,
14 which, as an investigator, you know is a very
15 short period of time. So any criticism that we
16 were slowing them down or getting -- or taking
17 too much time to answer requests, we rejected
18 outright as not being accurate.

19 MR. TEITELBAUM: And then it says they were
20 disappointed that their interview requests were
21 declined; correct?

22 THE WITNESS: Mm-hmm.

23 MR. TEITELBAUM: And I take it that those
24 interview requests were requests for Baum and

1 Dopp?

2 THE WITNESS: That would be my assumption,
3 yes.

4 MR. TEITELBAUM: You also say, and this is
5 on the 22nd, I believe, Mr. Nocenti, at least
6 according to the last page of 141, "Why is anyone
7 served by getting into a dispute about our
8 cooperation", meaning the Executive Chamber's
9 cooperation, I take it. Do you see that?

10 THE WITNESS: Mm-hmm.

11 MR. TEITELBAUM: Who does "anyone" refer to
12 here?

13 THE WITNESS: Our office or their office.
14 (Commission's Exhibit 147 was marked for
15 identification.)

16 BY MS. TOOHER:

17 Q. I'm showing you what's been marked as Commission's
18 Exhibit 147. It is a document that has been
19 represented to us by the Executive Chamber to be the
20 notes of Peter Pope. Have you seen this document
21 before?

22 A. I have.

23 Q. Can you identify it further?

24 A. I really can't.

1 Q. The document seems to indicate on the top, "We
2 cooperated", and then on the bottom, the disciplinary
3 actions, two out of three of which occurred; "30 days
4 without pay, out of the Executive Chamber and no" -- I
5 read that as -- "nomination". 30 days without pay
6 appear to be referencing Darren Dopp. Out of the
7 Executive Chamber is what occurred with Bill Howard.
8 And the nomination would appear to refer to
9 Mr. Felton. Did Peter Pope ever discuss with you the
10 concept of exchanging a statement in cooperation for
11 disciplinary action?

12 A. No.

13 Q. Did he ever discuss in sum or substance the balance of
14 these two issues, the cooperation versus the
15 disciplinary actions?

16 A. No. There was no connection between cooperation and
17 disciplinary actions.

18 MR. TEITELBAUM: Is it correct that as a
19 result of the Attorney General's report that
20 Preston Felton's nomination to be Superintendent
21 was not pursued?

22 THE WITNESS: The short answer is yes.

23 BY MS. TOOHER:

24 Q. I want to take a little bit of a step back in time in

1 terms of the time sequence and try and wrap this up.

2 A. Okay.

3 Q. We just have a separate area of inquiry.

4 MR. TEITELBAUM: Off the record.

5 (A discussion was held off the record.)

6 (Thereupon, the following excerpt of the
7 proceedings was read back by the Court Reporter:

8 QUESTION: "Is it correct that as a result of
9 the Attorney General's report that Preston
10 Felton's nomination to be Superintendent was not
11 pursued?"

12 ANSWER: "The short answer is yes.")

13 MR. TEITELBAUM: Do you wish to supplement
14 your answer?

15 MR. MOSCHETTI: He does.

16 THE WITNESS: I do.

17 I know it's the Governor's position that
18 Preston Felton was placed in an untenable
19 position, and I don't -- in the aftermath of the
20 report, it was clear that he couldn't get
21 confirmed because the Senate wouldn't confirm
22 him, so that's, to me, different than the
23 affirmative decision not to nominate him as some
24 sort of disciplinary action.

1 MR. TEITELBAUM: What's your understanding
2 of the untenable position that Preston Felton was
3 put in?

4 THE WITNESS: Excuse me?

5 MR. TEITELBAUM: What is your understanding
6 of the untenable position, as the Governor used
7 that term, that Preston Felton was put in?

8 THE WITNESS: He was being asked to provide
9 information by Bill Howard in, you know, an
10 unusual manner, and he, you know, was basically
11 doing what was asked of him.

12 MR. TEITELBAUM: Why is that untenable?

13 THE WITNESS: Because it would be -- you
14 know, he's in the State Police, I'm sure his
15 normal reaction is to respond to the request.
16 The Governor's view was that there were lapses in
17 judgment as to how this was handled, and so, I
18 think, he viewed -- in his view, Preston should
19 never have been asked to provide this
20 information.

21 BY MS. TOOHER:

22 Q. If we can go back a little to the facts and
23 circumstances underlying the AG's report, and we've
24 discussed the incidents leading up to --

- 1 A. Mm-hmm.
- 2 Q. -- the AG report. I'd like to ask you about the
3 referral process itself.
- 4 A. Mm-hmm.
- 5 Q. As I understand it, there was a determination made to
6 reach out to law enforcement entities concerning the
7 underlying facts and circumstances of the Times Union
8 article; correct?
- 9 A. Correct.
- 10 Q. Is that correct?
- 11 A. That is correct.
- 12 Q. Who do you recall as being the person to initiate
13 those conversations?
- 14 A. I initiated the conversations.
- 15 Q. And who did you initiate those conversations with?
- 16 A. I called the Attorney General, the Albany District
17 Attorney and Dan Castleman in the Manhattan DA's
18 Office.
- 19 Q. I'm not clear.
- 20 MR. MOSCHETTI: I don't think that's what
21 she's asking you.
- 22 Q. Not the conversations with law enforcement, but who
23 initiated the concept of reaching out to law
24 enforcement?

1 A. I don't know if anybody initiated it. I know that I
2 had conversations, you know, or communications, I
3 think it started by e-mail, with respect to what do we
4 do with the report having come out indicating that
5 Senator Bruno may have been using the plane for
6 illegal purposes.

7 MR. TEITELBAUM: You say "report", do you
8 mean the article?

9 THE WITNESS: The article, I'm sorry. The
10 article.

11 Q. When you say you were having conversations, with whom?

12 A. Primarily with Darren and Rich. And as I indicated
13 earlier today, I sent an e-mail to the Governor on the
14 morning of the 2nd of July.

15 Q. And what was the sum and substance of your
16 conversations with Darren and Rich?

17 A. The sum and substance was what are we going to do with
18 this information that we have; should we do a formal
19 referral letter, should we contact them and see if
20 they want it, should we do nothing and see if they ask
21 for it, do we do nothing. There was, basically, a
22 discussion of, the report comes out, we have
23 information of potentially illegal conduct, what do we
24 do with it.

1 (A discussion was held off the record.)

2 MS. TOOHER: We were receiving documents up
3 until the afternoon prior to Mr. Nocenti's former
4 testimony. Many of the documents, you know, we
5 just have had an opportunity to go through at the
6 pace that we were able to. We are not trying to
7 go over former testimony, but we do want to
8 ensure that we cover everything in toto.

9 MR. MOSCHETTI: Just so the record makes
10 sense, I had raised the issue that during David's
11 prior testimony, you had questioned him in this
12 area about this circumstance.

13 (Commission's Exhibit 148 was marked for
14 identification.)

15 Q. Mr. Nocenti, you have in front of you a document
16 that's been marked as Commission's 148. It's a string
17 of e-mails. Can you identify this document?

18 A. An E-mail beginning with an e-mail from Darren to me
19 at 3:40 on July 1st and an intervening e-mail and then
20 Rich Baum responding to me at 4:23, same day.

21 Q. And what is your understanding as to the subject
22 matter of this e-mail?

23 A. Subject matter of this e-mail is, you know, do we or
24 do we not do a, you know, formal referral or something

- 1 else with respect to the information that we had.
- 2 Q. And the first thread in the e-mail, Darren's e-mail to
3 you, "Rich thinks a DA referral is too dramatic,
4 prefers AG." Can you explain that?
- 5 A. I can only --
- 6 Q. Rich is Rich Baum?
- 7 A. Rich is Rich Baum, DA is District Attorney, AG is
8 Attorney General.
- 9 Q. Had you discussed prior to 3:40 p.m. on July 1st the
10 concept of referring the matter to the DA?
- 11 A. I believe there were communications. I think July 1st
12 was a Sunday, I don't know if I had oral
13 communications. I believe that there was e-mail
14 before 3:40, and it was basically discussing, do we
15 refer and who do we refer it to.
- 16 Q. And the second portion of the e-mail from you to
17 Mr. Dopp and Mr. Baum, can you explain that?
- 18 A. Yes. It was me expressing my view to the two of them
19 with respect to where this matter might be referred.
20 I did not believe it should go to the Inspector
21 General because the Inspector General doesn't have
22 jurisdiction over the legislature. If we wanted to do
23 a criminal referral, we could send it to the DA -- a
24 DA, and there were two likely candidates. And it was

1 knowing that the AG doesn't have criminal authority,
2 although we could grant it to them, and expressing my
3 view at that time that I didn't think we needed to do
4 anything because, presumably, somebody would ask us
5 for the documents.

6 Q. So why are you discussing referral at all if you
7 believe that someone is going to ask you for the
8 documents?

9 A. Well, there was a newspaper article that laid out use
10 of the aircraft by Senator Bruno that was potentially
11 criminal. One of the things that you need to decide
12 at that point is do you provide that information to a
13 law enforcement authority. So that's one of the
14 reasons why we were discussing that.

15 Q. And what is it about Senator Bruno's actions that are
16 potentially criminal?

17 A. Again, we'll get back to the discussion of the
18 continuum, but certainly, using State aircraft and
19 State Police drivers and personnel for purely
20 political purposes would be criminal. Comptroller
21 Hevesi had been prosecuted for having a driver and car
22 used for personal purposes the prior fall. Didn't
23 know enough of the facts or the circumstances under
24 which the usage was arranged to make a determination,

1 but there was no judicial determination at that point
2 as to how much usage would make it criminal. It's
3 potentially criminal, so referring it to an
4 investigatory body is a logical option.

5 Q. And you indicate that it could have been referred to
6 the AG for criminal action, but that that would
7 require for the Governor to make a Section 63
8 referral?

9 A. Correct.

10 Q. And that you did not want the Governor to take the
11 affirmative step of granting criminal authority to the
12 AG in this matter?

13 A. Correct.

14 Q. Why is that?

15 A. I know from experience that the District Attorneys
16 have criminal jurisdiction, they generally believe
17 that they're the, you know, primary prosecutors in the
18 State. There were two sitting DAs, one of whom had
19 handled a misuse of State resources case six months
20 earlier, it didn't seem to make sense to instead refer
21 it to the Attorney General.

22 Q. And did you discuss with Peter Pope the concept of
23 referral on July 1st?

24 A. I do not believe I did.

1 Q. Mr. Pope had been the head of the Criminal Division in
2 the Attorney General's Office; isn't that correct?

3 A. That is correct.

4 Q. And did you discuss with Steve Krantz or Robin Forshaw
5 on July 1st the concept of referring the matter?

6 A. I don't believe I did.

7 Q. But you had gone to Mr. Krantz and Ms. Forshaw when
8 looking for the definition of potential criminal
9 statute violations that Mr. Dopp had requested; is
10 that correct?

11 A. That is correct.

12 Q. But you didn't discuss it with them once Mr. Bruno's
13 activities were identified?

14 MR. MOSCHETTI: I guess that's the same
15 question that he gave you the answer to. No, he
16 did not. Or did I miss something?

17 A. I did not discuss it with them on the 1st.

18 Q. Did you discuss it with Richard Rifkin at that time?

19 A. Not on the 1st.

20 Q. And did you discuss with Mr. Rifkin on the 1st the
21 aviation policy and its application to Mr. Bruno?

22 A. I don't believe I had any discussions with Mr. Rifkin
23 on that on the 1st.

24 (Commission's Exhibit 149 was marked for

1 identification.)

2 Q. Mr. Nocenti, you've been provided what's been marked
3 as Commission's 149, which is an e-mail string from
4 7/1. I would direct your attention to the top line on
5 the e-mail, which is different from Commission's 148.
6 And it's an e-mail from Mr. Baum to you indicating,
7 "Couldn't we call around to the DA, AG today or in the
8 morning so we're in a position to say 'x' has asked us
9 for materials and we're cooperating. That way we're
10 not instigating or deciding if criminal." What did
11 you take that to mean?

12 A. I took that to mean yet another option to consider.

13 MR. TEITELBAUM: What was your understanding
14 of the options?

15 THE WITNESS: There was an option to do a
16 formal referral, there was an option to -- the DA
17 or to Morgenthau, there's an option of just
18 reaching out to them to see if they wanted the
19 documents, there's an option of not doing
20 anything and seeing if they asked for it, and if
21 they didn't, then you could be back in the same
22 place, basically, deciding whether you wanted to
23 refer yourself or not. So this option that Rich
24 proposed was calling and asking if they want the

1 materials.

2 MR. TEITELBAUM: Did you pursue that option?

3 THE WITNESS: In the end, we decided to
4 reach out and ask them if they wanted the
5 materials.

6 MR. TEITELBAUM: Just to connect up what you
7 did with 149. You did call around to the DA and
8 the AG; correct?

9 THE WITNESS: Correct.

10 MR. TEITELBAUM: And the nature of those
11 calls, as you testified, was to ask each one of
12 them if they would ask the Executive Chamber for
13 materials; correct?

14 THE WITNESS: It was to ask them if they
15 wanted the materials.

16 MR. TEITELBAUM: And if they wanted the
17 materials, they would ask you for them; right?

18 THE WITNESS: If they wanted the materials,
19 they would get them.

20 MR. TEITELBAUM: But they would have to tell
21 you that they wanted them; right?

22 THE WITNESS: Correct.

23 MR. TEITELBAUM: And by providing them to
24 them upon request, you would be cooperating;

1 correct? You would be giving them to them. They
2 would be asking for them and you would be giving
3 them; is that right?

4 THE WITNESS: I'm sorry, was there a
5 question there?

6 MR. TEITELBAUM: Yes.

7 THE WITNESS: Could you repeat it.

8 MR. TEITELBAUM: I'll ask it again. In
9 giving the law enforcement authorities the
10 documents that they would be requesting, you
11 would, in effect, be cooperating with them;
12 correct?

13 THE WITNESS: If the law enforcement
14 authority asked our office for documents --

15 MR. TEITELBAUM: You'd cooperate.

16 THE WITNESS: -- we would cooperate.

17 MR. TEITELBAUM: And that way, you wouldn't
18 be instigating; isn't that correct?

19 THE WITNESS: I don't know what you --

20 MR. TEITELBAUM: You'd be responding, rather
21 than instigating, you'd be responding to the
22 request?

23 THE WITNESS: Again, can you repeat the
24 question.

1 MR. TEITELBAUM: Can you repeat the
2 question.

3 (Thereupon, the following excerpt of the
4 proceedings was read back by the Court Reporter:

5 QUESTION: "You'd be responding, rather than
6 instigating, you'd be responding to the
7 request?")

8 THE WITNESS: Is that a statement or a
9 question?

10 MR. TEITELBAUM: Correct, I think there was
11 a correct at the end of that and if there isn't
12 the word correct --

13 THE WITNESS: Why don't you ask me a
14 question.

15 MR. TEITELBAUM: All right. By responding
16 to a request from the law enforcement authorities
17 for the documents, you would not be instigating a
18 review of the matter; you would be responding to
19 a request?

20 THE WITNESS: We would not be referring the
21 matter to them for criminal prosecution. We
22 would be providing them with documents that they
23 had indicated that they requested. If they
24 indicated that they did not want them, we would

1 not provide them to them.

2 MR. TEITELBAUM: I don't want to quibble,
3 but I'm not referring to a referral, which has --
4 which is a term of art. I'm referring to the
5 word "instigating", that if you respond to a law
6 enforcement authority's request for documents and
7 you respond by giving the documents, you would
8 not be instigating the review to be conducted by
9 the law enforcement authority; isn't that
10 correct?

11 THE WITNESS: I guess I'm hung up on the
12 word "instigating". If a law enforcement office
13 calls and asks for documents and we provide them,
14 we are providing them at their request. If I
15 refer the matter to them, I am referring the
16 matter to them. This would actually have to be
17 somewhere in-between those two where we reached
18 out to them and asked them if they wanted them;
19 two of the three offices said yes, and then we
20 provided them.

21 (Commission's Exhibit 150 was marked for
22 identification.)

23 BY MS. TOOHER:

24 Q. Mr. Nocenti, you've been provided a copy of what's

- 1 been marked as Commission's 150. Can you identify
2 this document?
- 3 A. It's an e-mail that I sent to Rich Baum and Darren
4 Dopp at 12:30 p.m. on July 2nd.
- 5 Q. And this document refers to your conduct in regards to
6 reaching out to various law enforcement entities; is
7 that correct?
- 8 A. Correct.
- 9 Q. And Mr. Dopp, at the bottom of the e-mail chain,
10 writes to you and to Rich Baum, "doing a news
11 conference at 1:30, need to release a statement before
12 that"?
- 13 A. Correct.
- 14 Q. Was this response that you gave Mr. Dopp for purposes
15 of the statement?
- 16 A. I don't know what you mean by "for purposes of the
17 statement". He wanted to release a statement, I was
18 giving him the status of the communications with the
19 offices.
- 20 Q. Well, you indicate at the bottom, "I know that's not
21 helpful, but that's where we are"?
- 22 A. Yes.
- 23 Q. What were you being helpful or not helpful with?
- 24 A. I know that one of the things that we were being asked

1 by the press was what are we doing, are we referring
2 it, who are we referring it to. I know that he wanted
3 to release a statement on that issue. It was up in
4 the air at that point, what exactly we would be doing
5 because we had not yet heard back from the three
6 offices.

7 Q. Isn't it true that Mr. Dopp had put the concept of
8 referral out to the press?

9 A. I believe at that time that he had.

10 Q. And in the first line of your response, "Castleman
11 said, requesting documents is unusual. People usually
12 refer things to them." When Mr. Castleman indicated
13 to you that it was unusual for them to request
14 documents, did you discuss that with anyone?

15 A. I discussed it with him and -- I know I discussed it
16 with him. I don't know if I had subsequent
17 conversations with Rich or Darren about that in
18 particular.

19 MR. TEITELBAUM: Did you tell Castleman in
20 words or substance that you wanted the DA's
21 Office to request those documents so that it
22 would not be seen that the Executive Chamber was
23 instigating this?

24 THE WITNESS: No. I know that I told

1 Castleman that we had these documents, that there
2 was a story, and I wanted to know if he wanted
3 the documents. I know there was a discussion of,
4 you know, whether they would request. He said to
5 me, people usually refer things to them, and he
6 said he needed to talk to District Attorney
7 Morgenthau.

8 MR. TEITELBAUM: Why didn't you just send
9 the documents to Castleman without his asking for
10 them?

11 THE WITNESS: It's a -- he's a criminal
12 prosecuting office that, you know, we have a
13 relationship with, we -- you know, sending it out
14 of the blue as opposed to calling him and seeing
15 if he wants to look into it or not is -- it just
16 seemed more appropriate to call and ask him.

17 MR. TEITELBAUM: You could have called him
18 up and said, Dan, we're sending you some
19 documents in connection with the July 1st Times
20 Union article, let us know if there's anything
21 else we can do with respect to those documents,
22 or words to that effect?

23 THE WITNESS: Could have.

24 BY MS. TOOHER:

1 Q. And what contact did you make with Attorney General
2 Cuomo in this regard?

3 A. I called the Attorney General and basically had the
4 same conversation with him.

5 Q. You indicate in your e-mail, "Cuomo is willing to do
6 whatever we want." What did you propose to him as
7 options?

8 A. Well, we have these documents, the question is whether
9 he wanted them or not. He expressed a view that he
10 did not want to be the only person requesting the
11 documents. I told him that I was reaching out to
12 Morgenthau's office and Soares' office, and I
13 actually told each of the offices that I was reaching
14 out to the others, and he said that he did not want to
15 request them if Morgenthau didn't request them.

16 Q. Did he indicate why?

17 A. I don't recall.

18 Q. Did he indicate why he didn't want to be the only
19 person requesting them?

20 A. I don't recall.

21 MR. TEITELBAUM: Did he indicate that there
22 was any political implications to be the sole
23 person requesting these?

24 THE WITNESS: I don't recall. It was a

1 short conversation with all three offices.

2 BY MS. TOOHER:

3 Q. And the press was inquiring as to what your office was
4 doing at this time with the information; is that
5 correct?

6 A. Correct.

7 (Commission's Exhibit 151 was marked for
8 identification.)

9 Q. I'm showing you what's been marked as Commission's 151
10 and ask you if you can identify this document?

11 A. It's an e-mail that I sent to Rich Baum on July 8th at
12 11:24 a.m.

13 Q. And I'm going to direct your attention to the bottom,
14 the first line of the e-mail from Darren Dopp to you,
15 subject is "Bruno". "Would you or anyone on staff
16 have contacted any law enforcement agency about the
17 Bruno matter before the story ran in the Times Union?
18 Dicker seems to think so." And you responded to that,
19 "You should not answer that question." Did you have
20 discussions with Darren Dopp concerning this inquiry?

21 A. I know he sent me the e-mail, I know I sent a
22 responding e-mail. I think I may have had a
23 subsequent conversation with him with respect to him
24 responding to these inquiries. I think that he

1 expressed the view that it was -- given his position
2 as the Director of Communications, it was difficult
3 for him to not respond to the press, and there were
4 too many questions coming in and what I proposed
5 wasn't really workable.

6 Q. Were you in constant contact with Darren Dopp
7 concerning his responses in this area?

8 A. I wouldn't say constant. I would say frequent.

9 Q. Did he consult with you before giving responses in
10 this area at this time?

11 A. Many times he did, yes.

12 Q. Do you know if he gave any responses without
13 consulting you first?

14 A. I can't say for sure. I presume that he did.

15 Q. Are you aware of anyone that he spoke to in the press?

16 A. I don't know who specifically. I know he was talking
17 to a lot of reporters. I don't know who specifically
18 he was talking to.

19 (Commission's Exhibit 152 was marked for
20 identification.)

21 MR. TEITELBAUM: Did Dopp know on July 8th
22 that in fact you had contacted a law enforcement
23 agency?

24 THE WITNESS: He was asking me if I had

1 contacted a law enforcement agency before the
2 story ran in the Times Union, and I believe I
3 responded, "We've already publically stated that
4 there is no truth to the allegations." We didn't
5 contact the law enforcement agency before the
6 story ran in the Times Union, and he knew that.

7 BY MS. TOOHER:

8 Q. You've been provided with what's been marked
9 Commission's 152. I ask if you can identify this
10 document?

11 A. It's a string of e-mail beginning with my e-mail to --
12 I believe it's more than a one page document, but it
13 starts with -- the bottom of this one page that you've
14 given to me is an e-mail from me to Darren on the 8th,
15 that is the same as the second portion of Exhibit 151,
16 and Exhibit 152 ends with an e-mail from me to Rich
17 Baum at 11:42 a.m.

18 Q. And on the issue of the contact of law enforcement,
19 prior to the Times Union article, Mr. Baum writes to
20 you, "Can't we say categorically that no one contacted
21 any law enforcement, it's the truth anyway"?

22 A. Correct.

23 Q. Is that your understanding of the truth, that no one
24 had contacted law enforcement prior to the Times Union

- 1 article?
- 2 A. That is correct.
- 3 Q. And in your response to Mr. Baum you indicate that
- 4 "one can argue that we should have sent it to a law
- 5 enforcement agency". Can you explain why you didn't?
- 6 A. I believe we did this before, but at the time, ie:
- 7 May 17th, it was my assumption that particularly
- 8 following the Hevesi prosecution that the aircraft and
- 9 drivers would be used essentially for governmental
- 10 purposes. As it turns out, you read the Times Union
- 11 article and the documents that were provided, it
- 12 appeared that Senator Bruno was using the aircraft for
- 13 what would appear to be predominantly political
- 14 purposes.
- 15 Q. But if I may, prior to the Times Union article, no one
- 16 contacted law enforcement?
- 17 A. Correct.
- 18 Q. And yet, the documents were in the possession of the
- 19 Chamber prior to the Times Union article; is that
- 20 correct?
- 21 A. Darren was gathering documents and then providing them
- 22 to Odató. I don't know when he actually physically
- 23 got them all.
- 24 Q. So someone in the Chamber had possession of these

1 documents and this information prior to the Times
2 Union article?

3 A. Correct.

4 Q. Are you saying that if someone had reviewed those
5 documents prior to the Times Union article, they would
6 have referred it to law enforcement prior to the Times
7 Union article?

8 A. I think there's a couple hypotheticals built in there.
9 If someone had come to me with evidence that I
10 believed to be a crime, I probably would have had to
11 think about what to do with that evidence.

12 MR. TEITELBAUM: I think what Ms. Toohar is
13 getting to -- let me see if I can be helpful.
14 What we're trying to find out, Mr. Nocenti, is
15 that given the fact that prior to July 1st the
16 Executive Chamber had in its possession all of
17 the facts that appeared in the July 1st article,
18 the question really is, was it the publication of
19 those facts in the newspaper that prompted the
20 Executive Chamber to in turn contact law
21 enforcement authorities?

22 THE WITNESS: I can only answer from my
23 personal knowledge. As of the 17th, it was my
24 assumption that the aircraft would be used

1 predominantly for governmental purposes. If you
2 read the article and look at the documents, it
3 appears it was being used predominantly for
4 political purposes. I don't know where the line
5 is on that, but certainly, it's something that a
6 criminal prosecuting office may want to look at.

7 MR. TEITELBAUM: I don't think you answered
8 my question, with all due respect.

9 (Thereupon, the following excerpt of the
10 proceedings was read back by the Court Reporter:

11 QUESTION: "given the fact that prior to July
12 1st the Executive Chamber had in its possession
13 all of the facts that appeared in the July 1st
14 article, the question really is, was it the
15 publication of those facts to the newspaper that
16 prompted the Executive Chamber to in turn contact
17 law enforcement authorities?")

18 THE WITNESS: Again, Darren was collecting
19 documents. He provided those documents to the
20 Times Union. The issue of referring the matter
21 first came to my attention after the article came
22 out. Just to give you an example, the State
23 Police had documents as well. The fact that
24 they're in the collective possession of the

1 Executive Chamber, I don't know when we actually
2 got them, I don't know if we immediately sent
3 them over to them on the 27th and the 28th or the
4 28th to the 29th.

5 MR. TEITELBAUM: 28th.

6 THE WITNESS: That's the best answer that I
7 can give to you.

8 BY MS. TOOHER:

9 Q. You indicated that if you were aware of evidence that
10 was potentially evidence of a crime, you would have to
11 consider referring it to a law enforcement entity?

12 A. I was speaking generally. I presume if someone came
13 to you with evidence of a crime, you would consider
14 whether to refer to a law enforcement entity; I would
15 as well.

16 Q. What would that entail?

17 A. It could entail, you know, anything from picking up
18 the phone and calling someone to doing a formal
19 referral letter, you know, referring -- you know,
20 referring the matter to a law enforcement entity.

21 Q. Would you discuss it with other individuals in the
22 Executive Chamber?

23 A. I would.

24 Q. And who would you discuss it with?

1 A. That's a -- I mean, it's a -- it depends on what the
2 facts are.

3 Q. If it's a criminal matter involving a high level
4 political opponent?

5 A. It, again, depends on what the facts are.

6 Q. If you had the Bruno facts in front of you prior to
7 the Times Union article, who would you have discussed
8 that with?

9 A. By the "Bruno facts", you mean the documentary
10 evidence?

11 Q. The itineraries, the schedules, the manifests?

12 A. I mean, there's a range of people that I could have
13 discussed it with; something I could discuss with
14 other members of my staff, if it related to Senator
15 Bruno, certainly would talk to Rich and Darren and
16 presumably the Governor about it.

17 (Commission's Exhibit 153 was marked for
18 identification.)

19 Q. You've been given what's been marked as
20 Commission's 153. I'm going to ask you if you can
21 identify this document?

22 A. It's an e-mail that I sent to Christine Anderson with
23 several cc's responding to an e-mail that Christine
24 sent to me asking me whether she should provide

- 1 schedules that were being requested by Jim Odatto.
- 2 Q. And Mr. Odatto asks you, concerning certain items on
3 the Governor's flights, which were provided to him in
4 response to his FOIL request and this was the
5 June 26th FOIL -- 27th FOIL request, I believe -- he's
6 asking Christine Anderson for more information
7 concerning the use of the helicopter?
- 8 A. Mm-hmm.
- 9 Q. Concerning who these people are, who attended the
10 private meetings, were they private meetings,
11 fundraising or related to fundraising; is that
12 correct?
- 13 A. Mm-hmm.
- 14 Q. And Christine forwards this with, "see questions
15 below. Should I work with Marlene to pull up these
16 schedules?" And your response is "yes"?
- 17 A. Mm-hmm.
- 18 Q. When you received the information concerning Senator
19 Bruno's schedules, was any attempt made to garner more
20 information?
- 21 A. Which information regarding Senator Bruno?
- 22 Q. On Senator Bruno's -- these are -- it was
23 Commission's 1, 2 and 3, I believe. I don't know if
24 you have those in front of you.

- 1 A. I don't think I have those.
- 2 Q. (Proffering).
- 3 A. Okay.
- 4 Q. These are the itineraries for Senator Bruno?
- 5 A. Mm-hmm.
- 6 Q. Was any attempt made to garner more information
7 concerning Senator Bruno's activities on these dates?
- 8 A. Not by me, no.
- 9 Q. Prior to contacting law enforcement personnel, did you
10 reach out to Senator Bruno's office concerning his
11 activities on these dates?
- 12 A. I did not.
- 13 Q. Did anyone in the Executive Chamber reach out to
14 Senator Bruno's office?
- 15 A. I don't believe so.
- 16 Q. So no attempt was made to verify whether or not
17 Senator Bruno had engaged in other activities on these
18 dates, to your knowledge?
- 19 A. Again, I don't know what communications Bill Howard
20 had with the State Police on this issue.
- 21 Q. But he didn't communicate anything to you after the
22 Times Union Article broke concerning Senator Bruno's
23 activities on these dates?
- 24 A. No.

1 MR. TEITELBAUM: Somebody looking at the
2 schedule on 153 and 154 at the bottom, trips on
3 April 4th, 5th, 10th and 24th, without further
4 information, just looking at these descriptions,
5 one might conclude, and tell me if you agree with
6 me, that all of these trips were political,
7 non-State business; true?

8 THE WITNESS: (Pause.)

9 MR. TEITELBAUM: There's no way of knowing?

10 THE WITNESS: The difference between a trip
11 and an event, there's no question that the
12 Governor has days when he does governmental stuff
13 and days in which he does a mixed use of
14 governmental and political. Inquiring as to
15 whether the private meetings, what was the nature
16 of the private meetings, you would have to look
17 at his entire schedule to see everything he was
18 doing that day to determine what else he was
19 doing on that day.

20 MR. TEITELBAUM: But on the face of the
21 document, 153, there's no way of knowing on the
22 face of the document whether the Governor was
23 engaged in predominantly State-related business
24 or non-State-related business; correct?

1 THE WITNESS: Not from the face of this
2 document, no.

3 MR. TEITELBAUM: You would have to look
4 behind it?

5 THE WITNESS: You would have to look at the
6 schedules.

7 MR. TEITELBAUM: You would have to look at
8 the schedules, you would have to see what the
9 purposes were for the meetings; correct?

10 THE WITNESS: That's correct.

11 MR. TEITELBAUM: Who he was meeting with;
12 correct?

13 THE WITNESS: That is correct.

14 BY MS. TOOHER:

15 Q. Are you aware of Darren Dopp reaching out to Peter
16 Pope concerning the activities of Senator Bruno and
17 use of the helicopter?

18 A. I believe last time I was here, you showed me an
19 e-mail relating to a conversation between Peter Pope
20 and Darren.

21 Q. There is such an e-mail, and I will show it to you.

22 (Commission's Exhibit 154 was marked for
23 identification.)

24 Q. I am showing you what's been marked as Commission's

1 154 --

2 MR. TEITELBAUM: 155.

3 MS. TOOHER: I'm sorry, I apologize.

4 THE WITNESS: Should I give you 154 back or
5 do you want to --

6 MR. TEITELBAUM: It's in the record already,
7 isn't it?

8 MS. TOOHER: Yes.

9 THE WITNESS: So 154 --

10 MR. TEITELBAUM: Why don't we just stipulate
11 to withdraw --

12 MS. TOOHER: Withdraw 154?

13 MR. TEITELBAUM: Yeah. We don't need to
14 stipulate, just withdraw.

15 THE WITNESS: Why don't we just say that
16 both of the documents are identical.

17 MS. TOOHER: Fine.

18 MR. TEITELBAUM: That's fine.

19 THE WITNESS: So I have Exhibit 122 and
20 Exhibit 154 are both an e-mail from Peter to me
21 and to Sean.

22 BY MS. TOOHER:

23 Q. Mr. Pope's conversations with Mr. Dopp, did you ever
24 discuss with him after July 1st whether he felt the

- 1 conduct was criminal?
- 2 A. "With him", you mean with Peter Pope?
- 3 Q. With Peter Pope?
- 4 A. I could easily have. I just don't recall a
- 5 conversation right now.
- 6 Q. And Mr. Pope's e-mail to you indicates that he did not
- 7 believe it was a crime and should be referred to the
- 8 DA. When you were having your conversations with
- 9 Darren Dopp, your e-mails with Darren Dopp, did he
- 10 relay to you at all that he had previously spoken to
- 11 Peter Pope and he had indicated this matter should not
- 12 be referred to the DA?
- 13 A. Give me a second to reread the document.
- 14 Q. Sure.
- 15 A. (Pause.)
- 16 Okay. What was the question, again?
- 17 Q. Mr. Pope's e-mail to you indicates that he had told
- 18 Darren Dopp that he did not believe Mr. Bruno's
- 19 conduct constituted a crime and should be referred to
- 20 the DA?
- 21 A. I think he says it would be difficult to -- very
- 22 difficult to make out a crime under the existing case
- 23 law.
- 24 Q. "In speaking of his second conversation in another, he

1 asked me my view of referral to a DA. I believe that
2 I reminded him of our prior conversation, that I did
3 not believe it was a crime"?

4 A. Yes.

5 Q. When you were having your e-mail communications with
6 Mr. Dopp concerning referring this matter out to
7 either the DA, the AG or the IG, did he relay to you
8 his prior conversations with Peter Pope?

9 A. Not that I recall.

10 Q. Did he relay to you in sum or substance that he had
11 discussed this with anyone in the Executive Chamber?

12 A. Not that I recall.

13 MR. TEITELBAUM: Did he tell you that he had
14 received an opinion from somebody within the
15 Executive Chamber that Senator Bruno's conduct
16 did not constitute a crime?

17 THE WITNESS: Well, I don't know when this
18 conversation took place and whether -- what
19 information Darren had with respect to Senator
20 Bruno's use of the aircraft at that time. And I
21 don't recall him saying to me that he had spoken
22 with Peter Pope regarding the referral to the DA.
23 I think he had said that Peter Pope thought it
24 should be referred to the IG.

1 MR. TEITELBAUM: But my question was
2 anybody, did he ever tell you that he had a
3 conversation with anybody in the Executive
4 Chamber with respect to the fact that whoever he
5 spoke to indicated that that person didn't
6 believe that Senator Bruno committed a crime?

7 THE WITNESS: On the 1st?

8 MR. TEITELBAUM: No, at any time.

9 THE WITNESS: I believe that after the 1st,
10 Darren did mention this conversation -- mentioned
11 to me this conversation with Peter, but, again, I
12 don't know what facts that opinion was based on.

13 MR. TEITELBAUM: Did you ask Peter?

14 THE WITNESS: I don't believe I asked Peter.

15 MR. TEITELBAUM: Why?

16 THE WITNESS: This was after the 1st, you
17 know, again, I -- you know, I don't recall having
18 had a conversation with Peter about his
19 conversation with Darren. I received this e-mail
20 laying that out.

21 MR. TEITELBAUM: You mean 155?

22 THE WITNESS: 155 -- 154 or 122.

23 MR. TEITELBAUM: Right.

24 THE WITNESS: I know I received that e-mail,

1 he was informing me of these conversations. I
2 don't know if this was before or after Darren had
3 told me something similar, but it was all after
4 the 1st.

5 MR. TEITELBAUM: To this day, have you had a
6 conversation with Mr. Pope as to his opinion as
7 to the criminality of the Senator's conduct?

8 THE WITNESS: In the course of the past
9 eight months, it's quite possible that I've had
10 that conversation, I just don't recall it sitting
11 here today.

12 BY MS. TOOHER:

13 Q. When did you first discuss the issue of the referral
14 or the passage of documents to the DA, AG, IG with
15 Peter Pope?

16 A. Sometime after -- you know, sometime after the 1st of
17 July.

18 Q. And did he bring up that he had already discussed that
19 issue?

20 A. Again, I don't recall. I know that he sent me an
21 e-mail. It starts off, "As I've discussed with one or
22 both of you". I actually don't recall if he actually
23 discussed it with me. He says at this time he
24 apparently didn't recall either, so I just don't

1 recall.

2 Q. Do you know what generated this e-mail?

3 A. I do not.

4 Q. Were you surprised when you received this e-mail?

5 A. I don't recall whether I was surprised, if he had
6 discussed it with me. He may have simply wanted to
7 memorialize it. I just don't have a recollection of
8 what I was thinking when I received this e-mail.

9 (Commission's Exhibit 155 was marked for
10 identification.)

11 Q. You've been handed what's been marked as Commission's
12 155. Can you identify this document?

13 A. Just give me a second to read it.

14 Q. Sure.

15 A. (Pause.)

16 Yes, I remember this document.

17 Q. Can you tell me what it is?

18 A. It's an e-mail that I sent to Christine, to Rich and
19 to Darren in response to an e-mail that she had sent
20 to us, which were some draft talking points, Q's and
21 A's.

22 Q. And your response to Christine indicates, "I wouldn't
23 say that the decision to pursue the investigation" --
24 I'm sorry. "I wouldn't say that the decision to

1 pursue the investigation was theirs", quoting
2 Christine Anderson, "There really isn't a clear answer
3 to the did they ask us for documents or did we just
4 send the documents to them question." Can you explain
5 that?

6 A. I believe she was getting questions from the press as
7 to did we send them to them or did they request them.
8 I think there was an issue with respect to something
9 that District Attorney Soares' office had said, early
10 on, the 2nd or the 3rd. I know there's been
11 additional questions about that. This is a draft Q
12 and A. And again, there really isn't a clear question
13 to the, did they ask us for documents or did we just
14 send the documents to them.

15 MR. TEITELBAUM: You say "clear question",
16 you mean clear answer?

17 THE WITNESS: Clear answer.

18 BY MS. TOOHER:

19 Q. Was there a reason you couldn't say you had reached
20 out to these offices to see if they had any interest
21 in the matter?

22 A. I believe that we actually were saying that.

23 Q. That you were saying what?

24 A. I believe that we had said that we had reached out to

1 the law enforcement offices to determine -- I believe
2 that we had said that we were reaching out to law
3 enforcement offices. There was a question of how you
4 actually word it. I had some conversation with her as
5 to, you know, what the factually correct wording would
6 be, that's the best answer I can give you, trying to
7 make sure that the questions and answers conform with
8 the facts.

9 Q. And you indicate, "There's nothing wrong with us
10 talking to these other offices after the story broke."
11 Why is it after the story broke?

12 A. That's when the questions arose. When the story
13 broke, there were questions of what were we going to
14 do with the documents, there were questions of who was
15 asking -- were they asking or were we sending. And I
16 was just reminding her that there's nothing wrong with
17 us talking to other offices about information that we
18 may have relating to a story that could involve
19 potential illegal conduct.

20 MR. TEITELBAUM: And it was the press that
21 was asking the questions?

22 THE WITNESS: The press was asking the
23 questions.

24 BY MS. TOOHER:

1 Q. Would there have been anything wrong with you talking
2 to these offices before the story broke?

3 A. Again, in my view, if I have evidence of potential
4 illegal conduct, there can't possibly be anything
5 wrong with talking to a criminal prosecutor about
6 that.

7 (Commission's Exhibit 156 was marked for
8 identification.)

9 Q. Mr. Nocenti, you've been handed what's been marked as
10 Commission's Exhibit 156. Can you identify this
11 document?

12 A. An E-mail that I sent to Christine Anderson, cc to
13 Rich Baum on July 9th.

14 Q. And as of July 9th, you indicate, "The AG/DA inquiries
15 relate to Senator Bruno, not to Darren or Rich or to
16 any ES/JB dispute." When did the AG/DA inquiries
17 shift their focus to include Darren and/or Rich?

18 A. I don't know that the AG ever shifted its inquiry to
19 Darren or to Rich. And as far as the DA, I believe it
20 was only after what I'm told is a referral that your
21 office made to the DA.

22 Q. Well, the AG and the IG inquiry, which culminated in
23 the AG's report, certainly addressed the conduct of
24 Darren Dopp?

- 1 A. Yes.
- 2 Q. So it would -- I think it would be fair to say that
3 they relate to Darren Dopp?
- 4 A. You have to go back to the question that Fred Dicker
5 was asking. It says, "Hi, Christine, I've been told
6 that Rich Baum and/or Darren Dopp have or are about to
7 hire outside counsel to advise them during the
8 AG/DA/IG inquiries/investigations of the ongoing ES/JB
9 dispute, and wonder if that's true". I was pointing
10 out to Christine that he was conflating inquiries that
11 we had referred to the IG, the allegation of
12 surveillance, that the AG also was looking into that
13 surveillance issue, that the DA -- and to Senator
14 Bruno's use of the aircraft -- but to my knowledge,
15 the DA was only looking at Senator Bruno's use of the
16 aircraft.
- 17 Q. But there did come a time where the AG was looking at
18 Mr. Dopp and he did retain outside counsel; is that
19 correct?
- 20 A. That is correct.
- 21 Q. When were you first aware that the AG was looking at
22 Mr. Dopp?
- 23 A. Well, again, I don't believe the -- the AG was looking
24 into two things; Senator Bruno's use of the -- to my

1 knowledge, the AG was looking into two things; Senator
2 Bruno's use of the aircraft and the allegations of
3 surveillance. Mr. Dopp obtained outside counsel at
4 the time that we, the Executive Chamber, began to
5 consider whether we wanted to take disciplinary action
6 against him.

7 Q. But the issue of surveillance certainly involved
8 Mr. Dopp; is that correct?

9 A. At this time, on July 9th, I didn't know -- I mean,
10 this was very early on, the referral was only the 5th.
11 I don't think any of us ever believed that there was
12 any surveillance, so no, I didn't have any reason to
13 believe that Darren had ordered surveillance.

14 Q. I understand that, and it's fairly clear that on
15 July 9th, you do not believe the AG inquiry relates to
16 Darren Dopp?

17 A. Correct, or Rich Baum.

18 Q. But at some point, the AG inquiry does shift and
19 relate to Mr. Dopp, as indicated in the report of the
20 AG?

21 A. Well, again, when you are talking about people getting
22 outside counsel to respond to outside investigatory
23 entities, I, you know, did not believe that there had
24 been any -- to my knowledge, there was never any

1 surveillance, I had no reason to believe that anybody
2 had ordered any surveillance, at this time there was
3 no reason to believe that they were at risk of any
4 sort of adverse action by any of these three entities
5 with respect to them, so I was trying to express to
6 Christine that Fred Dicker was conflating a number of
7 matters -- at least two different inquiries and
8 implying that all three entities were looking into,
9 what he describes as, the ES/JB dispute, which was
10 just a conflation of the inquiries and the offices.

11 Q. But getting past this e-mail --

12 A. Yes.

13 Q. -- sometime after July 9th, the AG inquiry included
14 Mr. Dopp and Mr. Baum in the scope of their inquiry,
15 not necessarily as targets at that particular time --
16 I don't even know if that's an appropriate word in
17 terms of their inquiry -- but certainly as it related
18 to their activities?

19 A. Again, they were doing an investigation of the
20 allegation of surveillance. So again, I don't know
21 that that was the target against any one in
22 particular. They were finding facts. They issued a
23 report that mentions Darren Dopp, mentions Rich Baum,
24 mentions Bill Howard, mentions Preston Felton.

- 1 Q. Let me try a different tact.
- 2 A. I don't think I understand your question.
- 3 Q. That's clear and I'll try and be clearer.
- 4 When the Executive Chamber reached out to the
- 5 Attorney General's Office --
- 6 A. Yes.
- 7 Q. -- when you reached out to the Attorney General's
- 8 Office, the DA's offices --
- 9 A. Correct.
- 10 Q. -- it was for purposes of looking at Senator Bruno's
- 11 activities with the helicopter; is that correct?
- 12 A. Correct.
- 13 Q. At some point in time, the scope of the AG's inquiry
- 14 grew to include the activities of gathering
- 15 information about Senator Bruno?
- 16 A. I believe that the -- it expanded to include an
- 17 inquiry as to whether or not there was surveillance of
- 18 Senator Bruno.
- 19 Q. When did that occur?
- 20 A. I believe that on or about July 5th or 6th, Senator
- 21 Bruno's counsel wrote a letter to the Attorney General
- 22 asking that he look into an allegation that Senator
- 23 Bruno had been surveilled.
- 24 Q. So are you saying on July 5th, the inquiry included

1 the activities of the Executive Chamber?

2 A. On July 5th or July 6th, he was asked to look into an
3 inquiry as to whether or not Senator Bruno was being
4 surveilled. You know, again, because I didn't believe
5 he was surveilled, I don't believe anybody ordered him
6 to be surveilled, you know, it's -- the scope of the
7 inquiry is up to the AG.

8 Q. And in terms of the District Attorney's Office,
9 District Attorney Soares, when you reached out to his
10 office, initially -- this is on or about July 1st or
11 2nd?

12 A. July 2nd.

13 Q. What happened as a consequence of that communication?

14 A. We ended up sending the documents over to him.

15 Q. And did you have any further conversations with the
16 District Attorney's Office?

17 A. I did not.

18 Q. Did the District Attorney's Office communicate with
19 the Executive Chamber at all?

20 A. I do not know.

21 Q. Following the issuance --

22 MR. TEITELBAUM: Pardon me.

23 Did you ever receive information from
24 anybody in the Executive Chamber that there was

1 communication with the District Attorney's Office
2 after the documents were sent to him?

3 THE WITNESS: We've obviously had a lot of
4 communications, including up to, you know,
5 currently. But if you are talking about the time
6 period from July 5th to July 23rd --

7 MR. TEITELBAUM: July 5th --

8 THE WITNESS: 2nd.

9 MR. TEITELBAUM: 2nd to the time his report
10 was issued.

11 THE WITNESS: Sure, well, once he -- after
12 the AG's report was issued and he indicated that
13 he was going to look into the propriety of the
14 conduct from May and June, sure, there were
15 definitely communications, just like there's
16 communications between our offices today.

17 MR. TEITELBAUM: Any communication with the
18 District Attorney's Office as to what his report
19 would say?

20 THE WITNESS: I know that I didn't have any
21 conversations with the District Attorney's
22 Office. Peter Pope was the primary person that
23 was dealing with the District Attorney's Office
24 with respect to the DA's September report.

1 MR. TEITELBAUM: Did Mr. Pope indicate to
2 you that he had communications with the District
3 Attorney's Office with regard to what the report
4 would say before it came out.

5 THE WITNESS: I believe that he did, yes.

6 MR. TEITELBAUM: When did he start receiving
7 that information?

8 THE WITNESS: I don't recall.

9 MR. TEITELBAUM: Was it a day before or more
10 than a day before?

11 THE WITNESS: I do not recall.

12 MR. TEITELBAUM: Can you tell us what the
13 nature of those communications were?

14 THE WITNESS: I think it was similar to our
15 communications with the AG's Office prior to --
16 you know, several days prior to the 23rd, we had
17 a general idea of what the report was going to
18 say, we got a full briefing on the 22nd, the
19 report came out on the 23rd.

20 MR. TEITELBAUM: I'm talking about the
21 District Attorney's report.

22 THE WITNESS: Yeah, I know. I'm talking
23 about the AG's report.

24 MR. TEITELBAUM: You had --

1 THE WITNESS: The best of my recollection,
2 that we similarly were advised, prior to the
3 report coming out, what it was going to say, but
4 I can't tell you dates. I did not have any
5 direct conversations.

6 MR. TEITELBAUM: Did Mr. Pope, as far as you
7 know, give commentary to the District Attorney
8 with respect to the report that was going to come
9 out, that he was receiving information about what
10 the report would say?

11 THE WITNESS: I don't know. I believe we --
12 I don't know.

13 MR. TEITELBAUM: Did you have conversations
14 with Mr. Pope in which he indicated to you that
15 he was giving commentary to the District
16 Attorney's Office concerning what the report
17 would say before it came out?

18 THE WITNESS: I believe we actually sent a
19 letter to the DA on the issue of whether it
20 was -- the activities would constitute a crime or
21 not, but I don't know whether there was what you
22 would describe as commentary on the report
23 itself.

24 MR. TEITELBAUM: Was that letter sent to the

1 District Attorney in connection with Mr. Pope or
2 anybody else in the Executive Chamber receiving
3 information as to what the District Attorney was
4 going to conclude in his report?

5 THE WITNESS: I believe it was prior to the
6 conclusions being reached. I believe it was a
7 statement of our view of the law.

8 MR. TEITELBAUM: Did the District Attorney's
9 report adopt any of those perspectives that were
10 provided to him by the Executive Chamber in that
11 letter?

12 THE WITNESS: I know it was our view that it
13 can't be official misconduct to provide truthful
14 information to the press about potential illegal
15 conduct. I believe that is the conclusion that
16 the AG, the IG and the DA all reached.

17 MR. TEITELBAUM: And who authored the letter
18 that was sent to the District Attorney?

19 THE WITNESS: I don't recall.

20 MR. TEITELBAUM: Was it Richard Rifkin?

21 THE WITNESS: I don't recall.

22 MR. TEITELBAUM: Who was the person at the
23 District Attorney's Office who was in
24 conversation with Peter Pope, do you know?

1 THE WITNESS: I had no communications
2 other -- to my knowledge, I had no
3 communications, other than July 2nd. I believe
4 Peter had conversations with the District
5 Attorney himself. I don't know who else he was
6 talking to.

7 MR. TEITELBAUM: Concerning the report?

8 THE WITNESS: Concerning the report or
9 anything else.

10 MR. TEITELBAUM: Before it came out?

11 THE WITNESS: Before it came out.

12 (Commission's Exhibit 157 was marked for
13 identification.)

14 Q. Mr. Nocenti, you have been provided with the document
15 marked Commission's 157. I'm going to ask if you can
16 identify this document?

17 A. It's an e-mail that I sent to Christine and others on
18 July 22nd at 3:15 p.m.

19 Q. Can you tell me the facts and circumstances that
20 generated this e-mail?

21 A. Christine had forwarded to me and others a draft
22 proposed statement by the District Attorney and asked
23 if we were, quote, "okay with it", and I expressed my
24 view that we should just tell them that they should

1 feel free to issue whatever release they wish to
2 release.

3 Q. Were you aware of the District Attorney sending other
4 press releases to your office for approval?

5 A. I don't know this was sent to us for approval, but,
6 you know, this was the only matter that I was aware of
7 that involved an interrelationship between the
8 Executive Chamber and the District Attorney's Office.

9 (Commission's Exhibit 158 was marked for
10 identification.)

11 Q. You've been provided a document marked Exhibit 158?

12 A. Mm-hmm.

13 Q. Can you identify this document?

14 A. I can tell you what it appears to be. It appears to
15 be an e-mail from Peter Pope to Christine Anderson.

16 Q. Have you seen this document before?

17 A. I have.

18 Q. And what do you understand Mr. Pope to be relaying to
19 Ms. Anderson?

20 A. I can just read to you what it says. It says, "Would
21 they add re gov's office, but the report shows no
22 evidence of a crime", unquote.

23 Q. And is it your understanding that Mr. Pope was
24 referring to the DA's press release?

- 1 A. Yes.
- 2 Q. Or the proposed statement?
- 3 A. Yes.
- 4 (Commission's Exhibit 159 was marked for
5 identification.)
- 6 Q. You've been handed Commission's 159. And again, I'll
7 ask you if you can identify this document?
- 8 A. I can only tell you what it appears to be. It appears
9 to be an e-mail from Sean Maloney to Christine
10 Anderson and others.
- 11 Q. And the substance of the e-mail, "Not great, why are
12 they leaving the door open with respect to us?" Is he
13 referring to the District Attorney's Office?
- 14 A. He appears to be referring to the District Attorney's
15 Office statement.
- 16 Q. And his following statement, "How about they concur
17 with the OAG's conclusions about the absence of law
18 breaking." Did you ever have any discussions in the
19 Executive Chamber concerning that issue?
- 20 A. No.
- 21 Q. And did you discuss with Mr. Maloney or Mr. Pope the
22 statement being issued by the District Attorney's
23 Office on the 23rd?
- 24 A. I don't believe I did.

1 Q. Were you aware that the statement was ever issued?

2 A. I believe it was.

3 Q. And did they make reference to the requests as stated
4 by Mr. Maloney and Mr. Pope?

5 A. I don't know.

6 Q. The information contained in those reports?

7 A. I don't know that those requests were ever relayed to
8 the District Attorney's Office.

9 MR. TEITELBAUM: Just a few questions about
10 the subpoena that we served on the Executive
11 Chamber. But before we get to that, Mr. Nocenti,
12 were you at a meeting with Mr. Kindlon in Peter
13 Pope's apartment?

14 THE WITNESS: Yes.

15 MR. TEITELBAUM: When was that?

16 THE WITNESS: I don't recall.

17 MR. TEITELBAUM: When was that in relation
18 to July 22nd; was it before or after?

19 THE WITNESS: I don't recall. I think it
20 was after.

21 MR. TEITELBAUM: How was that meeting
22 initiated?

23 THE WITNESS: I know that Peter said that he
24 had set up a meeting with Terry Kindlon, he was

1 going to have it at -- Terry at his apartment,
2 and he asked me if I would join him.

3 MR. TEITELBAUM: Did Mr. Pope tell you what
4 the purpose of that meeting was going to be?

5 THE WITNESS: I'm sure he did. Frankly, I
6 don't really recall the substance of that
7 meeting. I know that we had it and that Terry
8 was concerned about coming -- I believe he was
9 concerned about coming into the Executive Chamber
10 or being seen, so we did it at Peter Pope's
11 apartment.

12 MR. TEITELBAUM: What was discussed there?

13 THE WITNESS: You know, I do not recall.

14 MR. TEITELBAUM: You are drawing an absolute
15 blank as to anything that was discussed at that
16 meeting?

17 THE WITNESS: I haven't thought about that
18 meeting in months. I am sure that my
19 recollection -- my guess is that my recollection
20 might be able to be refreshed, but I do not
21 recall the substance of that meeting.

22 MR. TEITELBAUM: How long did the meeting
23 take place?

24 THE WITNESS: I don't know, maybe half an

1 hour.

2 MR. TEITELBAUM: And was anything decided at
3 that meeting?

4 THE WITNESS: I don't recall the substance
5 of that meeting.

6 MR. TEITELBAUM: Have you ever held a
7 meeting of that sort in the personal residence of
8 a member of the Executive Chamber?

9 THE WITNESS: I don't know what you mean by
10 "a meeting of that sort".

11 MR. TEITELBAUM: Well, with a lawyer
12 representing a member of the Executive Chamber?

13 THE WITNESS: My recollection --

14 MR. TEITELBAUM: On business, on business?

15 THE WITNESS: My recollection is this was an
16 accommodation to Terry Kindlon.

17 MR. TEITELBAUM: And were you aware that
18 Darren Dopp was seeking employment outside the
19 Executive Chamber before he got his job with
20 Ms. Lynch?

21 THE WITNESS: Yes.

22 MR. TEITELBAUM: And were there any phone
23 calls made to Ms. Lynch's office by any member of
24 the Executive Chamber, to your knowledge?

1 THE WITNESS: Not to my knowledge.

2 MR. TEITELBAUM: Any communication with her
3 office concerning his job?

4 THE WITNESS: Not to my knowledge.

5 BY MS. TOOHER:

6 Q. Mr. Nocenti, I know that you are aware that there's an
7 outstanding subpoena from the Commission to the
8 Executive Chamber and that numerous documents have
9 been provided in response to that subpoena?

10 A. Mm-hmm.

11 Q. Is it your understanding at this time that the Chamber
12 is in full compliance with the subpoena of the
13 Commission?

14 A. That is my understanding.

15 (Commission's Exhibit 160 was marked for
16 identification.)

17 Q. I'm going to show you what's been marked as
18 Exhibit 160 and ask you if you can identify this
19 document.

20 A. It's an e-mail that Sean Maloney sent to me on
21 July 16th.

22 Q. And in this document, it specifically refers to
23 private e-mails of Darren Dopp and others. Were those
24 e-mails ever reviewed by the Executive Chamber?

1 A. Any e-mails on our servers that went to or from a
2 private e-mail account were reviewed, and to the
3 extent they were responsive and relevant, they were
4 provided.

5 Q. But what about e-mails that went between private
6 accounts?

7 MR. TEITELBAUM: Just a second. Are you
8 testifying that if a document was responsive to
9 the review of the Executive Chamber, but was not
10 relevant, it would not be turned over to us?

11 THE WITNESS: No.

12 MR. TEITELBAUM: You were not -- the
13 Executive Chamber was not applying a standard of
14 relevance to the compliance with the subpoena?

15 THE WITNESS: Well, we had, I think -- I
16 believe that there were conversations back and
17 forth.

18 MR. TEITELBAUM: There were.

19 THE WITNESS: And letters as to the
20 narrowing of the subpoena.

21 MR. TEITELBAUM: Correct. But the subpoena,
22 as adjusted by agreement --

23 THE WITNESS: Right.

24 MR. TEITELBAUM: And let's define that as

1 the subpoena, the subpoena as adjusted.

2 THE WITNESS: Okay.

3 MR. TEITELBAUM: Would the Executive Chamber
4 apply its view of relevance and withhold
5 documents that was responsive to the subpoena as
6 adjusted if in the view of the Executive Chamber
7 the document wasn't relevant?

8 THE WITNESS: No.

9 BY MS. TOOHER:

10 Q. This e-mail from Sean Maloney to Peter Pope and then
11 forwarded to you indicates, "If the investigators get
12 smart, they ask for Darren's private e-mails and then
13 others, that will be a rich source of info now that I
14 think about it." Did you review those private e-mails
15 in private accounts?

16 A. Did not.

17 Q. Did the Executive Chamber review those private e-mails
18 between private accounts?

19 A. We did not ask employees to give us access to all
20 their private e-mail so that we could determine
21 whether they had any that would be responsive to the
22 subpoenas of the Commission. We were responding on
23 behalf of the Chamber to the documents that we had.

24 Q. But I'm speaking now of the e-mails as referenced in

1 Commission's Exhibit 160. Did the Executive Chamber
2 review those private e-mails?

3 A. If an e-mail was in our possession that went to or
4 from a private account, we reviewed it, and if it was
5 responsive, we provided it.

6 Q. So did this review take place that is discussed in
7 Mr. Maloney's e-mail?

8 A. I don't know what you mean by "this review"?

9 Q. We may want to get them so that --

10 A. Let me answer the question.

11 Q. -- we know what they said.

12 A. We received a request for documents. We searched all
13 of our e-mails, I spent dozens of hours looking at
14 e-mails. If we had an e-mail that was responsive, we
15 provided it regardless of whether or not it was to or
16 from a private person's -- a private e-mail account.

17 We did not go into people's homes or ask them to
18 give us their passwords or look at their private
19 e-mails or e-mail that went from somebody's private
20 account to somebody else's private account that never
21 touched the Executive Chamber, we never reviewed them,
22 we didn't have possession of them.

23 Q. But this e-mail seems to refer to just those types of
24 documents and gives the example of Darren's private

1 e-mail to Dicker's private e-mail.

2 MR. MOSCHETTI: So what's the question?

3 MR. TEITELBAUM: Were those reviewed?

4 That's the question.

5 A. No. I don't think it says that. It says, "On
6 July 5th, Darren e-mails to himself an e-mail to
7 Dicker from the day before." I think that that is
8 referring to an e-mail that was on the Chamber's
9 servers that Darren e-mailed from the Chamber's
10 servers to himself, meaning to his private account, so
11 it was on our system. My guess would be, you have
12 that document.

13 MS. TOOHER: I think we're done.

14 (Whereupon, the examination of DAVID NOCENTI
15 in the above-entitled matter adjourned at
16 4:22 p.m.)

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1 STATE OF NEW YORK)
2 COUNTY OF) ss.

3

4 I, DAVID NOCENTI, have read the foregoing
5 record of my testimony taken at the time and
6 place noted in the heading hereof, and I do
7 hereby acknowledge it to be a true and accurate
8 transcript of same.

9

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DAVID NOCENTI

13

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DATED: _____

15

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Sworn to before me this _____

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day of _____, 20_____

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Notary Public

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C E R T I F I C A T I O N

I, SADIE L. HERBERT, Shorthand Reporter and
Notary Public in and for the State of New York,
do hereby CERTIFY that the foregoing record taken
by me at the date and place noted in the heading
hereof is a true and accurate transcript of same,
to the best of my ability and belief.

SADIE L. HERBERT

Dated: February 15, 2008

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