STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

In the Matter of an Investigation
Into Governor David A. Paterson's
Acquisition of World Series Tickets

EXAMINATION UNDER OATH
OF
PETER KAUFFMANN

Tuesday, March 2, 2010
1:30 p.m.
Commission for Public Integrity
540 Broadway, 2nd Floor
Albany, New York

APPEARANCES
FOR THE NYS COMMISSION ON PUBLIC INTEGRITY

STATE OF NEW YORK COMMISSION ON PUBLIC INTEGRITY
540 Broadway
Albany, New York 12207
BY: JEFFERY SCHLANGER, ESQ.
BRIDGET HOLOHAN, ESQ.

ALSO PRESENT:
Lawrence J. Murello

ALEXY ASSOCIATES, INC.
(518) 798-6109
PETER KAUFFMANN,

having been first duly sworn by the notary public,

was examined and testified as follows:

EXAMINATION

BY MR. SCHLANGER:

Q Would you please state your name for the record?

A Peter Kauffmann.

Q And spell your last name, please.

A Kauffmann, K-a-u-f-f-m-a-n-n.

Q My name is Jeff Schlanger. I am special counsel to

the Commission of Public Integrity, and I've been

engaged to assist in this particular investigation.

As we spoke just a moment ago, I'll be asking you

questions. If there's any question -- well, first of

all, you have to give a verbal response to every

question that I ask because we have a stenographer here

who is taking everything down, and she can't take down

nods or shaking of heads, so if you'd please give a

verbal answer, that would be great. If there's any

question that I ask you that you don't understand --

and I'm sure that will happen because sometimes I do

that -- just let me know and I will rephrase it in a

way that you do understand. Okay?

A Okay.

Q Good. Are you currently employed, sir?
A I am.
Q And by whom are you employed?
A I am employed by the Executive Chamber.
Q And in what capacity is that?
A I'm Director of Communications for Governor Paterson.
Q For how long have you been so employed?
Q Okay. Can you tell me what the role and responsibility of the Director of Communications is?
A I run the communications staff. I oversee interaction with the media on a day-to-day basis, and I advise the Governor.
Q And in terms of the communications staff, approximately how many people work directly for you?
A Directly for me, I would say probably 19, including the speech-writing team, advance staff, et cetera.
Q You do understand, sir, do you not, that you are under oath and as such you're obligated to tell the truth under penalties of perjury?
A I do.
Q Okay. Are you familiar with the rules regarding the acceptance of gifts and benefits as embodied in the Public Officer Law?
A Yes, I have read them.
Q With regard to those rules are you specifically aware that no state officer or employee can solicit or request or receive any gift having more than nominal value and in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him?
A Yes.
Q And, specifically, are you aware that no state officer or employee can use or attempt to use his official position to secure an unwarranted privilege for himself or others?
A Yes.
Q Okay. And you understand, do you not, the reason that these policies exist?
A Yes.
Q Do you have any understanding as to what the policy of the Governor is with respect to his attendance at any sporting events that he may go to and when, if at all, it would be necessary for him to pay for tickets?
A I don't. If there is a set policy, I don't.
Q Okay. Did you ever have occasion to discuss that policy or any policy regarding those issues with the Governor or anybody else in the Chamber?
A Yes.
Q When did you have those discussions?
Specifically, following the World Series, when I was called by Fred Dicker of the NEW YORK POST to ask if the Governor did, in fact, attend, I believe it was, Game 1 of the World Series, did he pay for the tickets, and from there started doing my research.

Q And in terms of your research, did you learn whether or not there was a policy with respect to this?

A I know that there was a letter written to the Yankees that stated that Governor Paterson attended in his official capacity and, therefore, he was able to attend in that capacity without paying for a ticket.

Q Prior to your appearance here, in the Chamber did you have occasion to speak with other people about your prospective testimony here?

A No.

Q Did there come a time when you became aware that what are commonly referred to as 15-day letters were issued with respect to the tickets to the World Series?

A Could you repeat the question?

Q Yeah. Are you aware of what a 15-day letter from the Commission is?

A Yeah. I mean, that's why I'm here, right?

Q Right.

A I got a letter, I guess, about opening day.

Q Right.
Or other Yankee tickets.
Okay.
Or other tickets, which I responded to. Yes, I do. We get a letter. We have 15 days to respond, yes.
Okay. Do you understand that that letter outlined that there might be certain allegations of misconduct in connection with the rules that we went over before?
Yes.
When was it that you first learned that the Governor did, in fact, attend the first game of the World Series?
I believe I knew the day of the game that he was going, but I did not know any of the circumstances in terms of tickets or anything like that.
Okay. When you say that you knew the day of the game that he was going, how did you learn that?
I think it was part of his -- I don't -- I can't remember -- I can't recall that. I remember -- I know the day of the game that I was aware that he was going to the game, but I don't remember in what capacity I found out.
Was it standard protocol that you would assign somebody to accompany the Governor in that kind of situation?
Yes.
1. Q Did you assign somebody to accompany the Governor in that particular situation?
2. A I did, yes, when I found out that he was going to the game.
3. Q Who was that that you assigned?
4. A It was -- I believe Lauren Passalacqua was the person I assigned to cover for the press.
5. Q Why did she get that assignment, do you know?
6. A Anytime the Governor goes somewhere, I need to make sure that he has a representative from the press office to handle any press inquiries, so I was given a heads-up that he was going to the game, and I made sure that we had someone there to assist him in case there were any media -- requests from reporters, he had to answer any questions. I know that there was a couple cameras, video cameras on the way in. I think he stopped and took a couple questions, so I want to make sure I had a press person there.
7. Q Okay. Is there a division, any natural division of labor between New York and Albany? Are some people based in New York?
8. A Yeah, some people are.
9. Q Was Ms. Passalacqua based in New York?
10. A In New York City, yes.
11. Q Getting back to the 15-day letter, when you
received the 15-day letter, did you discuss that letter with anybody?
A  No.
Q  Did you speak to Mr. Kiernan about the letter at all?
A  Discuss -- I may have let him know -- yes, I let him know I had a letter.
Q  Did you talk to the Governor at all about it?
A  No.
Q  Was there concern among the -- or in the Chamber that these 15-day letters had been issued?
A  I don't know how I would quantify "concern."
Q  Well, did you have discussions with anybody other than Mr. Kiernan and mentioning it to him?
A  You know, I just have to take a step back. I mean, there's so many sort of day-to-day issues that arise in the press office. I mean, I talk to, you know, 50 reporters in a day --
Q  Right.
A  -- just on a regular daily basis, and there might be, you know, ten crises a day. I remember -- I remember certain specifics in the inquiry with Fred Dicker touching off Thursday, October 29th.
Q  And we'll get into those in a minute.
A  But in terms of the 15-day letters, I don't
remember the timing of when those were issued. I sort
of have a memory of what was sort of in the papers with
announcements by NYPR, calling for an investigation,
things like that. I do have a recollection of that.
And I can recall there being discussions about, you
know, next steps in terms of having to answer any
questions about that or anything, not in terms of
testimony but more what to say to reporters when asked.
Q And who were those discussions with?
A Again, I don't recall the details of any specific
discussions, but I think they were something that was
brought up with Peter Kiernan, Larry Schwartz.
Q By the way, do you report directly to the Governor?
A I do.
Q Do you know where the Governor was on the day of
the first game of the World Series, which I think we
can agree was the 28th of October?
A I don't have that in front of me. I will take that
at face value.
Q Okay.
A I will believe you on that one.
Q Thanks. Do you know where the Governor was on that
day?
A I don't. I mean, I have access to his schedule. I
just don't have it in front of me.
Q: Are you responsible for his schedule?
A: No.
Q: That is drawing up the schedule itself?
A: No. I mean, I have a role in planning, you know, media events, but, no, I don't draw up the schedule.
Q: Do you recall how you first learned that, in fact, the Governor would be attending the game?
A: No, I don't. Like I said, I know that I was aware that day, but I don't -- I don't remember who first told me. I just don't recall that.
Q: There came a time after the World Series that you learned that, in fact, the Governor had attended, as you thought he was going to?
A: What was the question?
Q: There came a time after the game was actually played that you learned that the Governor had, in fact, attended the game?
A: Yes.
Q: Did you have conversations with Ms. Passalacqua about his attendance at the game, how things went?
A: Yes. Yeah. I talked to her that night and the next morning, and she let me know that there were a couple of reporters that had wanted to talk to him on the way in, you know, just gave me a heads-up that nothing eventful happened from a press perspective, you
know, nothing worthwhile but that he talked to a couple
reporters.
Q  Did you know who, in fact, attended the game with
the Governor?
A  I did after the fact, yes.
Q  When you spoke to Ms. Passalacqua after the game,
did you know at that point who had attended?
A  I didn't. I knew at that point that Judy Sanders,
the photographer, was at the game, but I wasn't aware,
I don't think, beforehand that she was going down to
the game.
Q  When was it that you first learned who had attended
with the Governor?
A  I believe it was after Fred Dicker called me and
confirmed that the Governor was at the game and what
the details were, that I then did sort of my research,
talked to him, talked to David Johnson, Matthew Nelson,
Peter Kiernan, to get the details of his attendance and
got who sat with him.
Q  We'll get into all those conversations, if that's
okay.
A  Okay.
Q  You mentioned a person by the name of Fred Dicker,
is that correct?
A  Yes.
Q And can you describe who he is?
A NEW YORK POST reporter.
Q Did you have a relationship with him, that is, a professional relationship?
A Yes, he calls frequently. He's one of the 50-odd reporters that calls me on a day-to-day basis.
Q Do you recall the first time that you spoke to Mr. Dicker relative to the World Series game?
A I believe it was on October 29th.
Q Would that be the day after the game?
A That Thursday, yes.
Q Do you recall what time it was, approximately, that you spoke to him?
A I don't.
Q Okay. Do you recall what it was that you did -- well, why don't you recount the conversation with Mr. Dicker?
A You know, and again, I just have to -- I've sort of reviewed -- I don't have handwritten notes, and I didn't have access to any e-mails from that day when I was called in here, so I just -- I know a set of details about this, but I can't remember all the --
Q Obviously, telling the truth means if you don't recall that you have to say you don't recall.
A Yeah.
Q  But if I ask you for your best recollection, then I hope you'd provide your best recollection.
A  Absolutely.
Q  So with regard to your conversation with Mr. Dicker, your first conversation -- there were multiple conversations?
A  Yes. There were a number of conversations through mainly Thursday and Friday, October 29th and October 30th.
Q  So with regard to that first conversation with Mr. Dicker, can you give us the sum and substance of that conversation?
A  Yeah. I mean, there was a series of discussions with Dicker. And, again, I believe the initial call was, "Peter, did the Governor attend the game? I talked to someone who saw him. Did he attend the game? Did he pay for his tickets? Who was he with?"
So I -- subsequently I guess I would have confirmed with Matthew Nelson that he had gone to the game, and it was either Matthew or David Johnson that I said, "Who was the Governor with?"
And then eventually, you know, once I got those baseline facts, talked to the Governor and said that Fred Dicker was calling about the World Series tickets.
Q  Now, was it an unusual call, that is, was there
something implicit in the conversation that amounted to
an allegation from Mr. Dicker?

A I mean, yeah, Fred -- I guess the implicit aspect
of it would be the idea that the Governor and his
guests didn't pay for their tickets and show us
confirmation that they did.

Q And that was clear from the beginning of the
conversation or string of conversations?

A It was clear from the string of conversations, yes.

Q How many times in the next 24 or 48 hours would you
say you spoke to Mr. Dicker?

A Between five and ten times.

Q And would it be fair to say that ultimately
Mr. Dicker wrote an article in the NEW YORK POST
especially reporting on those conversations?

A Yes.

Q Okay. Have you seen that article recently?

A Yes.

Q Do you have it there with you? Okay. Have you
read that before you came to testify?

A Yes.

Q And are the items which are asserted as fact by
Mr. Dicker accurate, to the best of your knowledge?

A Yes.

Q Okay. We're going to mark a copy of that article,
if that's okay.

MR. SCHLANGER: Why don't we have that marked as -- I think we're up to 5.

(Commission Exhibit No. 5 was marked for identification.)

BY MR. SCHLANGER:

Q Same article that you had reviewed?

A Yes. Yes.

Q Okay. So let's, if we can, go paragraph by paragraph. The second paragraph in the article states the following: "When initially asked about freebies, Paterson spokesman Peter Kauffmann said the Governor was personally offered the tickets by Yankee president Randy Levine" -- or "Levine, with whom he had appeared on a CNBC show a few days earlier." Was it accurate that you had said that to Mr. Dicker?

A Yes.

Q And did that account later change?

A Yes. Yes.

Q So let me ask you first, from where did you obtain the information relative to the initial account?

A Governor Paterson.

Q And can you relate the conversation with Governor Paterson as best you can?

A It was very simple. I let him know that Fred
Dicker was asking questions about the World Series. I asked if he -- how he got the tickets, what the background was.

And he said, "Oh, I was just on with Randy Levine, I was just on CNBC with Randy Levine. We went to law school together. And he invited me."

Q Okay. There came a time when you came to understand that that was not an accurate recitation of the facts, is that correct?

A Yes, that's correct.

Q How did you learn that it wasn't accurate?

A I believe in subsequent conversations with Fred Dicker he told me that it wasn't true, that it was being denied, I guess, by the Yankees. So then I went back to the Governor and David Johnson and said, you know, "The Yankees, Randy Levine is saying that that's not true, that, you know, he didn't invite you." And, you know, "Was that an actual invitation? Did he explicitly say 'please come to Game 1 of the World Series; here are some tickets. I will give you tickets'?"

And at that point was told, "Well, no. He may have mentioned it like a 'hey, are you coming to the game?' Or, 'let me know if you want to come to the game.'"

That was the second time.
Q By the way, was Mr. Johnson present during the
first conversation with the Governor?
A No.
Q And you said that he was present for the second
conversation, is that correct?
A Yes.
Q And who was it that did the speaking that you just
related relative to that second conversation?
A The Governor.
Q Did you subsequently find out what the true state
of facts relative to the interchange between the
Yankees and the Governor was?
A Yeah. I mean, skipping ahead through the sort of
blow by blow that Fred Dicker -- yes, I subsequently
found out, and I feel I have an accurate picture of
what actually happened.
Q Okay. So with regard to the so-called -- or what
was first called the invitation, what did you
subsequently learn?
A What I subsequently learned through talking to a
number of different people within the Chamber was that
the Yankees COO, Lonn Trost, called in to our office.
That call was forwarded to Matthew Nelson, our director
of scheduling. And it was sort of a, you know,
boilerplate, you know -- this was before the
playoffs -- if the Governor is interested in going to any of the games, any of the playoff games, let me know. I think Matthew relayed that message. This is only what I've learned --

Q That's fine.

A -- in research. And the Governor wasn't able to go for any of the pre -- the playoff series, but before Game 1 of the World Series, the Governor expressed an interest in going to the game. I believe that Matthew may have sent an e-mail to that effect. I can't recall if that was the order -- I can't recall, I believe that Matthew may have reached out and let them know the Governor was interested.

Subsequently the details from that point on were -- in terms of who went, was handled by David Johnson with, I believe it was, Brian Smith of the New York Yankees.

Q And all of this information came to you over those next 24 to 48 hours that you were trying to respond to Dicker and his inquiries?

A Correct.

Q Okay. There is reference in this article, is there not, to a senior Paterson administration official who is alleged to have said "the Governor didn't want to pay." It looks like the 8th paragraph down.
A Yes.
Q Do you know who that official was?
A I don't.
Q Or is?
A I don't.
Q Okay. Had you heard that same statement?
A I had not, no.
Q Had you heard anything to the contrary up to your second conversation with Governor Paterson?
A No.
Q Okay. In your conversation, the first two conversations with Governor Paterson about this that you just recounted for us, did the Governor at any time indicate to you that it had always been his intention to pay for tickets?
A It was unclear.
Q When you say "it was unclear," what aspect of it was unclear?
A During one conversation with him, he seemed to think that the tickets had been paid for.
Q Okay. Let's go back to the first two conversations, the first conversation where he said he was invited, did he in that conversation, when he was alone and it was you, in that conversation was there any mention that "I had paid for these tickets" or I --
A No, we didn't discuss payment. It was just his answer was, "Well, Randy Levine invited me."

Q Okay. Did he indicate in that conversation that he had drawn up a check or anything to that effect?

A No.

Q In that conversation was there any reference at all to anybody paying for any of the tickets?

A No.

Q Let's move to the second conversation with both the Governor and Mr. Johnson. In that conversation was there any indication that the Governor had paid for any of the tickets or had written a check to pay for any of the tickets?

A Could you repeat that? I'm sorry.

Q In the second conversation with Mr. Johnson and the Governor, was there any reference by either one of them that the Governor either had paid for the tickets or had written a check to pay for the tickets?

A I can't recall the first -- the exact first conversation where the payment came up. I had a number of subsequent conversations in a relatively short time frame with the Governor and David Johnson. First it was -- the first story I got directly from the Governor was that Randy Levine invited him. When Fred called me back and I was told the Yankees denied that, they said,

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"Oh, no, maybe it was somebody else with the Yankees," and I had known that at that point, then, that Lonn Trost had sent an e-mail -- or had called our office to extend -- you know, it's a semantic difference -- made the offer of tickets.

Q  Back earlier?
A  Correct, before the playoffs.
Q  Before the playoffs, right?
A  Correct. And then subsequently in a number of conversations, sort of getting more details from Fred Dicker asking more questions of Governor Paterson and David Johnson, came to find out that, no, in fact, they didn't pay for any of the tickets. I spoke with Mark Leinung, who attended the game. From the first conversation I talked to him about going to the game, he expressed that he, you know, he will send a check in.

Q  Right. We'll take these chronologically if that's okay.
A  And I do apologize because --
Q  Not at all?
A  With the number -- having been months ago with the number of -- I don't necessarily have a chronological --
Q  That's okay. I'll try to give it to you and we'll
see if we can break it down into those individual
pieces, if you will.
A Okay.
Q There is a paragraph in the story that says, "A
third story then came from a senior Paterson
administration official who told the POST that the
tickets were solicited from the Yankees' top management
at Paterson's direction by David Johnson, the
Governor's personal aide." In fact, that turned out to
be the case, as you've learned, is that right?
A That was the case as I learned, yes.
Q Okay. There is a paragraph in the story that reads
as follows: "Kauffmann initially claimed that taking
free tickets worth nearly $2,000 was appropriate
because the Governor's appearance at the World Series
was part of his official and ceremonial
responsibilities." Was that true? Did you, in fact,
say that?
A I did, yes.
Q And where did you get the information to be able to
make that statement?
A I was told that by David Johnson.
Q Okay. And can you recall whether this was a third
conversation or a fourth conversation?
A I can't. This is where it -- again, this is where
it becomes a number of successive conversations.
Q    And how many conversations would you say that you
had with the Governor with respect to this?
A    With the Governor?
Q    In which he was either there, present, or you spoke
to him alone?
A    Five, I'd say, at least five, between five and ten.
Q    How about Mr. Johnson?
A    About the same.
Q    So you indicated that you somehow gleaned from
Mr. Johnson -- a conversation with Mr. Johnson that the
free tickets worth nearly $2,000 were appropriate
because of the Governor's appearance was official, is
that correct?
A    Correct. David Johnson told me it was official and
that he got a letter saying so from Peter Kiernan.
Q    And it was your understanding that the letter that
he got from Peter Kiernan referred to all of the
tickets, not just one of the tickets?
A    My understanding when David Johnson first said that
to me, the way David Johnson expressed it to me was
that it covered everyone who had come with the
Governor.
Q    Okay. Did Mr. Johnson at any point during that
correspondence indicate to you that he had a check from
the Governor to pay for the tickets for his son and his son's friend?
A No.
Q That would have, in fact, been inconsistent with what he was saying to you relative to the free nature of the tickets?
A Yes, to that first --
Q At that point?
A At that point, yes.
Q Okay. There is a paragraph in this article which says, "Kauffmann's story changed several more times over two days as the number of free tickets received shrunk to four to two and over the weekend to one."
First of all, is that accurate, that, in fact, your story changed in that regard with respect to the number of free tickets?
A Yes.
Q Can you tell us how the information that you supplied to Mr. Dicker relative to this article came into your possession?
A The information that I supplied?
Q Yeah.
A From the Governor and David Johnson or David Johnson. Those were my two main sources for the change of information.
Q Were you participating in conversations which led to this sequence of events of paying for one ticket, paying for two tickets and so on?
A Yes.
Q Can you describe those conversations to us?
A Again, it was initially what I was told was the Governor was invited and, therefore, by nature of the fact that this was an official and ceremonial duty, which I then subsequently confirmed through counsel, yes, in fact, you know, the statute is that if it's a ceremonial duty, this is okay. That's what I was told by counsel.
Q Was counsel involved in these conversations?
A No. No.
Q Okay.
A But I independently went to try to confirm as much as possible. And then it was sort of the -- the initial understanding from Governor Paterson and David Johnson in a series of conversations that -- first that you're allowed to get free tickets because it's ceremonial and you have to have staff with you to -- and then it sort of developed from there.
Q What was their specific conversation to the effect that maybe this wasn't ceremonial with respect to the other participants?
A  I mean, I don't know if --
Q  Were you present for any of those conversations?
A  I was present for some of the conversations. My advice from the onset was that all these tickets should be paid for, period, and that you should pay for them. And was told, "no, no, this is ceremonial. This is ceremonial. This is standard practice."
Q  Who was saying that? Was it both the Governor and Mr. Johnson?
A  Yes.
Q  And so when a decision was made to pay for some of the tickets, do you recall which of the tickets was first that was going to be paid for?
A  The first ticket was immediately -- again, I came into this process initially because the reporter called. Shortly after the reporter called, when I determined who went to the game, the first -- when I first spoke to Mark Leinung, Deputy Director of State Operations, to confirm that he was one of the people, the first thing he said to me was where -- was like, "I didn't pay for the ticket yet. Where do I send my check to?" So he right away said his intent was to pay. He just didn't know -- I would categorize -- it seemed to me, when I talked to him, he said, "Yeah, I'm paying for my ticket. I saw the face value. Where do
I send that?"

Q Did he ever indicate to you that it had always been
his assumption that he would pay?
A That's -- again, I don't know. That was the first
thing he said, basically, when I asked him if he went
to the game and started asking him about it, that
seemed to be -- he seemed to think that he was going to
pay.

Q Did he ever indicate to you that he had had any
conversations with either Mr. Johnson or the Governor
with respect to that?
A He didn't say. I didn't talk to him about that.

Q In fact, his stance would seem to be at odds with
the stance, or did it seem to be at odds with the
stance that the Governor and Mr. Johnson were putting
forth that they didn't have to pay for any tickets?
A Yes. Yes. And it just seemed that his take seemed
to be "look, I want to pay for this. I just want
to" -- you know, whatever, "let me know."

Q Okay. So that was the first ticket that was
decided that would be paid for?
A Correct, yes.

Q And, in fact, you indicated that to Mr. Dicker,
that you just got word or something to the effect that
Mr. Leinung would pay for his ticket?
Q  Did there come a time when you learned that somebody else would pay for their tickets?
A  Yeah. In subsequent conversations with the Governor, he felt that he -- it was appropriate for him to pay for his son and his son's friend's tickets. He said that while he would attend in his official capacity with one staff member attending to assist him and that that was consistent with his understanding, but that, in fact, he should pay for his son and his son's friend's ticket.
Q  Was there conversation in between the Governor's position that he didn't need to pay for any of the tickets to the position where he had decided to pay for his son and his son's friend's tickets?
A  There were conversations. I wasn't involved in a lot of the -- I may not have been party to all those conversations.
Q  You said that you had given them the advice that they should pay for all the tickets and, I guess, be done with the whole thing?
A  That was -- yes. Yes, that was my advice.
Q  When did you give that initial advice?
A  I don't know if it was in the -- I don't think it was in the initial conversation with the Governor.
because payment didn't really come up. It was just I
was invited to this. But the moment it was clear that
Dicker's direction here was going to be kind of a
gotcha, you know, trying -- you know, elected official
trying to get freebies, my feeling was that, you know,
regardless of whatever the legal basis was for
accepting free tickets -- I am not an attorney, but as
a communications director my advice was $2,000 is a
small investment to not have any subsequent questions
about it.
Q And was it to that advice that the Governor and
Mr. Johnson indicated "no, no, no, this is official
business"?
A Correct.
Q "We get to go for free"?
A Correct.
Q At any point during any of the conversations that
you had with the Governor, did he mention having
written out a check prior to October 29th?
A I don't know. We never discussed the date of when
he -- no. We didn't discuss when he wrote the check.
Q Right.
A He did say -- while he said at first -- while he
said at first that there was this legal opinion that
they didn't have to pay for the tickets, when he told
me that he was going to pay for his son and his son's
friend, he indicated to me that that was always his
intention, that he would pay for the tickets, even
though he --
Q  But you knew that wasn't true when he told you
that?
A  He said that it was his intention to pay for the --
his son and his son's friend's ticket at that point,
that at that point he paid for them, that even though
he didn't have to, he intended to do so.
Q  But it was clear to you that that wasn't always his
intention because he had said at one point that he
didn't have to pay?
A  There were few things that were clear about this
process.
Q  Was that one of them?
A  Yes. Yes.
Q  Okay. There came a point, did there not, when you
drafted a response to Fred Dicker's inquiry, is that
correct, you or someone acting on your behalf?
A  Yeah. I mean, that would have been me, I believe,
yes.
Q  So would it be fair to say that there were both a
written response and verbal responses in your
conversations?
A I don't recall the details, but that would seem --
yes, yes. Yes.
Q And --
MR. SCHLANGER: 822. I'm going to ask
this be marked as Exhibit Number 6.
(Commission Exhibit No. 6 was marked for
identification.)
BY MR. SCHLANGER:
Q I'll give you a second to look at Exhibit Number 6.
So in terms of a draft response, the subject of this
e-mail from you to Larry Schwartz and Peter Kiernan
dated Thursday, October 29th, at noon, copy to Marissa
Shorenstein and Matthew Nelson, is "suggested response
to Dicker," is that correct?
A Yes, that's correct.
Q Did I accurately indicate who this message was from
and sent to with copies?
A Yes.
Q And the suggested response reads, in quotes, "The
Governor was invited by the Yankees to attend the
opening game of the World Series in his official
capacity, to represent the State of New York as a
ceremonial occasion attended by First Lady Michelle
Obama." Is that correct?
A That's correct.
Q Closed quote. And then there is a new paragraph in this e-mail which says, "He did not pay for the tickets," correct?
A Correct.
Q And then a new paragraph which indicates, "also seated with the Gov: David Johnson, GDAP's son, a friend of GDAP's son, Mark Leinung"?
A Correct.
Q "Deputy Director of State Operations," is that correct?
A Correct.
Q Do you recall drafting this e-mail?
A I do, yes.
Q This was the result of numerous conversations, was it not, with a number of individuals?
A This was -- Fred e-mailed at 9:52. I believe this would have been the result of initial conversation probably with the Governor and David Johnson, and that I drafted subsequent language to reflect that there was an invitation by the Yankees; this was ceremonial. That was the wording. It was a clause or something that counsel gave me about a ceremonial occasion that I tried to work in.
Q And was this the response which ultimately went out to Mr. Dicker?
A I wasn't able to review my e-mail, but this seems consistent with what my first statement to him would have been.

MR. SCHLANGER: Do you have 444, maybe? Can we have this marked as Exhibit 7?

(Commission Exhibit No. 7 was marked for identification.)

BY MR. SCHLANGER:

Q Do you recognize what has been shown to you as Exhibit Number 7?

A Yes, I do.

Q And this, is it not an e-mail from you to FUD31, who is Fred Dicker?

A Yes.

Q Dated Thursday, October 29, 2009 at 1:33 p.m.?

A Yes.

Q And this would be the response to Mr. Dicker's original e-mail?

A Yes.

Q And there is a difference between this response and the draft response or suggested response that was contained in Exhibit Number 6?

A Yes.

Q And what was that difference?

A I deleted the reference to the First Lady, Michelle
Q Do you recall, as you sit here, why you deleted that reference?
A I remember there being discussions. I believe my initial conversation with the Governor, he mentioned how much of a ceremonial occasion it was and that First Lady, Michelle Obama, was there as sort of evidence of the fact that it was such a high profile national ceremonial and official occasion. You know, I can't remember the specifics of it, but, to the best of my recollection, I think that I just might have made a decision, frankly, just not to include Michelle Obama's name in reference to this Fred Dicker column.
Q Okay. By the way, the conversations that you had with the Governor and Mr. Johnson that you've referenced, those were face-to-face conversations?
A My memory is that the initial conversation with the Governor was over the phone and that I had subsequent face-to-face conversations with him.
Q Do you recall where the Governor was when you were on the phone with him?
A I don't.
Q Was he in New York, do you know?
A I had face-to-face conversations with him about this in the New York City office.
Q  That's where these conversations occurred?
A  Where some of them did, yes.
Q  The first conversation that you had with the
Governor, going back to that first conversation after
you received Mr. Dicker's inquiry, where was that?
A  The initial thing, I don't know where he was. My
memory is that it was on the phone, but I can't fully
recall.
Q  The second conversation with respect to the
Governor and Mr. Johnson being present, was that in the
New York City office?
A  I don't recall the specific -- number of --
chronologically, of it, but there were subsequent
conversations I had with both of them in Governor
Paterson's office in New York City is my memory.
Q  And that's on 3rd Avenue?
A  Yes.
Q  And is that your normal duty station, New York?
A  Yes. Yes.

(Discussion off the record.)
Q  Okay.

MR. SCHLANGER: 174, please.
Q  There came a time at some point prior to your
sending Mr. Dicker a response that you corresponded
with Peter Leinung -- Mark Leinung?

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A Mark Leinung.
Q Is that correct?
A Yeah. Yes.
Q I'll show this to you in a second.

MR. SCHLANGER: Let's have that marked as Exhibit 8.

(Commission Exhibit No. 8 was marked for identification.)

BY MR. SCHLANGER:
Q Before we get to Exhibit Number 8, let me ask you this: Are you aware that Governor Paterson has testified with respect to this matter, has given a deposition similar to that which you are undergoing now?
A Yes, I think I did know that he talked to you the other day, I believe.
Q And when did you learn that that was going to take place?
A I don't recall.
Q Were you in New York City when you learned that?
A I don't recall. I haven't been up to Albany much in the past few weeks, so I don't recall.
Q Do you know whether or not the Governor had met with individuals relative to his appearance here for the deposition?
Q Okay. Exhibit Number 8, would you take a look at it, please? Reading from the bottom up, there is an e-mail from you to Mark Leinung, subject, Yankee game, dated Thursday, October 29, 2009 at 1:26 p.m., is that correct?
A That is correct.
Q Okay. Would you read that for the record, please?
A "Mark, I wanted to give you a heads-up that Fred Dicker is asking who sat with the Gov last night and did everyone pay their tickets. The answer is no, no one paid, everyone was a guest of the Yankees, but I wanted to give you a heads-up that this will be in the POST tomorrow. I am working with D.J. and the Gov to formulate our official response but wanted to give you a heads-up as you were at the game. Thanks, Peter."
Q Okay. So at that point would it be fair to say that you hadn't yet had the conversation with Mark Leinung relative to his payment for the ticket?
A Correct.
Q Okay. And would it be fair to say that as of 1:26 p.m. on that date, Thursday, October 29th, that your best information was that no one had paid for the tickets and, by inference, that no one was going to pay for the tickets, either?
Q And at that point you had spoken, had you not, to Mr. Johnson and to the Governor about this?
A Yes.
Q Had you spoken at that point with anybody else about this?
A I probably would have, again, and I apologize that I can't recall -- the people I would have talked to. And it's the chronology that I can't recall specifically, Governor Paterson, David Johnson, Matthew Nelson, Peter Kiernan, and I would have given Larry Schwartz a heads-up. I don't remember specifically what the extent of my conversations were with him in this sort of -- in the several hours afterwards.
Q Jumping back to your knowledge of the Governor giving a deposition with respect to this incident last week, did there come a time after that deposition that you discussed the content of his deposition with anyone?
A No.
Q Referring back to Exhibit Number 8, Mr. Leinung, in response to your e-mail that you just read, says "Thanks, Peter," is that correct?
A Correct.
Q And then you ask him at 1:46, "What was the face
value on your ticket," is that correct?

A Yes.

Q And then Mr. Leinung then says, "I think it said 425 -- $425"?

A Yes.

Q Is that correct? Okay. And was that the first time that you learned what the face value of the ticket was?

A I believe so, yes. That's my recollection, yes.

Q Do you have any knowledge where the Governor sat during this game?

A I don't. I mean, I could -- I don't remember specifically. I know it would be a guess on the row number.

Q Good seats, would it be fair to say?

A Yes. It's a relative thing. Not as good as Mayor Bloomberg's.

Q Would it be fair to say that those seats were worth substantially more than the $425 face value of those seats?

A I'd have no way of categorizing it.

Q Do you know whether or not -- are you a baseball fan?

A I am, yes.

Q Do you know whether or not those tickets would have
been available to just ordinary people?
A I wouldn't know. I don't know exactly where he sat.
Q Okay. So at some point after the e-mail exchange which is contained in Exhibit Number 8 there came a time where Mr. Leinung indicated that he was going to pay for his ticket?
A That's my recollection. Again, the specific timing on all this, I can't -- I can't pinpoint that.
Q Was that a result of conversations between Mr. Leinung and somebody?
A I don't know.
Q Do you remember how you learned that Mr. Leinung had, in fact, or was, in fact, going to pay for his ticket?
A As I said earlier, I mean, I remember having a conversation with him about it, but I don't remember with any more specificity.
Q There came a time, did there not, that you learned that the Governor was, in fact, going to pay for his son's ticket and the ticket of his son's friend, is that correct?
A That's correct.
Q Do you recall when that was, approximately?
A No.
Q  Was it on the 29th or 30th, do you recall?
A  I don't recall.
Q  Do you recall the sum and substance of the
conversation where the Governor finally decides that
that's the best thing to do?
A  You know, not with any specificity other than I do
remember there being a conversation and the Governor
saying, you know, "I'll go ahead and I'll pay for my
son and my son's friend."
I believe at that point Mark Leinung had already --
and I don't -- I wasn't involved in the process of how
the checks got delivered.
Q  We'll get to that in a second.
A  But my understanding at that point, it was after
Mark Leinung had already sent in a check or however --
had already determined he was going to pay, and then
the Governor told me that he was going to pay for his
son and his son's friend with the thought being that he
was there in his official capacity, David Johnson was
there as his assistant in an official capacity. The
other tickets would be paid for, and that that was --
this would meet the criteria laid out by counsel.
Q  There came a time, did there not, when a decision
was made that Mr. Johnson would pay for his ticket as
well?
Eventually, yes.

And how did that come about?

Again, since there was a string of conversations, I don't remember the timing of that, when that decision was made. I was told -- in the beginning I was led to believe that the letter that Peter Kiernan had sent to the Yankees was covering everyone who was invited by the Yankees was what I was initially told.

By whom?

By David Johnson. Repeatedly. And as I dug more deeply -- and again, I don't have that letter in front of me, but my understanding is eventually, when I did see a copy of that, it only covered the Governor attending in his official capacity. It didn't specify a number of aides or anything in that letter.

And was that a key aspect to the decision to have Mr. Johnson pay for his ticket?

I believe so, to the best of my memory.

Okay. And do you recall any conversation around that?

I remember that there was but not with any specificity.

Was there any protestation by Mr. Johnson about that?

Not that I -- I wouldn't know how to characterize ALEXY ASSOCIATES, INC.
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"protestation."

Q  Did he argue against that at any point?
A  Well, certainly, throughout the process --
throughout the process it was clear that he wasn't
going to pay for it. I think when there was a final
determination made that the Governor was part of that
Dave Johnson should, in fact, pay for his ticket, there
was no protestation at that point, but that was at the
end of a process of multiple conversations.

Q  Did the Governor say something to the effect,
"David, just pay for your ticket"?
A  I wasn't there for that conversation.

Q  Okay. There comes a time, does there not, when, in
fact, payment is made?
A  To my -- to my knowledge, yes, but I -- again, I
wasn't part of the payment.

Q  Did you ever see checks being written for the
payment?
A  I may have been shown a photocopy of a check, but
again --

Q  Do you have any recollection of seeing anybody
write any checks physically?
A  No.

Q  How does the Governor handle, given his disability,
affixing his signature to documents that need to
have -- be authenticated as his or attested to as his?
A He can see. He signs it himself. You'll see
photos of him signing a bill into law.
I believe he's completely blind in one eye, but
he's legally blind in another, and with strong glasses
with his face right up against the table he's able to
see and he signs his name himself.
Q Is he able to, other than his signature, write as
well?
A My understanding is he can read one letter at a
time. I think it's painstaking, but he can do that.
I don't know to the extent of -- I wouldn't know if
he would write out a whole check himself, but I've seen
him sign documents.
Q Aside from signing documents have you seen him
hand-write any document?
A I've seen him writing. I can't characterize.
There may have been where he signed a note, maybe, to
someone, maybe. No. I know specifically I've seen him
sign his name. Other than that, I don't know.
Q Okay. Have you ever seen Mr. Johnson write notes?
A I don't believe I have, no.
Q Are you familiar with his -- you're laughing. I
don't mean that in any disparaging way but there's
something, obviously, that's striking a chord.
1 A No. No.
2 Q Have you ever seen something which purported to be
3 written by Mr. Johnson?
4 A Yes.
5 Q Was it handwritten or in block letters or cursive?
6 A I don't remember. I believe that I've seen
7 something written by him, but I wouldn't know.
8 MR. SCHLANGER: Can we have the checks?
9 BY MR. SCHLANGER:
10 Q You're familiar with the Governor's signature, are
11 you not?
12 A Yes.
13 MR. SCHLANGER: I'm going to ask that
14 these two pages be marked as Exhibits 9 and 10.
15 (Commission Exhibits No. 9 and 10 were
16 marked for identification.)
17 Q I'm going to show you what have been marked now as
18 Exhibits 9 and 10. First of all, do you recognize what
19 Exhibit 9, the top document, is?
20 A A letter from David Johnson to the Yankees.
21 Q And could you read that, the body of that letter?
22 A "Dear Mr. Kirimca, thank you for the invitation to
23 attend the World Series 2009 opening game at Yankee
24 Stadium. Please accept the enclosed check for the
25 purchase of one ticket. Looking forward to a
successful win this season."

Q Thank you. And do you know how this letter came to be?
A I don't.

Q Did you have any input into this letter?
A I did not.

Q And turning to the second page, that is Exhibit Number 10, do you see a check on the top of that page or a photocopy of a check?
A I do.

Q And do you see handwriting on that check as well as a signature?
A I do.

Q Do you recognize the handwriting on that check?
A No.

Q Do you recognize the signature on the check?
A No.

MR. SCHLANGER: Could we have that marked as 11 and 12?

(Co mmission Exhibits No. 11 and 12 were marked for identification.)

BY MR. SCHLANGER:

Q Mr. Kauffmann, I'm going to show you Exhibits 11 and 12. Could you take a look at those?
A Okay.
Q With respect to Exhibit 11, can you identify what that document is?
A Looks like a letter from Governor Paterson to the Yankees.
Q And can you read the body of that letter, please?
A "Dear Mr. Kirimca, thank you for the invitation to attend the World Series 2009 opening game at Yankee Stadium. Please accept the enclosed check for the purchase of two tickets for my son, Alex Paterson, and his friend, Jeremy. Looking forward to a successful win this season."
Q Did you have anything to do with the drafting of this letter?
A No.
Q And does that letter bear the signature of David Paterson as you know that signature to be?
A It does. It appears to be autopenned, it looks like.
Q Can you just describe for the record what an autopen is?
A An autopen, a standard piece of equipment for an elected official who has to sign many, many documents for correspondence. It's a machine that is imprinted with the principal's signature. So this appears to be, because it's pixelated, I would guess that it's
autopen.

Q Notwithstanding the fact that it's autopenned, is it a reasonable facsimile of the Governor's signature?
A Yes. It appears to be, yes.
Q Turning your attention to Exhibit Number 12, can you identify what that document is?
A It appears to be a check from the Governor to the Yankees.
Q Okay. Is there handwriting on that check?
A There is, yes.
Q Is there, additionally, a signature on that check?
A There is.
Q With respect to the handwriting, to the best of your knowledge, is that the Governor's handwriting?
A I'm not equipped to make a determination like that.
Q Okay. With respect to the signature are you able to determine whether or not that's the Governor's signature?
A I'm not.
Q Okay. Did you ultimately see the response that Mr. Kiernan submitted to the 15-day letter on behalf of the Governor?
A No.

MR. SCHLANGER: Would you give us just one minute? You stay here and we'll step out.
(Discussion off the record.)

MR. SCHLANGER: I have no further questions. Thank you for your cooperation and I appreciate your coming.

THE WITNESS: Okay. Thank you.

* * * 2:50 p.m. * * *
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CERTIFICATE

I, Kay Trigilio, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me is a true and accurate transcript of the same, to the best of my ability and belief.

Kay Trigilio, Notary Public
State of New York

DATE: March 2, 2010