STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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

Commission on Public Integrity
80 South Swan Street, Suite 1147
Albany, New York 12210-8004

Thursday, October 11, 2007
10:00 a.m.

STENOGRAPHIC RECORD of an Investigative
Interview under oath conducted pursuant to
agreement.

INTERVIEWEE: DARREN DOPP

APPEARANCES: HERBERT TEITELBAUM, ESQ.
Executive Director
MEAVE M. TOOHER, ESQ.
Investigative Counsel
JOAN P. SULLIVAN, ESQ.
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator
TERENCE KINDLON, ESQ.
74 Chapel Street
Albany, New York 12207
(Appearing for the Interviewee)

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter
DA R R E N  D O P P, called to testify before the Commission, and being duly sworn/affirmed by the notary public, was examined and testified as follows:

EXAMINATION BY MS. TOOHER:

Q. Would you state your full name for the record, please.
A. My name is Darren Dopp.
Q. Mr. Dopp, where are you currently employed?
A. I am currently employed at a company called Pat Lynch Communications here in Albany.

MR. TEITELBAUM: Let me interrupt you for a second.

(A discussion was held off the record.)

Q. For the record, are you here voluntarily today?
A. Yes.
Q. You are accompanied by your attorney?
A. I am indeed, Mr. Kindlon.

MS. TOOHER: Will you note your appearance for the record?

MR. KINDLON: Terence, T-e-r-e-n-c-e, Kindlon, 74 Chapel Street, Albany, New York.

Q. And you are currently employed with Pat
Lynch Communications?
A. Yes.

Q. Where were you employed previously?
A. Previously, I was Director of Communications in the Executive Chamber for Governor Spitzer.

Q. When did you leave that position?
A. I departed last Friday.

Q. Prior to last Friday what were your responsibilities in that position?
A. Interacting with the media, advising the Governor on matters concerning the media, addressing all manner of external communication and intersection of policy and communication. I wish I could provide a neat description of the role of Communications Director. But at the given moments you could be confronted by a host of issues that you then confer with your colleagues on in terms of the best approach with the media.

Q. And you say confer with your colleagues, who would you usually confer with?
A. Basically, the individuals that had the most interaction with the Governor: The secretary to of the Governor --

Q. That is?
A. Richard Baum. The counsel to the Governor, David Nocente. Those three most regularly and most routinely, but beyond that the entire rest of the administration.

Q. And, when you say the intersection of policy and communication could you explain that a little?

A. When the administration took over we had a set of, you know, policy goals that we wanted to implement. A big part of your success in implementing those goals involves the communication of your goals. And some people it's all in the communication. But, you know, we set a set of goals and try to implement them both with strategies to interact with the media, the public and lawmakers who ultimately have the decision as to whether or not to approve those policies.

Q. Your role in that was the communication aspects of the policy?

A. Again, it is not a four-corner type situation, you know. We would consult internally will about the best approach. And, sometimes, as a communications director you sort of recommend possibilities and options for the group to consider. I always considered it my role -- and I
thought I was good at it -- in terms of saying if we do this, this might result. If we do that, that might result. I was able to do that based on 20 years in government as a communications director and as a journalist.

Q. And, when you say -- I am going to paraphrase a cause and effect: If we do this, then that might result, who would you be having that communication with?

A. The trio; Mr. Spitzer, Mr. Baum and Mr. Nocente.

Q. Who was your direct report in the executive chamber?

A. I guess if we had to draw a flow chart it would be Mr. Baum. But in reality it was Baum, Spitzer and Nocente who formed the trio. Baum, Spitzer and Dopp formed the trio that had been with the Governor as Attorney General since the beginning.

MR. TEITELBAUM: You mean Baum, Spitzer Nocente and yourself.

INTERVIEWEE: Baum, Nocente, and Dopp were the trio in the Attorney General's Office and then became the same in the Governor's Office. It
is not an exclusive process, obviously, when you have others: Policy director, director of administration, you know, other counsel. You know, it was not as though decisions were made by that group alone. Budget Director, obviously, as well, Paul Francis, another key player on just about everything we worked on.

Q. What was your relationship with Christine Anderson?

A. My employee, my press secretary?

Q. Yes.

A. The press office is organized as communications director, press secretary, deputy press secretary, and then press officers. She would report to me.

Q. What was her title?

A. Press Secretary.

Q. And, she would report directly to you?

A. That's right. Lines of reporting frequently weren't like so rigid. If Christine learned of something that was essential to bring to the attention of the Governor she would do so and apprise me as well. It wasn't so rigid that everything had to come through me. It was rather
informal, as a matter of fact.

Q. What about Marlene Turner?

A. Marlene Turner, Director of Administration.

Truthfully, she is kind of like the den mother of our office, you know, someone who was responsible for Mr. Spitzer's schedules and a host of other activities that spoke to administration. She performed the same function in the Attorney General's Office and moved with us to the Governor's Office.

Q. Did you work with her on any policy issues?

A. Marlene Turner wasn't generally involved in policy discussions. She would have been involved extensively in scheduling decisions; where the Governor goes, what and how events were planned.

Q. What about Paul Larabee?

A. Paul Larabee was our Deputy Press Secretary in the chain of command. It was Dopp, Anderson, and Larabee in the press office.

Q. What were his duties?

A. Paul's duties would probably be described as the immediate interface with reporters. When calls came into the press office, you know, frequently the secretaries would consult Paul as
to who should handle a given inquiry. If it was something that was important, dicey, problematic, he would come to me saying: Who do you want to handle this? Do you want to handle it? That kind of thing. He would come to me and say: Here's this inquiry. Who should be handling it? And Christine and I would decide who to hand it off to.

Q. How would you make that determination?
A. Again, it's hard to generalize for you. The way I structured the press office is to give each press officer an area of specialty and -- not to provide like too much of a tutorial, but you have 63 state agencies and authorities. You have press personnel, public information officers in each one of those agencies that I would have hired those individuals. And I had sort of set up a situation with the eight press officers. The eight press officers had a group of public agencies that they would be responsible for. It just so happened that one of Paul's agencies for which he was responsible was everything in the law enforcement and security area, including the State Police.

Q. So, Paul Larabee handled all law enforcement
issues?

A. Not all. Well, yes. He would be involved in all. But, as I said in the beginning, it was like when there is a problematic one or potentially one that could rise to the level of having the Governor's attention, he and I would work on it together. Many times he handled things on his own, but he always apprised me of it and I would say sure, take care of it.

Q. How would you define a problematic area worth bringing to the Governor's attention?

A. This issue is a case in point.

Q. When you say "this issue" --

A. Use of state aircraft. And the reason for that is probably three-fold. Number one, there is a little bit of a misnomer in terms of people think the State Police control the state aircraft. The administration controls the state aircraft. We had a situation set up in the beginning of our term where anyone who wanted to use it had to attest the use is for official business. That, you know, was a policy discussion early in the administration. The reason we set that up is because I and others wanted to avoid controversial
Q. And, so, the issue of the state aircraft was a "dicey" issue, to use your word?
A. Potentially so. I knew it could be problematic for the Cuomo administration when I served in the Cuomo administration. I knew it to be problematic for Governor Pataki.

In the first four months of the year heading into this particular situation, I had a series of inquiries about aircraft usage that were, again, problematic. Was Mrs. Spitzer on the aircraft and, perhaps, misusing it? Was Governor Pataki's previous use of it with regard to charter flights something that we should have done something about? Was the Governor improperly using it by going on fundraising trips? In my statement to the predecessor group I sort of tried to set out four separate occasions that were specific inquiries about this. I recognized it as a problem and I had an interest in avoiding an "air Spitzer" controversy akin to the controversies that occurred for Governor Pataki and Cuomo.

Q. And how did you learn of these things? Were
you contacted by reporters or --

A. Very much so. I mean part of your job as communications director is to interact with reporters. They were coming to my office. I had an open door policy and I would walk up to the Legislative Correspondents Association where they reside. Whatever was on their mind I tried to engage them about. In the course of those discussions you try to represent the interests of your principal, the Governor, recognizing problems and, you know, trying to present your person in the best light possible.

Q. Were there particular reporters who were interested in this issue?

A. Basically, all of them in specific periods, but some more than others.

Q. Who might those be?

A. Mr. Dicker of the Post; Mr. Odato of the Times Union. Jim is someone I knew for long time. And if I felt it of use to the Commission I can provide a whole host of stories. I had a file on Jim's interest in aircraft. He had written a number of them, broke a lot of stories. Specifically, he was among those asking pointed
questions about whether the Governor took the aircraft on political fundraising trips. So, Jim -- you know, some people with the New York Sun, people with the Daily News. A host of the LCAers had inquiries about it at some point or another. Some had an avid interest in it.

MR. TEITELBAUM: Can you make a copy of that available? I would appreciate it.

INTERVIEWEE: Yes, will do. The interest in it goes back to 1995, actually goes back before that to the time when I was at Governor Cuomo's Office, and I was answering questions about aircraft usage then.

Q. You indicated there was a policy discussion about the aircraft early on in the Spitzer administration. Can you tell me about that?

A. When Mr. Spitzer was elected there was a period between November and January when we talked about how we were going to comport ourselves with regard to the media, Mr. Nocente, Mr. Baum, Mr. Spitzer and myself. I had raised at that time, you know, the issue of aircraft usage. The catalyst for that was the Hevesi matter, and we all sought to avoid any appearance of impropriety.
So, Mr. Nocente actually developed the disclaimer process that I think you are familiar with.

Q. Can you describe the disclaimer process, as you call it?

A. My understanding may not be perfect. But, you know, someone else would like describe the exact way it came down. But I was among those saying, hey -- short digression. I'm not an expert in any one area; I have a lot of knowledge about a lot of the areas. I would have said in my typical informal way: Hey, we really have to avoid Air Cuomo, Air Pataki jackpots. Let's not have an Air Spitzer jackpot. That would have been the catalyst idea for Nocente and Baum to develop the disclaimer process which was simply a sheet of paper in which anybody using the aircraft was required to state the purpose of their business and attest in writing that it was for official business only. What we had sought to avoid was improper use of the aircraft. And the rationale then and now for trying to ensure there was proper use was three-fold. One, we control it. We have to sign off on it. That's just policy and practice. Number two, it costs a heck of an a lot
of money to operate, $10,000 to $20,000 a pop
every time it goes up, and that's taxpayer money.
And the third real compelling rationale in my mind
is use of the aircraft is not meant for
politicians. It's meant for emergency personnel.
And every time a politician uses the aircraft,
that means potentially an emergency personnel
cannot use it. And I will give you an example.
If there's a shooting of a state police officer in
Margaretville or someplace out west, the
superintendent and his emergency personnel need to
get to that site immediately. That's what the
helicopter and the aircraft are for. They're
really not for convenience travel or elective
travel by public officials. When they are not in
use and there is an appropriate reason for a
public official to use it, you know, we are in the
habit of approving it.
Previous administrations -- when I was
with the Cuomo administration we routinely said no
to certain requests because we were afraid we
might need it at a given moment. So, that was the
overall chain rationale at the time in January --
actually, in December, when we set the new policy.
Q. And, did you have a discussion concerning verification on the use of the aircraft and the materials you might use for that?
A. Not at that time, no.
Q. Did you ever discuss ground itineraries at that time?
A. No, not at the time.
Q. Did Mr. Baum ever relate to you a conversation he had with Ken Riddete over at the Senate concerning ground itineraries?
A. I am not aware of any such conversation. The only relevant thing that I heard early in the process -- and I would say in January -- was Majority Leader Bruno saying to Eliot -- the Governor -- you are not going to mess around with me over of the aircraft; are you? George was constantly doing that. And Eliot related that story to me saying it was a sore point. But beyond that, I know of no Senate administration contacts over the matter.
Q. You were not aware that Mr. Baum had a discussion with Mr. Riddete, Senator Bruno's counsel, wherein he had relayed a desire for ground itineraries to confirm use of the aircraft?
A. This is the first I am hearing that. Can you tell me the time period was?

Q. It was early in the administration when you are discussing the change to the aircraft form.

A. I was not aware of any of that.

Q. And, did Mr. Baum relate to you that the Senate's position was that due to the separation of powers they would not provide ground itineraries and he had said that was acceptable?

A. No. I am not aware of that, no.

Q. Did you have any discussions with Mr. Nocente about the provisions of ground itineraries?

A. No. I mean later on I did, but not in the early part.

Q. Early on in the administration?

A. No.

Q. So, Mr. Nocente didn't discuss Mr. Baum's conversation with Ken Riddete with you either?

A. No. This is the first I am aware of it.

Q. Did you have any of meetings with Marlene Turner early on in the administration about the administration of the aircraft?

A. No, not me.
Q. Did you have any discussions with Bill Howard concerning the aircraft early on in the administration?

A. No. Once, you know, we had taken office, you know, and there were sort of some media requests for aircraft information I would have talked to him about helping me meet those requests. I would have made requests for the information through Bill, but I didn't have any procedural or policy discussions, no.

Q. What is your working relationship with Bill Howard, or what was your working relationship with Bill Howard?

A. He is one of the Deputy Secretaries to whom as a communications person I would turn for information, parallel for you all, if I could be so bold, Walter. I'm Walter for --

Q. That's Walter Ayers?

A. Right, yes. I am Walter for the administration. I don't want to diminish myself, but I know only what I am told. And on a given matter I reach out to somebody in Health, Economic Development, Security, or any other matter when a question comes in. I go to them to provide
guidance in providing an answer to the media, so a 
good working relationship. A little bit of an 
aside, he was a carryover from the previous 
administration. I knew him from before that as an 
honorable person. And we came somewhat friendly 
because he has an interest in history and the 
Civil War. And my eleven year old is an avid 
Civil War buff. I don't know if you would see in 
the communications every once in awhile Bill would 
send me a trivia question for my son Owen. And, 
then, Owen would send Bill a trivia question back 
through me. And they tried to stump one another 
on arcane developments from the Civil War. So, a 
good working relationship and I would say -- I 
mean we didn't socialize together, but had some 
rappor.

Q. You had a cordial relationship?
A. Very much so.

Q. You don't recall meeting with Bill Howard 
concerning the certification or change in the 
aircraft form early on in the administration?
A. No. I was not a part of the actual 
implementation of any new policy. Again, a press 
officer is confronted by a thousand things. And,
while I have interfaced with some policy matters I wouldn't have been at the table figuring out the policy.

Q. And, do you recall a request of early on from Fred Dicker concerning airplane information?

A. Yes. Forgive me for like being informal, but Fred is very aggressive. I was very friendly with him. I go way back with him, some twenty years. And he had a number of requests early on. They were pointed requests about whether Governor Pataki was using the aircraft properly. And he would be fairly aggressive even though he was my friend. He would be fairly aggressive towards us sort of saying we were covering up for Governor Pataki. And I think you see that in the correspondence where he asks for information.

What do I do when I receive such an inquiry? I turn to Bill to say, "How do we respond? What's the story? How do we respond?"

Q. Were you familiar with a request that Mr. Dicker made in March of the State Police for information?

A. I became aware of it. He would frequently -- I talked to him regularly and he told me about
it. And he was a little bit agitated because his view was: You guys came into office promising not to jerk us around. This is clearly public information. Why can't I get it?" And I said, "Fred, I'll take care of it." And it was at that point I turned to Paul saying, "Can you help him out? Figure out what the right thing to do is and square it away."

Q. What was your understanding of what was happening with that request? And I'm going to put a time frame of mid March.

A. I know that he was looking for flight manifests. And flights manifests had been routinely released through the years. And I had a conversation with Paul saying let's not jerk him around. Talk to the State Police so they don't have a problem, and just give him the materials. Who uses the state aircraft and when and how is clearly a public record. And I had released that information, not countless, but numerous times in the Cuomo administration, and I was committed to a policy of openness in the Spitzer administration where those public records would be made available.
Q. I am going to show you what has been previously marked as Commission's Exhibit 6. And, this is an e-mail from Glen Miner. Do you know who Glen Miner is?

A. I'm sorry. I was thinking of Glenn Valle. Glenn Valle is counsel, and Glen Miner is the PIO.

Q. To Paul Larabee?

A. Right.

Q. Have you seen this e-mail before?

A. I have not, no.

Q. Do you want to take a minute to take a look at it?

A. Sure. It's consistent with what I have been describing. We came in -- and, again, I'm not sure if you can appreciate it. We never trashed our predecessor, but in this venue -- I hope you'll allow me to provide a little background and not think I'm doing what I promised not to do.

They had a very adversarial, contentious relationship with reporters. And Mr. Spitzer and I were committed not to have that same relationship. On matters that were clearly public documents we sort of made a commitment to them that we wouldn't jerk them around and make them go
through a FOIL process. And this was one such thing. Flight manifests had been released since time immemorial. I felt -- and I wouldn't want to ram this down anybody's throat. I would have just said: Look. Flight manifest we be have been releasing sine time immemorial. Unless they have a big problem with, it just obtain it and give it to them. That's the guidance I would have been giving to Paul.

Q. So, the e-mail here from Mr. Miner was to Mr. Larabee indicating that the State Police process for a FOIL was to get a written request?

A. Right.

Q. And you were aware of this discussion between Mr. Miner and Mr. Larabee?

A. Yes. Paul apprised me of it and so did Dicker.

Q. And, your direction to Mr. Larabee was to get the documents from the State Police and provide them directly to Mr. Dicker?

A. What I think I said is, "Look. Let's not jerk him around. Unless the State Police really object for some specific reason, let's just give it to him because they are clearly public records
we have already provided in the past."
Q. But the State Police here is relying on a FOIL process?
A. Right.
Q. Did the executive chamber at this point have a FOIL process in place?
A. No, nothing in writing. It was rather ad hoc and informal. Elements of it included -- you get deluged with FOIL requests frequently, you know. For instance, Mr. Nocente with Ms. Treisman who would be the official FOIL officer would come to me saying this is an onerous FOIL request. Can you talk to the reporter and see if you can get it scaled back? See if you can find out what they are really looking for. I would to do so endeavoring to them a lot of work, endeavoring to meet the needs of the reporter without creating a lot of work for the administration. That was one aspect of the FOIL -- informal FOIL policy we had. The second aspect of it was if a reporter was asking for something that was, in my judgment, clearly a public record clearly subject that I released numerous times in the past, I wouldn't require them to FOIL it. I would say,
hey, don't worry about it. I will just provide it.

Q. When you say "clearly a public record" how would you make that determination?

A. Policy and practice, you know, in the Governor's office, for Governor Cuomo, for Mr. Spitzer's Attorney General's Office and Mr. Spitzer's gubernatorial administration were: You want to know a salary for a public official? Clearly, a public record. Do you want to know Mr. Spitzer's schedule, that kind of stuff? Where he went, what he did? Clearly, a public record. Do you want to know about our use of taxpayer money? As long as it's easily accessible and not something overly broad, I will get it for you.

Q. You mentioned Governor Spitzer's schedule is a public record. Isn't it true Governor Spitzer has more than one schedule? There's a public schedule and then there's what I will call an in-house schedule?

A. Whenever I asked for scheduling information from Marlene Turner she would provide to me what I believed was the comprehensive schedule. Now, sometimes when she provided it to me she would X
out something and it would correspond to Eliot's
doctor's appointment or Eliot's parents-teacher
conference.

Q. Something in his private life that would not
be made part of his public schedule?
A. Right -- right. As a general rule I was
providing his private schedule as well as.

Q. You would provide information concerning his
private appointments to the press?
A. Yes. Open door in that regard. We didn't
have anything to hide and that was what we wanted
to do.

Q. Then why was Ms. Turner crossing these items
out?
A. Every once in awhile there was something
there that she would say something to me about:
Look. This is Eliot's doctor's meeting. It's
like he has a cosmetology appointment because he
has a mole that he has to get rid of. That was
it. And, you know what? The reporter would say,
"What was here?" And I would say, "Look, a
private doctor's appointment" and they would be
fine with it. So, it wasn't so rigid. We tried
to be as open as possible. That's the way the
Governor and Attorney General had always been.

Keep in mind as well that on Friday of every week I was in the practice of advising for the next week everything that the Governor was doing, every public event the Governor was holding. And when there was a scheduling request I always honored it. Really, the only time I would require a FOIL or suggest a FOIL was if they said: Tell me everything that he's done for the last nine months. Well, that was ridiculous. Most of the time scheduling information was like, okay, he went to California that day. Can you give me the schedule? Sure, I will go get it for you. It's one page, two pages, something like that. And I would provide it.

Q. When you were providing these documents did you consider this responding to a FOIL request?

A. No, not necessarily. Just that, you know, my business is to provide public information. I am a public information officer; I believe in that.

MR. KINDLON: Can I just say something?

Your explanation only dealt with, clearly, public information. We are dealing with documents less
INTERVIEWEE: Yes. Having worked in a law enforcement office for eight years I knew basically, you know, the areas that I needed to avoid: Work product, case or confidential information. To me, that was crystal clear. But I offer this to you as well. I never would have made these decisions unilaterally. I would double-check. I would have said, you know: A guy wants this. Do you have a problem with it; I have done it before. Is this okay?

Q. When you say you would have checked. Who would you have checked with?

A. Marlene and Rich, generally. Sometimes Nocente.

Q. And, how would you make the determination as to who to check with?

A. We have morning staff meetings where I would usually would have raised it. And they would have been seated around the table. Again, I would just routinely know who to check with after working with these guys for a decade. Sometimes even Eliot, you know. Basically, Most of the time it was Eliot as well. If someone was asking for
flight information about Silda, you know, assuming
she might be misusing the state aircraft, I most
assuredly would tell him.

Q. And, you indicated that you went to Bill
Howard for information on the plane. What is the
earliest you recall doing that?
A. When we took over -- before we took over in
December. Mr. Dicker -- this is part of the
e-mail -- the article package that I will provide.
Fred had a real problem with the Governor's use of
the aircraft, Governor Pataki's use of the
aircraft. And, right when we walked in the door
there was this issue. And I think you see it in
e-mail correspondence, the previous governor's use
of charters. And that would have been something
-- that would have been my first contact with
Bill. And I would have gone to him to said,
"What's the deal on this? What should we be
saying? Fred's asking" -- blank.

Q. Why would you go to Bill Howard?
A. Remember who he was, was Acting Director of
Administration for the previous administration.
And we had retained him as an expert in security,
public safety. And he was the main guy for
interacting with the state police. He and the
rest of the state police worked hand in hand for
twelve years. He is pretty much the lone person
we retained, and we retained him for his
institutional knowledge, an honest, forthright guy
who had knowledge and a wide range of information
an a whole range of topics.

Q. Were you aware of his familiarity with the
topic of the aircraft and use of them?
A. That's why I went to him.

Q. How did you know that?
A. I knew it because when I first turned to him
to say, "Billy, what's the deal on this? I have
got this inquiry." I would have shown him
Dicker's inquiry. "How do we respond to this?"
And, he would have explained the issue. He would
have explained what was happening as a result.

Q. He would have explained or did explain?
A. On any matter that concerned aircraft and
State Police Bill was my source of information.

And he would and did explain.

Q. Did you go to him with Dicker's request?
A. Yes.

Q. And did he provide you information in
response to that?
A. Yes.

Q. What did he say to you?
A. Forgive me for being difficult, but you have to be specific. Is it is about charters?

Q. In this instance the charters, yes.
A. We had a big problem over this, you know. I am arguing with him as we speak. The Comptroller, I believe, has rejected it and we think it should be reimbursed. But Bill was at the time talking to Governor Pataki's representatives in a little bit of a dispute over whether it was an official trip or not and whether it should be reimbursed or not.

Q. Had you discussed the use of the aircraft with Bill Howard prior to the Dicker incident?
A. Not in any over action way. It would have only been when I had had a media request and I could think more about it and figure out whether anything came in front of the Pataki charger flight issue. But I don't think so. I think the Pataki use of the aircraft was my first interaction with Bill on aircraft usage. But, again, remember, we have a media interest in use
of aircraft. And in my statement I said like on
at least four other occasions -- one was the
Pataki charger. Number two was Spitzer
fundraising trips. Three, Silda's use of the
aircraft. And, four was some blog items about
Eliot was possible using the aircraft. So, those
four episodes in the first four months of the
administration were all things that I would go to
Bill and say: What do we do? What do we say?
And, then, I would take the information from Bill,
go back to Rich, David, and Eliot and say: Here's
the situation. Here's what Bill recommends. What
do you want to do?

Q. Did Bill share with you his feelings on the
use of the aircraft?

A. Yes. You know, he would offer -- I would
ask him, "Is this right?" And he would say, "I
don't think so." And I think you see that in some
of the e-mail correspondence. What he was talking
about is something happened at the tail end of the
Pataki administration when -- and there's a
specific e-mail in the pile about this. What you
see from me is a generalist, so I can't explain in
detail his concern about it except that he thought
the administration didn't properly split the bills
as a way of getting under -- the previous
administration -- as a way of getting under a
requirement that they do an RFP for the contract
for the flight. I am like -- I mean that was one
of the things we discussed.

BY MR. TEITELBAUM:

Q. Mr. Dopp, I have a few questions on the
testimony you have given so far this morning. You
seem to be reading from a document. What is that
document?

A. Oh, I'm sorry. I had submitted this to the
Ethics Commission in response to your letter to
me.

Q. May I see it?

A. I'm not sure it's the final copy, but it's a
draft that I worked on. When I received the
letter from Ethics they invited me to submit a
response, a written response. And that is the
response I sort of penned with Terry. I made some
notes. It's the things I wanted to underscore
with you all.

(Commission Exhibit 73 ws marked for
identification.)

INTERVIEWEE: Do you want me to refer to
MR. TEITELBAUM: Absolutely. I have some questions about it.

MS. TOOHER: Do you want me to make a copy?

INTERVIEWEE: Forgive me for being forward, you understand what that was. They asked me for a written response and I submitted a written response to them. But I was never sure. I assumed you received it, but maybe not.

MR. TEITELBAUM: We did. Off the record.

(A discussion was held off the record.)

BY MR. TEITELBAUM:

Q. You had described an early conversation -- when I say early, I mean early in the administration -- with the Governor in which he related his conversation with Senator Bruno concerning the use of state aircraft. And you testified -- and I think I've got it right; tell me if I don't -- that the Governor had indicated that Bruno might be a source of some conflict. That's my word.

A. No. What the Governor had indicated to me
was that it was a source of concern for Mr. Bruno.
Q. I see. What else was said between yourself
and the Governor during that conversation?
A. I don't have a significant recall of it. It
would have been in a session where we were
describing a whole host of issues and, you know,
nothing really beyond that. It was an offhand
comment from Eliot. It just made an impression on
Eliot that it was important to Joe.
Q. You also talk about and identify persons
with whom you would consult regarding the release
of documents to the media and others I suspect.
You didn't mention the FOIL officer. I am
wondering why.
A. The FOIL officer -- like I don't mean to
diminish what she does. She's a junior random
attorney. While she handled a score of FOILS she
would apprise me of, she would sometimes come to
me and say, "Can you get this scaled back?" But
the vast majority of FOILs I look at and say, eh,
and not divert a ton of time to. In this
particular matter it's like it was handled a
little differently than a normal FOIL, but
remember how it came down; reporters coming to me
and I am bringing -- I'm consulting the personnel on the second floor that are relevant. And I get some information and take that information to everybody on the second floor that I think is relevant. When I obtained the materials from Mr. Howard that had to do with airplane use for Mr. Spitzer and for Bruno, what did I then do with it? I am only as good my interaction with the people on staff. I don't make unilateral decisions. I take the information and go to Rifkin, your predecessor, and the Ethics Commission former director, to Pope, former Inspector General, to Nocente, the guy who wrote the statute authorizing this commission, to Spitzer, the nation's foremost reformer and to Baum. I have an interaction with all of them saying: Here's what so-and-so said about it. Here's what I think we might want to do. And that is what we did with this particular process. So, if someone is suggesting, for example, proper FOIL procedures weren't followed in this particular matter that, to me, is incredulous because we discussed this matter more than any FOIL had ever been discussed. I went to every single relevant person and sat down with
them and showed them the document and said, "What do you think we ought to do?" There were divergent opinions that present ethical issues that we needed to confront. I maintain to you that I did the right thing in interacting with all of these people and then we did the right thing in tackling the ethical issues at the time.

Q. I'm sure we are going to get to those conversations with the cast of characters you identified. What I am trying to nail down now is the role of the FOIL officer. Did you ever go to her when a request was made of you?

A. I forwarded lots of FOIL requests to her, yes.

Q. And is what you are saying that for FOIL requests that were of really no significance in your mind you would send them on to her, but if there was a FOIL request that had some significance she would not be consulted? Or is there another protocol that you were following?

A. I wish I could describe to you like a hard and fast rule in that regard. There were some matters that I recognized as issues that I should tackle and I should tackle consulting with the
senior staff. There were other issues that I recognized and I would look at them and say I don't know anything about that and that's obviously something that the lawyers are going to have to decide, right. I'm not like thinking as clearly as I could to like give you ten examples. But there are matters that involve agencies: Matters of law, matters of policy that are technical in detail that Mariah handled and I would just look at and say -- I wouldn't know what it was. A reporter wants to get, for example, the documents that went into the creation of the Burger Commission Report. Now, I'm not a health policy expert. I'm not, you know, someone who is terribly familiar with that particular dialogue. But, for some reporter that was a big deal. I would give it to Mariah and send her a note and say, "We should probably talk about this when it comes down the road," because I am dealing with a lot of Burger Commission pushback. That was one where if I wasn't versed in the topic I let her handle it exclusively asking her to come back to me because of media interest. But a matter like this with aircraft which was so common over my
years, I was like -- I apprised Mr. Nocente, her boss, of the matter. And I assumed he was consulting with her on it. It might have been a bad assumption on my part. But on something like this which since the start of the administration had been so routine -- four months, four separate inquiries -- I tried to present to you the topic of our interview, the degree to which we were concerned about Air Cuomo, Air Pataki, we didn't want Air Spitzer. But maybe you will identify this as a weakness. I think in retrospect we could have had a firmer FOIL policy. But I don't think it affects the outcome at all because whether it went from Mariah to me or went from me directly -- this is what we are tackling. I brought it to the group as opposed to Mariah bringing it to the group.

Q. Putting aside for a moment the matter about which we are having this session, when you would go to the senior staff, as you described it, on an issue of whether we are going to release one document or another that you would think merits their consideration, would that happen once a week, once a month over the course of the
administration? How frequently was this happening?

A. Not terribly frequently, but with some regularity; a couple of times a month, perhaps.

Just to provide perfect clarity, again, Walter doesn't say anything to the media on any matter before the commission without talking to you and Meave.

Q. Walter Ayers?

A. Right. I'm kind of the same way. I'm not going to be a lone ranger. That's absurd. I mean I didn't survive in a law enforcement agency for eight years talking about legal cases. And I don't talk about policy decisions for the administration or matters confronting the administration without engaging them. And, truthfully, if you sat around the table we would vet the words that I would use because it makes all the difference, you know. You're playing high stakes. It's a ton of attention and you have got to be right about what it is that you are doing.

Q. When you approached one or more of the senior staff during those occasions when you thought it was appropriate to get their input on
whether to release documents, did you show them
the documents that you were contemplating
releasing?

A. I showed it to them or described them. We
would have a fair amount of discussion, sure. You
wouldn't blind side anybody. It was my obligation
to ensure that they were operating from full
knowledge. And it was difficult at times because
we had a ton going on. And this particular matter
-- this was like I know the perception on the
outside is that this is what we were engaged in.
But we were trying to get our legislative agenda
passed.

Q. When you would come to a member or members
of the senior staff with documents that you had
questions about releasing, did it ever occur that
the documents were redacted by the senior staff
people?

A. Yes, sometimes. Sometimes, you know, when
there was an issue of redaction that was usually
the result of, you know, Mariah and the lawyers
examining it and concluding that this was
problematic or that was problematic, but we can
still release it minus these things. But that
usually was the case when you were talking about
some legal issue or some other issue with
overriding confidentiality concerns.

Q. So that the record is clear on this, is this the way it would happen? You would present
documents to a senior staff person that you had questions about concerning releasing and, on occasion, those documents would be reviewed by counsel, including Mariah, and then they would come back to you either without redactions or without redactions?

A. It happened in that way almost exclusively in the prior administration when we were with the Attorney General's Office because we were dealing with legal matters. On this front, when you're talking about the areas that I identified: Salaries of public officials, duties of public officials -- I mean administration members, you know, minority members -- that I've got to know how many minority members, I go in and get the breakdown, there would be no need for addressing issues of redaction in that regard because it's all clearly public information. But if there is a problematic inquiry, an inquiry that involves
something that would need to be redacted, then
most assuredly that would be the route things
would take. But, again, it may seem like an
arbitrary distinction to you all, but these
matters, or this particular matter, redaction
issues are not particularly relevant because use
of the aircraft is -- you are an open book on use
of the aircraft. You're an open book on salaries
and appointments and that kind of stuff in the
administration.

Q. Could you give us the kinds of items that
were redacted over the course of time that you
were serving in the administration as the
communications person?

A. I can be responsive if I had some time to
contemplate it and recall previous FOIL issues.
Off the rip, I have a little difficulty doing it.
Forgive me for not having my total recall.

Q. Give me some examples.

A. Remember, we are just four months into the
administration at this point, so there weren't a
ton of FOILs. But here's an issue that I presume
we will get to at some point soon. Mr. Odato very
much wanted a list of member items proposed by the
lawmakers. This list was submitted to the executive for its contemplation. This list is relevant later on when I say: I'm going to ask Jim a favor. The favor was for him to stand down on that particular request. But on this particular matter I go to Mr. Mr. Nocente. And the letter should come to Treisman directly and they had come to me saying: Can you get him to stand down because that is terribly problematic for us if we do release it without be redacted. And I'm like, okay. Why would that be the case since we're talking about expenditure of taxpayer resources on capital projects. Well, it's a work product at this time and we have to redact who sponsored it and how much it costs. I gave a little bit of pushback because I was getting pushback from the reporter. Why wouldn't that be public information, taxpayers money? But that was a classic example of a FOIL that came to me and came to Mariah and something that they felt they wanted to hold in confidence and that if you did advance would have to be redacted. I can't explain the rationale for that because, frankly, I pushed back a little bit internally about that. I
want to be open. I mean, "How in the world can you not release such information?" is what I said to David and Mariah.

Q. I am inferring from your testimony that when the issue of redaction would arise you would be participating in whether to redact or not; /STHRA is that fair?

A. Not really.

Q. It would just come back to you from the attorneys as a fait accompli?

A. Pretty much. I would ask about it, what was there and why. Why would I do that? Because a reporter most assuredly would ask me that. Sometimes they told me; sometimes they didn't.

Q. But you didn't question the bona fides of the redaction?

A. Mr. Mr. Nocente is my brother. There is not a more honorable guy in public service, no individual's judgment I trust more.

Q. Was Nocente involved in each instance in which there was a redaction in the matters that you were going to the senior group?

A. Right.

Q. So, when you went to the senior group are
you saying that in every instance Nocente was involved?

A. I believe so, yeah.

MR. TEITELBAUM: Give me one minute.

INTERVIEWEE: Sure. Is it okay if I make a pit stop?

MS. TOOHER: Absolutely.

(Recess taken)

BY MR. TEITELBAUM:

Q. Take a look at Commission's 73, which is a document we have been referring to or reading from your prior testimony. Tell us what this document is.

A. I was invited to submit a letter in response to a letter that I received on August 23rd from the States Ethics Commission. And in this letter I attempt to make a few points that were responsive to Attorney General Cuomo's report.

Q. Tell me if I have got this right. 73 is your response to what is commonly referred to as a 15-day letter?

A. Yes.

Q. Other than the handwriting that is on the letter, is this the letter that you submitted?
A. I will double-check.

Q. And you can consult with Mr. Kindlon.

A. We might have made a tweak or two here.

Q. It's a draft but it's close to the final?

A. Yes, correct.

Q. And the handwriting is yours?

A. It is mine.

Q. I see on page two you have in the margin a line on the top of that paragraph beginning, "In retrospect." And, then, you have something handwritten on the bottom. Would you read that for us?

A. "I was asked to say this. And it's disingenuous. We, meaning the administration, controls the aircraft. We are responsible for its proper use, not the state police. It would be weird to have the state police announce what we decided."

Q. Actually, it doesn't say "state police"; it says S.P. but that is what it refers to?

A. Right.

Q. Tell us what you mean when you are saying, "I was asked to say this and it is disingenuous."

A. Throughout the whole process I believe I
have been like completely candid on the whole thing. When -- and Terry will help me with this -- it's like when I was asked not to go -- I wanted to talk to Andrew Cuomo, a personal friend of long acquaintance. I was convinced there wasn't a single e-mail or single action that I ever took that I couldn't provide a compelling rationale that was both legal and ethical. I was convinced of it and I was convinced that he, as my friend, would listen to me. They didn't want me to talk to Andrew Cuomo.

Q. Who said that you couldn't talk to him?

A. The administration, Peter Pope and Sean Maloney. There was a critical moment where it was conveyed to me that: You can't do it. He is not going to listen. And I objected. And I want to turn to Terry. I didn't have counsel when those discussions were underway. When I finally obtained counsel we just didn't have the time to sort of interact with Andrew. So, the best course was I reluctantly agreed to it; that the best course was to submit a statement in which I said this. And I said it at the time, but it bugged me
at the time. And the more and more I thought about it, this was the administration's belief that: You should have let the state police handle this. But the people urging me to say this -- I go back twenty years. I served in the previous administration. They didn't understand; it's my humble belief. My own people didn't understand the degree to which we control the aircraft, not the State Police. We sign off on its use. We're responsible for its use not only for Mr. Spitzer for everybody else. And to sort of pretend, oh, Darren -- this is what they tell me. There's an appearance problem. You didn't do anything wrong, Darren but there's an appearance problem here. You should have let the State Police handle it. I thought then, as now, it's disingenuous to pretend the administration was not controlling the aircraft and making the decisions as to who would use it, but to instead let the State Police announce our decisions on use of aircraft. Why would the State Police in my mind be the source of information on this matter when we controlled it? That's what I wanted to convey to him. And I think my people, if I ever had to do it again, I
would talk to him. I have talked to nobody since this happened, and I was always frustrated why. What the heck happened? We didn't do anything wrong. Everything was ethical; everything was legal. Everything occurred in a way we always handled it; we, being the previous administration. And this was the stumbling point with my friends, my dear friends and colleagues in the administration. Can kept telling me: You should have let the State Police handle it. And I kept saying back, "But we controlled it." That's what I want to like -- if it came up. I didn't mean for this to be an issue in this moment in our exchange. But, since you looked at it, it was something that I wanted to raise at the end of it. Q. I believe it's obviously important to you to get it out on the table.

A. I don't want to say that -- I don't want to be like in some way passing the buck or saying anything that is untoward toward the administration. I think we did the right thing. It's just that at strategic moments there were some mistakes. Not unethical or illegal mistakes, but errors of judgments. And this is one; right?
To suggest that this all could have been handled differently and the State Police would have handled it -- if the State Police handled it, to me doesn't make sense. I'll give you one aside. I am drifting a little bit and I apologize for doing so. If it was as it was in the old days, that the Department Environmental Conservation controlled the State Aviation Unit or housed the State Aviation Unit there wouldn't have been a controversy because no one would have said, "You sicced EnCon on Joe Bruno. You had EnCon spy on Joe Bruno. It just doesn't have the same feel. State Police, at some point in the Pataki administration they switched the Aviation Unit from EnCon to the State Police. And this is well: Why did you talk to the State Police? Because the State Police are the only repository for information as a result of that switch. You could turn, I could turn to nobody else but the State Police for information on use of the aircraft. Q. Just so the record is clear, you had said -- you made reference to the prior administration. That wasn't the Pataki administration; that was -- A. No. Pataki shifted it from Environmental
Conservation to State Police.

Q. I didn't want to interrupt you, but I think that you were referring to Attorney General Spitzer's administration but the records will --

A. Remember, I served six years as a press officer and senior official in the Cuomo administration.

Q. I understand. When we talk about the prior administrations it would be helpful that you identify the specific administration.

A. Sorry.

Q. You are saying that -- When did you begin engaging the services of your present counsel?

A. Terry?

Q. Yes.

A. It was awkward. He was the first person I could get a hold of when they advised me that their interests and mine might diverge. I had him for only a short amount of time, twenty-four hours when we were forced to make this call about engaging Andrew Cuomo. That was the frustrating thing because even Terry said, "Why the rush?"

Q. So, you engaged Terry on -- was it July 28?

MR. KINDLON: I can clarify. As I said
to you before we went on the record, my wife and I had gone London. And she went on to Israel and I came back to Albany. I was walking through Albany Airport having just flown in, and I just turned my cell phone on. And it was about 6:30 at night and I received a telephone call from Judith Enck (phonetic) who works in the executive chamber. And I have known Judith -- I did a same sex marriage case and an appeal in that case. She said to me that one of her colleagues need help, could I help. I said, "Sure. I'm just a little jet lagged right now, but have the person call me." And, quite frankly, I thought it was somebody who had done something inappropriate with an underage girl. I had no more information than one of our colleagues needs counsel.

I was in my car driving away from the airport and Darren called. And I said to Darren -- and we didn't discuss the facts at all, just, name, rank, serial number. I said, "Where are you?" And he said, "I'm at the Capitol." I said, "I will just drive downtown and I will meet you," because my family was away. So, we met like in a spy movie on a park bench across from Sheridan on
his horse. And we had a very brief conversation and agreed to get together the following day. So, the following day was Saturday and we spent some time on Saturday. And I asked Darren to get me some records.

MS. TOOHER: The date on this, Terry, Saturday --

MR. KINDLON: Saturday was the 21st. Sunday was the 22nd. On the morning of the 22nd, Sunday, Darren came down from Saratoga County and I drove out to Wolf Road and we met, not exactly in the middle but sort of in the middle, and Darren gave me some records which I then took home and read. It was that afternoon, Sunday afternoon that we found out that the Cuomo report was in the can. It was done. And it was just after he had -- just as he was coming to have counsel. I didn't really understand all of the facts yet. I had no prior knowledge of this, so I had to start from scratch. By the time I was just beginning to understand it, it was too late for us to speak to Cuomo or anyone else. It was a done deal.

INTERVIEWEE: They had given me a list of attorneys and I called the three names on the
list and Terry was the first one.

MS. SULLIVAN:

Q. "They"?

A. Yeah, Mr. Pope and Mr. Maloney, the Governor's Counsel, Special Counsel designated to review the matter. And I called all three names on the list and, thankfully, Terry got back to me.

BY MR. TEITELBAUM:

Q. Let me take you through the document that you submitted to the Attorney General.

A. Okay.

Q. Commission Exhibit was marked for identification.)

A. This is a statement that I was asked to submit to conclude the Attorney General's inquiry.

Q. And, it has the name Darren Dopp and a signature. Is that your signature --

A. Yes.

Q. -- or a copy of it. And, on the bottom, "sworn to before me this 22nd day of July 2007."

Do you recognize the signature of the notary?
A. Yes.

Q. Whose signature is that?
A. Counsel to of the Governor, Mr. Nocente.

Q. You swore to the truth of the document to Mr. Nocente?
A. And others who were present at the time.

Q. Who was present when this document was signed?
A. Mr. Maloney, Mr. Pope, Mr. Nocente, and Mr. Kindlon.

Q. And can you tell us how this document came to be?
A. It was drafted for me and I signed it because I was urged to do so and believed at the time that it would be in the interest of the administration and myself.

Q. Did this document go through a prior draft? Is this a one-shot deal, as it were?
A. They put it in front of me I read it and signed it.

Q. Who was the person who put it in front of you?
A. Mr. Pope and Mr. Maloney. I think Mr. Maloney actually handed it to me.
Q. You had an opportunity to discuss with Terry whether you should sign it before you signed it?
A. A brief opportunity, yes.
Q. And, what was said to you by persons whom you described who were present other than Mr. Kindlon concerning this document?
A. If I did so, the matter would be concluded.
Q. Who said that?
A. Mr. Maloney and Mr. Pope.
Q. Did Mr. Nocente say that?
A. No.
Q. Did Mr. Nocente say anything?
A. When I protested -- I'm sorry. When I protested at this session and expressed the belief that I had nothing for which I should be ashamed and I was convinced I could speak in a way that would be compelling to Mr. Cuomo -- I said I can talk to him. I can convince him that nothing inappropriate happened. He interjected that they were -- they didn't believe us and they were intent on, you know, prosecuting us; that the Attorney General's office wanted to prosecute me for a chime, and that this was best for all concerned that I did sign it.
Q. There was Mr. Nocente?
A. This was Mr. Nocentie. He said, "Andrew is a moderating influence and this is best, Darren."
Q. What did you understand Mr. Nocente to mean by Attorney General Cuomo being a moderating force?
A. I kept saying to him that I don't believe that that is what the situation is. I believe in my heart that if I talk to Andrew and explain what happened and why, that they're not going to do this. And they said it won't do any good.
Q. The term "moderating influence," I am having difficulty understanding. What was your understanding of what was meant?
A. I looked at them and said, "Andrew wants to prosecute me for this?" And they said, "His people do." And I said, "And, he's behind that?" "Well, he's trying to moderate them," is what he said to me.
Q. What else did Mr. Nocente say?
A. That was the extent of that session. They expressed, you know, concern about what a difficult decision it was for me. It was written on their faces. But, again, I think our
recollections are the same on this. It was sort of: Do this. Terry's comment was, "It's like a non-apology apology. It doesn't box us in in any way down the road. But if, indeed, this wraps up the case and this wraps up the inquiry, it's up to you." And I said to him I just -- every time in my life that I haven't gone to the people involved and laid it all out and told the truth but instead stood down because it might be an awkward discussion or anxiety ridden discussion, I have gotten into trouble. And, man, was that ever true.

Q. When you say you said to "him" you mean Mr. Kindlon?

A. Yes. All of them were there at that time.

Q. What did Mr. Pope say?

A. I don't recall him saying anything. He just had that look on his face.

Q. What did you interpret the "look" to convey to you?

A. Kind of pity and sympathy that I reacted so negatively. And it's like he's my friend and good friend over the last decade. And I just kept saying to them it's like these are lawyers.
Forgive me for insulting each one of you, but lawyers don't understand communication issues sometimes. And I said this isn't going to make this issue go away and you are dreaming if you think so.

Q. Did Mr. Pope tell you this issue would go away if you signed 74?
A. He had they were animals and we couldn't reason with them.

Q. Mr. Maloney was present, too?
A. Mr. Maloney was in and out dealing with telephone calls, but he agreed.

Q. He said the same thing, in substance, that Mr. Pope was saying?
A. Yes; that they wouldn't be reasoned with, that they weren't listening to us.

Q. And if you signed 74 the matter would go away?
A. Right.

Q. And did Mr. Kindlon speak at that meeting with the other lawyers present?
A. He had a couple of questions, as I recall, about the substance of it. I don't recall the exact details. He was being supportive of me.
And, you know, his counsel at the moment was "It's a non-apology apology. It doesn't box you in moving forward."

Q. Did anybody make reference to the Governor at this meeting?

MR. KINDLON: I don't think so.

A. I don't recall it. I take it back. I said, "Is this good for the Governor?" And the answer was, "If we wrap up the investigation you are going to take a professional hit, but we'll all live to fight again." And this is what I was doing, you know. (Indicating)

Q. You said you were saluting?

A. I just believed it was the right thing to do for the administration.

Q. Metaphorically, you were saluting? You were being a good soldier; is that fair to say?

A. I am not at this moment going to be anything other than that. This is a heavy-duty game. There is a tremendous political battle underway. I was always prepared. You know, you live in this business knowing that at some point it can come back to bite you. But it's just in this matter I don't believe I did anything wrong. And I didn't
have the opportunity to explain that. And I had to shut up pretty much for two months when I got kicked around in the media. I was a plotter, a leaker, a liar, misuser of the State Police, and all of these things. And at this moment I am thinking, okay, I guess this concludes the matter. But I had a gut feeling that it wouldn't and bad things would happen and they most assuredly did.

Q. I am going to ask you some questions about if the last sentence in this Exhibit 74. You say, "I now recognize that any requests for State Police records relating to those travels should have been handled through other channels." Listen to my question, if you would. Did you in fact genuinely recognize that any requests for State Police records relating to those travels should have been handled through other channels when you signed 74 and had it notarized on July 22nd?

A. Can I consult with Terry on the matter?

Q. Unless there is privilege I would like to have your answer.

A. I knew what I was signing, but did I wholeheartedly believe that particular statement, no.
Q. When you say "wholeheartedly" I want the record to be clear for all of our benefits here because, really, what I am asking you -- and it boils down whether that part of the sentence was truthful. Do you, in fact, recognize that any requests for State Police records relating to those travels should have been handled through other channels? Was it, in fact, truthful that you recognized it or were you being pressured?

A. I apologize if that's the way I come off, but I certainly recognized that as an option. It was an option to use other channels. I did not use other channels, but it certainly most assuredly was an option for us to let the State Police handle any inquiry regarding Senator Bruno.

Q. I don't think this is a quibble, so I think we need to get this very clear. There is a difference between using other channels as an option and the words "should have been handled." You are saying here that you should have done this? Now, I want to know whether on July 22, 2007 when you signed this; that that was your genuine view that this was something you should have done and you didn't do it. And I think you
can say yes or no to that, if you can.

A. Not then and not now.

Q. And the second part says, "and I regret any appearance of impropriety that was created by the manner in which this information was sought and obtained." And I ask you the same question. On July 22, 2007 when you signed 74 did you in fact regret any appearance of impropriety or -- let me withdraw that. On July 22, 2007 did you think that there was an appearance of impropriety in what you did?

A. I didn't think when properly explained there would be any appearance of impropriety. But remember what transpired in the days leading up to this. A furor, a "scandal" that brought state government to a halt. That's a sincere statement. I have been maligned, vilified. My family suffered. That's one thing. The other thing is the fact that I'm involved with something that ruined state government, set aside every meaningful progress. So, that's a sincere statement that I regret everything that has happened. But the statement that comes before, I still -- I mean I did it. I signed it. I am not
apologizing. I can't hold back from it because I did it. But I didn't sincerely believe it at that moment or now.

With regard to the second part, do I regret what has transpired, the appearance of a scandal and all the things that have come about? It has ruined my career in public service, nothing I value more than that, and brought state government to a halt.

Q. In '74 when you referenced "appearance of impropriety," did you believe when you signed this that there was an appearance impropriety that had been committed by you?

A. No, I don't believe I did anything improper. But it was clear to me from reading the newspapers that it had been established as egregious misconduct. I misused the States Police. We spied. We did all of these things. It's like wait a minute. No, we didn't. But it was, you know, it was out there.

Q. Did you say to Mr. Nocente or Mr. Pope or Sean Maloney that, in fact, that, in fact, it was appropriate to make the request to the State Police?
A. Repeatedly.

Q. And you indicate to them that it was your view that that was the proper channel?

A. Yes.

Q. And you said that to them on or before July 22nd?

A. Yes, when they were conducting their internal review. And at any tried to support that by giving them the history of how this matter had been handled previously and that there was no alternative but consulting the State Police.

Q. Did you indicate -- did you indicates to any of those three people that I just named at or before the time that you signed this -- forgive my loose language -- that it was your view you were taking a hit by signing this document?

A. I didn't say that.

Q. In words or substance; those are my words. Do you understand what I mean when I say "taking a hit"?

A. They said that I would have to do that and I was prepared to do that.

Q. They said you would have to take the hit?

A. Right. It was couched as: You are going to
take a professional hit here, but this is the path to closure.

Q. Did you tell them you didn't want to do that; it was your preference not to do it?
A. Saying it in that manner I believe would have been disloyal. Instead, I said: If we explain this no one will have to take a hit.

Q. Who typed Exhibit 74?
A. I can't -- I don't know the answer to the question.

Q. Do you remember the person who had it in his hand that gave it to you?
A. I think it was Mr. Pope.

Q. I was curious about this and I would like to you to explain this to me. Is that weeks after you swear to what is contained in 74 you submit a statement to the Ethics Commission, referring now to 73, which is pretty close to the final -- do we have the final? Let's mark the final.

(Question continued: Commission Exhibit 75 was marked for identification.)

Q. 75 is the final version of the statement that you submitted to the Ethics Commission, if we can represent that to you. But take your time and
read it to double-check us if you like?

A. Yes.

Q. You say in the last paragraph on page two of 75 -- that is a copy of your signature; right?

A. That's correct.

Q. This was reviewed with your counsel before you submitted it?

A. Yes.

Q. Did he edit it at all?

A. He made a few suggestions, yes.

Q. You say, "In retrospect, however, it is clear that given Albany's poisoned political atmosphere, I should have referred reporters to the State police for any and all information on Senator Bruno." Now, in your mind tell me the difference between that statement and the last sentence in Exhibit 74.

A. There is not a dramatic difference. It would have provided a little more "cover" in the parlance if it was the State Police answering the question. But the reality, again -- and the reality is that it might or might not have had an impact. Maybe having the State police being the source of information on Bruno -- if you take a
look at the documents it's flight manifests and
it's the travel itineraries. To me, when I looked
at them, three or four sentence -- no big deal.
Flight manifests since time immemorial have been
released. The itineraries were new. But maybe
having the State Police be the source of
information would have somehow mitigated Bruno and
Spitzer's opposition to sort of say it was a kind
of, you know, orchestrated effort to smear him.
Maybe, maybe not.

Q. When you say in 74, "I now recognize that
requests for State Police records relating to
those travels should have been handled through
other channels," was that in your mind
substantively the same as "I should have referred
reporters to the State police for any and all
information on Senator Bruno?"
A. Yes.

Q. Do you genuinely believe that?
A. Again, maybe it would have made a
difference. Maybe not. I don't think so, though.
I don't think so. I don't think it would have
made one whit of difference.

Q. I want to be frank with you. My concern on
1 74 is that you were pressured into signing it,
2 and I want you to tell us whether, in fact, from
3 your perspective you were. And I want you to be
4 frank with me.
5     A. I served the man for a long time. And they
6 were my friends and colleagues. And I don't want
7 to be placed in a situation where I am perceived
8 as disloyal because after getting hammered the way
9 I have, there is one thing that I have left. And
10 that's like the sense that I wasn't disloyal. And
11 you are coming close to like stripping that from
12 me, and I don't know how to respond to it.
13     Q. Our discussion here, Mr. Dopp, is really not
14 about loyalty or disloyalty. And, I am not trying
15 to -- believe me, we are not trying to establish
16 that you were disloyal in any way, because this is
17 a sworn-to document. And I think for everyone's
18 benefit I want to make sure that you have the
19 opportunity to provide the full context of how
20 this thing happened. And when I say "this thing"
21 I mean 74. So, if in your view you were pressured
22 to do it, or somebody said, for example: Listen.
23 You can sign it, not sign it, that would be okay.
24 But your testimony up until now --
A. I apologize, yes.

Q. No, no. You don't need to apologize. You don't need to apologize. I understand there is a reluctance because of the issue of loyalty. But I think it's important, I think, for everybody the clarity of this. And it's really not disloyalty. It's what the truth is. And I want to know the truth on this. Did you feel pressured?

A. I wanted to testify before the Attorney General. I was encouraged not to. I was told that if I said certain things the matter would go away and that it was best for all concerned.

Q. And, the "certain things" is the last sentence in 74?

A. Exactly.

Q. Had you testified before the Attorney General would you have said what is in the last sentence of 74?

A. I would have engaged him about that topic. I would have said: The State Police are the only people, the only entity you can turn to for this information. Say act of inquiring about airplane use from them is accurate, ethical, appropriate. And, then, secondarily when it comes to having the
State Police answer to a decision made by the executive, it wasn't the State Police's role to do so. I mean it's like the point that I was unable to impress upon anyone in the administration was that we control the aircraft. We should answer for its use, not the State Police, because they take their direction from us. The Secretary to the Governor, Mr. Baum and Marlene Turner sign off and they can refuse. In previous administrations, the Cuomo administration we routinely said no to the Majority Leader at the time. No, you can't use the aircraft because we don't think it's an appropriate use. So, this is the position of the administration that I should have used the State police to address these kinds of questions. Internally, I said that doesn't make any sense, but I am a press officer. I don't call the shots. I have the ability to respectfully register concerns and bring things to their attention, but I don't call the shots.

Q. That was the perspective of the administration, I take it, and the position of the administration is articulated by the three persons, David Nocente, Mr. Pope and Mr. Malone.
A. Yes.

Q. But that was not your perspective; correct?
A. As we delve further into it you will see me explaining that I really think we ought to do an internal review. I agreed, at least at this moment, with Peter Pope who said we ought to refer it to the Inspector General. But, again, they give me the ability and they listened carefully to me, but decided otherwise.

Q. I want to get an answer to my question. My question is: You said from the perspective of the administration is that it should have been referred to the State Police --
A. Yes.

Q. That was not your perspective?
A. Yes. I had a different review.

Q. And you articulated a different view at or before the time you signed 74?
A. Yes.

Q. And let me tell you the difference that I see between the first sentence of the last paragraph of 75 and the last sentence on 74, and you tell me if I have got this right. The last sentence on 74 you seem to be saying that you
should have referred the reporters to the State Police because that would have been more -- more responsive to the "poisoned political atmosphere in Albany"?

A. Well, from a communications standpoint it might have had an advantage in providing a little bit of insulation against those accusations.

Q. But in '74, that's not what you're saying.

In '74 you are saying that you, in fact, recognize that this should have been handled through other channels. And what you are saying to us -- and I want to get it straight -- is that that wasn't your belief.

A. I kicked it around a lot. I couldn't imagine another channel that was appropriate, if not the State Police. I said could we maybe have somebody else do it, and the answer was no. That's why in the process I was among those advocating for referral to an outside agency.

BY MS. SULLIVAN:

Q. On 75, the last paragraph you, "I should have referred reporters to the State Police for any and all information on Senator Bruno." Had a reporter gone directly to State Police would they
have received the information in response?

A. That's the kicker. The State Police would have come back to us.

Q. How so?

A. We were the ones to sign off. They would have checked with us. And we would -- remember, we were the ones that approved it; right? And they would have had to turn back to us and say: Do you want us to release this information? And we are announcing your decision to sanction.

Q. The reporter was asking for ground itineraries of Joseph Bruno, not just --

A. And manifests and the flight approvals.

Q. But the itineraries, they were asking for itineraries from the State Police?

A. That part of the package would have come directly from the State Police.

Q. But the itineraries that were turned over didn't exist at the time.

A. Is this the moment that I sort of broach that issue? I don't know that to be a fact. To the contrary, I was told records exist going way back. And I think you saw the Times Union this weekend sort of corroborating that they did exist
going way back. So I was under the impression
after being informed on this specific point from
Bill that those very records did exist. So, I
mean -- you are absolutely correct in saying the
State Police could have and perhaps should have
been the source of that particular information.
But everything else, you know, again, would have
come through us. So you have to understand the
degree to which the State Police and us work
together.

MS. SULLIVAN: We will come back to this

later.

BY MS. TOOHER:

Q. We're a little out of sequence. I am going
to ask you to go back -- I think it's important
especially in light of our discussion -- that we
look at the facts and circumstances leading up to
what is now Commission 74. When we started off or
left off we took up the issue that we have with
Commission 74. We were talking about your
practices in the chamber in responding to requests
for information concerning the airplane. And the
last we spoke you had indicated when we were
speaking about that you were in contact with Bill
1 Howard about a request from Fred Dicker concerning
2 the flight manifests --
3     A. Right.
4     Q. -- just taking you back a little bit. And,
5 in response to that request I believe you
6 testified earlier that you reached out to Mr.
7 Howard concerning information; am I correct?
8     A. Correct.
9     Q. And, that was concerning the Pataki
10 administration?
11     A. That's right.
12     Q. Was there a point in your discussions on the
13 Pataki charter that you turned your focus to
14 Senator Bruno?
15     A. Not at all. It never came up.
16     Q. I am going to show you what has previously
17 been marked as Commission's 58 and ask you if you
18 recall seeing this document before.
19     A. I do.
20     Q. Can you identify this document?
21     A. Mr. Howard is writing to me explaining the
22 past use of the aircraft according to the Pataki
23 policy.
24     Q. I am going to direct your attention to the
last line of this e-mail. It says, "I'm getting more information on the specifics of today with the passengers, et cetera." And the date the May 17, 2007. Do you know what he is referring to there?

A. I think there was another trip by Senator Bruno on that day, another aircraft trip.

Q. Why is Mr. Howard making that reference in an e-mail that is otherwise pertaining to the Governor's trips?

A. I think simply because we commenced the process of reviewing both the Governor's use of the aircraft and Senator Bruno's use of the aircraft. And we did that earlier in the month and this is May 17th, the middle of the month.

Q. When you say you had commenced the process of reviewing both the Governor's and senator's use, can you explain?

A. The end of April, beginning of May, there were reporters' questions about both Eliot's use and Joe's use of the aircraft. It was at that point that I turned to Mr. Howard and informed him of those inquiries. I also told Eliot, told Rich, and told others on the second floor that there
were requests for information about the use of the aircraft. This presented a problem for us because, as I described, we control the use of the aircraft and we were responsible for appropriate use by Eliot and everyone else. The review that followed from that was a close examination of Eliot's use of the aircraft and Senator Bruno's use of the aircraft and anybody else who might have used it.

Q. Now, when you had this discussion about reviewing the use of the aircraft who did you have this discussion with?
A. Initially, I informed the Governor's Secretary -- Secretary to the Governor and counsel.

Q. When you say you "informed" them, did you actually discuss it all of you together? Did you send an e-mail?
A. I talked to them verbally. And then later on we had a series of meetings about the topic.

Q. I just want to put this in a time frame. Is this prior to the 17th?
A. One of those meetings would have occurred prior to the 17th and others occurred after.
Q. The meeting prior to the 17th, who was present at that meeting?

A. It would have been at our normal staff meeting. We have an early morning staff meeting, and it would have come up several times in the beginning of May that reporters were interested in use of the aircraft.

Q. And, they were interest in Governor's use of the aircraft?

A. Yes. And, you remember the sort of sequence for the context for it, just a ton of media interest on just the Governor's trips to Florida and California for fundraising purposes. And, you remember -- or maybe you don't remember -- Senator Bruno was criticizing him intensely for leaving the state and leaving the state for raising funds at a time he is advancing campaign finance as a priority.

Q. So, would it be fair to say that the press interest was in the Governor and your interest at his point is in both the Governor and Senator?

A. Early in May the senator's use of the aircraft was also broached by reporters.

Q. Who broached that topic?
A number of them. And I can't explain the exact catalyst for that. There were a couple of web blog items noting he was traveling to New York City for a fundraiser. They actually advertised their big event and it was noted. The question came to me: Was Joe using the state helicopter to go to the event?

Q. How did that question come to you?
A. Verbally by a couple of reporters. And, again, the blogs were the initial catalyst. But you'll see me sometimes, and even in my e-mails, conveying information, hunches, ideas. I think what was going on, I think the Senate Minority was looked in a death match with Joe Bruno. They were telling people: Joe's jetting off. Joe's a hypocrite. At the time he's jetting off he's criticizing Eliot for fundraising and he's fundraising himself. So, someone on the other side was working it and trying to get reporters interested in it because on a given day I had maybe three or four inquiries from reporters all saying the same thing.

Q. Were you in communication with the Senate Minority at that time on this issue?
A. No, never.

Q. Have you ever been in communication with the Senate Minority on this issue?

A. No. I don't recall.

Q. You don't recall discussions with Senate Minority staff concerning Senator Bruno's use of the aircraft?

A. Never.

Q. And, after you have these meetings and there is this inquiry do you take any action in that regard?

A. If you can forgive me, it's an anxiety-ridden event to be here. But you cast Herb a look that was kind of strange. Do I have the ability -- does somebody?

MR. TEITELBAUM: Let me tell you what "the look" was. I can understand the anxiety. Ms. Tooher looks at me to see if I have any questions.

INTERVIEWEE: Gotcha. Forgive me.

MR. TEITELBAUM: That's the signal.

So's it's all above-board.

MS. SULLIVAN: We have anxiety, too.

INTERVIEWEE: I just had this vision
that someone in the Senate Minority is claiming
that I -- Nothing of the kind ever happened.
Forgive me for the digression.

MS. TOOHER: Could you read back the
last question?

MR. KINDLON: Complete with "the look."
(The pending question was read.)

INTERVIEWEE: Could you rephrase it for
me?

Q. After these meetings, the initial meetings
in mid May and you are reviewing the Governor's
use of the aircraft and you indicated Bruno's use
of the aircraft, did you take any actions
concerning that area?

A. I, myself, no. You know, we have to sort of
delve into what was being discussed on the 17th.
And you see an e-mail here where I suggest that we
conduct an internal review. There was a lot of
discussion about that. It has been portrayed as
though the news release was my suggestion, and I
said no.

Q. We will get to the news release. But, prior
to that conversation --

A. No action except the initial one which was I
wanted to -- I asked Bill Howard: What would you have responsive to FOIL requests on this matter?

Q. You asked Bill Howard -- I'm sorry. Could you repeat that?

A. The catalyst for the whole thing was reporters asking me the questions. I turned to Bill. I apprised my people and then I turned to Bill and said, "What do you have that would be responsive to a FOIL request on use of the aircraft for the Governor and Joe?"

Q. The last line in Commission's 58 is in response to that? I am getting more on the specifics of today with of the passengers"?

A. No. I think that would have been the flight Joe took on that particular day. He was getting more information on the specifics of that day's flight. There was an earlier flight, and this was a second flight that was a source of concern.

Q. The earlier flight is the May 3-4 flight?

A. Yes.

Q. You specifically said to Mr. Howard, "What can you get in response to a FOIL request on the May 3-4 flight?"

A. I wouldn't have phrased it like that.
Q. How would you have phrased it?
A. I would have said we got a bunch of inquiries on the use of the aircraft by Joe and Eliot. What would be responsive -- What do you have that would be responsive to a FOIL request on this? We would have subsequent dialogue about manifests, schedules.

Q. Did you have subsequent dialogue?
A. Oh, yes.

Q. What was the subsequent dialogue?
A. Just, you know, I would have said: What do you have? Reporters want to know about schedules, manifests, any other information. What do you think is available? I didn't have the answer when the reporter originally asked it, but I turned to Billy and he said, "I don't know, but I'll see. I think I know but I'll see." And he came back a couple of days later and said, "It's all the manifests you have seen, Darren." And I said, "Yeah, yeah, yeah. Anything on Bruno's schedule or itineraries?" And he said, "Yes. The records exist going way back."

Q. Let me show you what has previously been marked as Commission Exhibit 59 and ask you if you
1 recall receiving this document.
2 A. On that particular day, that trip, he had a
3 meeting with C.V. Starr.
4 Q. "He" being --
5 A. The Senate Majority Leader. He had two or
6 three meetings. And the question was what's this?
7 Is this government business?
8 Q. How did you know he had the meeting?
9 A. I was given the itinerary. I had been given
10 what was actually faxed over. Bill provided to me
11 what was faxed over from Bruno's office. This is
12 what I would have received at the time.
13 Q. (Indicating)
14 A. Yes.
15 Q. I have provided you with a copy of
16 Commission's Exhibit 5. Are you familiar with
17 Commission's Exhibit 5?
18 A. Yes.
19 Q. When did you first see this?
20 A. I can't give you an exact date, whether it
21 would have been somewhere near before the 17th,
22 maybe a day before that.
23 Q. I am going do show you another exhibit
24 marked Exhibit 16, which is another e-mail between
1 yourself and William Howard. Do you recall
2 receiving this?
3     A. Yep.
4     Q. And in this e-mail you refer to, again, C.V.
5 Starr at 12:30, and 3:30 at the Sheraton.
6     A. Bill refers to it, not me.
7     Q. I'm sorry, Bill refers to it -- which
8 appears to mirror the information in Commission's
9 Exhibit 5.
10     A. Yes.
11     Q. Are you saying that you received
12 Commission's Exhibit 5 prior to these e-mails?
13     A. I can't recall which one came first.
14     Q. Did they come in proximity to each other?
15     A. I think so. I think they came on the same
16 day.
17     Q. And, you received Commission's 5 from
18 William Howard?
19     A. Yes.
20     Q. How did you receive it?
21     A. He handed it to me.
22     Q. So, he walked into your office and handed
23 you Commission's Exhibit 5?
24     A. That's what I recall. I think so, yeah.
Q. And, did you ever any conversation about the
information contained in the e-mails, C.V. Starr
and Bruno's meetings?
A. Yeah. Like, "What do you think, Billy? Is
this governmental business here?"
Q. What was his response?
A. At the time he didn't know what C.V. Starr
was and he said he would check.
Q. It appears from Commission's 59 that the
information on C.V. Starr that Mr. Howard relayed
to you is at 12:20, prior to the more detailed
information in Commission's 16. Do you recall how
that happened?
A. Forgive me for not understanding what it
was. I mean maybe it was a situation in which
Bill handed me this.
Q. "This" being Commission's 5?
A. Yes, 5. And, then, maybe I said: Did it
actually happen, and then maybe he went back to
check if it actually came off as planned. But I
can't explain that. I just don't recall.
Q. Is your testimony clear, however, that you
received Commission's 5 at or about the same day
as the prior e-mail on C.V. Starr?
A. I just don't recall for sure, but I think so, yes. I couldn't tell you precisely when I received it. It would have been about that time because I would have then commenced the dialogue with Rich and others about the need for a possible internal review.

Q. And, if Mr. Howard testified that you had asked him about C.V. Starr out of the blue and he responded with Commission's Exhibit 59 would that be accurate?

A. I don't know. I don't know how or why I would come to have an inquiry about C.V. Starr unless there be some basis there. I wouldn't just like ask him what about C.V. Starr. It wouldn't have made any sense.

Q. So, you had no familiarity with C.V. Starr prior to your familiarity with Senator Bruno's schedule in Exhibit 5?

A. I basically knew it was a big time insurance company, one of the biggest I think there is. But, beyond that it would be like asking about IBM or asking about something else. I don't know how or why I would come to it. I just don't believe I went to him to say: Tell me about C.V. Starr. I
1 would have said: C.V. Starr, what's that? Is
2 that the insurance company?
3 Q. Did Mr. Howard ever indicate to you where he
4 got Commission's 5?
5 A. I don't recall him specifically saying where
6 he got it. I just assumed it was from the State
7 Police. But he pointed out to me the header which
8 I think unfortunately y'all have cut off.
9 Q. The header being --
10 A. One second. I'll show you. It was faxed
11 over from Bruno's office, and your copy doesn't
12 show that, but -- and I know I am jumping ahead a
13 little bit but itinerary information. I asked
14 Bill at one point why does it look different? Why
15 does this look like this and this look like this?
16 And he said, "Sometimes they are in the habit of
17 calling over the information and they take it down
18 in longhand. Other times they actually fax over
19 an itinerary. I mean that kind of -- I never knew
20 about reconstructed records. No one used the word
21 "reconstructed" until I saw it in the newspaper.
22 Q. We will get to that, I'm sure.
23 A. I said, "Billy, you are giving me two
24 different things. Why does this look like this
and this look like this?” And he said, “This is faxed over directly.

Q. You are pointing to documents that we actually have in the record at this time but not in that version. Do we copies of Commission's 1, 2, 3 and 4 as well?

A. 5 looks a little different from the others.

Q. May I take a look at those?

BY MR. TEITELBAUM:

Q. Do you have documents you would like to share with us?

A. It's basically part of the FOIL package that you already have. I would like to be able to write a note for follow-up and elaborate on a few points on this.

BY MS. TOOHER:

Q. Mr. Dopp, I am going to give you a stapled package that's marked Commission's 1 through 4. The documents that you were referring to, you have Commission's 1, Commission's 3, and Commission's 5. I have already given you Commission's 5.

A. They correspond exactly except you have an extra one for the 27th that wasn't a part of the official package. And you lack on your version of
1 Exhibit -- actually, you lack you know --
2 Q. What is Commission's 5?
3 A. In this package.
4 Q. So, the documents that you have in your
5 possession in your folder are Commission's 1,
6 Commission's 3, and Commission 5; is that correct?
7 A. Yes. And those are the documents that were
8 released to reporters at the time.
9 Q. At the time you received Commission's 16 you
10 were only in possession of Exhibit 5; is that
11 correct?
12 A. And the one for the 3rd. I was in possession
13 of two, the one for the 3rd and the one for the
14 17th.
15 Q. So, you already had Commission's 1 --
16 A. Yes, I think so.
17 Q. -- in this form?
18 A. I take it back. No. He would have provided
19 that later. The only -- the first one -- He told
20 me the records existed going way back. And I
21 said, "Could that be part of the FOIL package"
22 because it's a public document. And he said,
23 "Yes. I'll see what I can do to go get it."
24 Q. I understand, and we are very eager to hear
your story. But if hope don't keep it in a chronological order it gets very difficult to get it all on the record.

A. Sorry.

Q. You indicated that after receiving Commission's 5 and the itinerary you prepared a statement?

A. Yes.

Q. And what was the purpose of preparing that statement?

A. It was evident from that document, Commission's 5, that there might be an issue, you know. And what I thought was as a result of this information really being dumped in our lap we should at least review it.

Q. When you say you thought there might be an issue, what did you think the issue was?

A. Bill was saying he might not be living up to the spirit of the disclaimer, the spirit of the disclaimer that only official business would be pursued.

Q. When you say "Bill was saying" -- did he volunteer this information? Did you meet with him?
A. When he dropped it off I said, "What do you make of it?" He said, "Well, it does raise the question of whether he's doing official business or not."

Q. And, what brought up the subject of the disclaimer?

A. One just follows from the other. Remember what our charge is. Our charge is to ensure the use of the aircraft is proper. And if there is a question about whether it's proper or not. We are obligated, a serious obligation to sort of review it.

Q. What is your understanding as to proper use of the aircraft at this time when you are first speaking with Mr. Howard about the 17th?

A. The spirit of the disclaimer and the spirit of the policy we put in place is that it should be official business only.

Q. Was that your understanding?

A. Yes.

Q. And did Mr. Howard explain that was his understanding?

A. I don't think I ever really discussed it with Bill in any great detail. But we discussed
Q. I am going to show you what has been marked as Commission's 41. Have you seen this document before?

A. Yes. I wrote it.

Q. When you say you wrote it, the top of the document contains an e-mail from Richard Baum to you and then below is a statement by Darren Dopp.

A. Yes.

Q. You wrote the statement?

A. I wrote the statement. And what I am doing here is saying perhaps we should conduct an internal review this response to the media inquiries. We could if y'all think it's an appropriate thing, put out a statement like this.

Q. Who are "y'all"?

A. Sorry. It would be Mr. Nocente, Mr. Baum, Mr. Spitzer, and I think Marlene was in the mix as well. But, basically, it's like Rich, Eliot, and David.

Q. So, May 17th at the time of this e-mail you are discussing the statement contained in commission 41 with Mr. Nocente, Mr. Baum, Mr. Spitzer, and you believe somewhat with Marlene
1 Turner?
2 A. I think she was in the room as well.
3 Q. When you say "in the room" this meeting took
4 place face to face?
5 A. In Rich's office, where we frequently met.
6 It wasn't like a formal sitdown or anything, but
7 we sort of gathered around the table. And I said
8 questions raised, you know. This is one avenue
9 that we could pursue. We could handle it in this
10 fashion.
11 Q. Did you present the statement by you
12 contained in 41 to this group?
13 A. Yes.
14 Q. What was the response to that?
15 A. We talked about it. Each person had a
16 separate view.
17 Q. What did Mr. Baum say?
18 A. Can I go to Mr. Nocente first? Nocente was
19 like, oh c'mon, Darren. You know, of course, he's
20 just going to say that it was government business
21 was conducted.
22 Q. He, being Senator Bruno?
23 A. Right. And I said, "Yeah, probably." And,
24 then, Mr. Baum said, "You wonder. You wonder what
he is doing, but without having a schedule how
would we know?" Now, I think at some point, you
know, Eliot might have come in or we discussed it
with Eliot later on. And he, too, was of the
notion that without having access to Joe's
schedule you just didn't know whether government
business was being conducted or not.
Q. Did you have Commission's 5, Senator Bruno's
schedule, during this discussion?
A. Yes. We had this itinerary.
Q. Commission's 5?
A. Yes, we had 5. But, again, separate an
itinerary from, you know, a schedule. And the
review of the itinerary here as Commission's 5
shows C.V. Starr. And we all sort of looked at it
and said, yes, it's a business. He could have
been conducting business there.
Q. At the conclusion of this meeting was there
any direction from any of those present?
A. We all reached the same consensus that we
would not proceed in this fashion, stand down, and
continue to monitor in this fashion.
Q. When you say "not proceed in this fashion,"
what do you mean?
A. We wouldn't conduct an internal review and not release a statement of this kind.

Q. Were you advised by Mr. Baum or Mr. Nocente that that this was a non-issue; that there was no problem with the senator's using the plane in this fashion?

A. Nothing leak that ever occurred. We didn't know. And we left it without knowing Joe's schedule, how would we know? Nobody said "non-issue," never mind. That has been misrepresented, I'm afraid.

Q. Was there ever any direct instruction to you to get Senator Bruno's schedules?

A. No, not specifically. Just that when the reporters' inquiries began in the beginning of May and I told everybody we are going to ask Billy for the records that would be relevant, I did so. So it was not like -- nobody said: You go get those records. But I said, "What do you want to do? I will ask Bill for the records." And Bill produced the records thereafter.

Q. When you say you said, "I will ask Bill for the records," was that during your meeting on your statement?
A. No, that was much earlier.

Q. So following the meeting on the statement contained in Commission's 41 did you then have any records in your control?

A. Just Commission's 5. And, then, we sort of agreed not to pursue in this manner, but monitor the situation through Bill.

Q. What was monitoring the situation through Bill going to provide you?

A. Just -- it's just watch and see what develops. It raised a concern, but it didn't rise to the level of we should conduct an internal review. They concluded otherwise about all that.

I said to him, "Look, remember you're on the hook" you, Rich, you proved these things. And somebody at some point, someone in the media is going to get this information because they always do. They routinely engage on who's using aircraft for what purposes. And I reminded them of our obligation to ensure it was properly used, and they said, "We know. Let's just continue to monitor."

Q. Did anyone ever relate to you that as long as Bruno signs the form, that's sufficient; you don't need to look at this any further?
A. Rich was nervous about it. And I said, well, you are doing your due diligence by requiring him to sign appropriately. I don't think you will get too much of a whack for not doing more because you are making him attest. So that's covered for any kind of charges that you were not doing proper due diligence.

Q. Was there a discussion at that time about getting ground itineraries or more information concerning Senator Bruno's schedules?
A. Just that we would continue to monitor. And, to the extent we had the ability to determine what was going on on the ground, that was appropriate.

Q. Was there discussion about how you were going do determine what was going on on the ground?
A. Nothing -- not really. Just -- we would work through Bill to continue to monitor.

Q. Did you say to Mr. Nocente, Mr. Baum, Governor Spitzer that you would be asking Bill Howard for these records?
A. It was clear. I didn't like state it in that particular fashion. They knew that I
1 requested documents from him after the original
2 request. And, "continue to monitor" meant watch
3 and be apprised.

4 Q. How would they know?
5 A. We had discussed that. Remember, reporters'
6 inquiries come in. I am apprised of the
7 reporters' inquiries. We talked about how to
8 proceed, and the conclusion was: We have to get
9 the information. Darren, can you do that? Sure.
10 I'll ask Bill.

11 BY MR. TEITELBAUM:

12 Q. May I ask a question? What did you
13 understand "continue to monitor" to mean when it
14 was said to you?

15 A. We really just like if Joe is taking a
16 flight or if anybody else was taking a flight just
17 sort of make sure they sign the disclaimer and
18 make sure they were attesting that the purpose was
19 appropriate. And, then, because the State Police
20 were keeping records on that, we would have access
21 to those records.

22 Q. Was that a charge to you at that meeting
23 that you should do it or that you should be
24 involved in that effort to monitor?
A. See, I had begun the effort. I had begun it the outreach through Bill Howard for information on it. And it was apparent to me that I should continue to work with Bill to continue to monitor on the use.

Q. Getting back to your understanding of the charge to continue to monitor, wasn't that within the jurisdiction of Marlene Turner?

A. She was in the meetings in the room. And, yes, it would have been like a dual -- Marlene would have a heightened awareness of the issue and Bill would supply us with whatever documentation was appropriate. And we would all reconvene to discuss it at a later date.

Q. The document on which Senator Bruno would represent that the purpose for which the aircraft was being used, would that go to Marlene Turner?

A. I think it goes directly to Marlene.

Q. Why was Bill Howard being engaged with respect to that document?

A. He was not being engaged with respect to that document. That came from Marlene. Bill was responsible for the documents coming from the State Police.
Q. And, what was your understanding about continuing to monitor with regard to what Bill Howard was going to do?
A. Just that if there were future trips he would apprise us of what the upshot of what those trips were. He's going to New York again. The guys on the ground faxed over this itinerary.
Q. When was this meeting?
A. I think we are talking about the 17th.
Q. So, on the 17th you are all in Baum's office; right?
A. I think so, yes.
Q. And, the Governor is there?
A. He stopped in for two seconds. He wasn't in.
Q. When you say two second, literally, he was in and out?
A. That's the way the boss is. He comes in and figures out what we're talking about, adds a comment or two and departs.
Q. Was he present when you were told to continue to monitor?
A. I don't believe so.
Q. Who told you to continue to monitor?
A. It was not like a directive: Darren you go do that. It was kind of what do we want to do? Stand down from the internal investigation but we'll continue to watch it. Does that make sense? I don't recall who actually said that, but we all sort of nodded. And that was the extent of it.

Q. Was the Governor present when that was said?
A. No.
Q. And continue to watch it, who said is that?

Did anybody say it?
A. It might have been Rich. It might have been me. But, basically, it was like, okay. What do you want to do?

Q. And, when there was this agreement that you would continues to watch it, was there discussion that Bill Howard would be part of this effort?
A. It was understood because he was the liaison with State Police.

Q. When you said at that meeting that Bill Howard was going to be continuing to get documentation from the State Police; that would be what would follow?
A. Everybody understood that would occur.

Q. How are you able to tell us that? Did his
name come up?

A. Yes. Where did this come from? Remember, I would have apprised him when the first reporters' inquiries occurred that I would engage Bill to figure out what we could learn from that side of it. And, periodically, as this matter arose for discussion, it's like: And Bill provided this and Bill provided this, and Bill says this.

Q. Was the subject of receipt of ground itinerary by the executive chamber raised during this meeting?

A. I don't recall it. We spoke about what documents would be available. If that came up and we certainly said here's one.

Q. Meaning Exhibit 5?

A. Right, I'm sorry. 5 is available and 5 indicates something. But, again, the reason for not proceeding with the internal investigation was nothing was really clear. More to the point -- and I'll make this point again in the future. The ground itineraries show the venues where he could have been conducting state business. So, the notion that the whole thing is a plot to smear him, the product of the so-called plot, the ground
1 itineraries actually shows where he could have
2 been doing government business.
3 BY MS. TOOHER:
4 Q. Let me show you what has been marked as
5 commission Exhibit 76.
6 Q. (MR. TEITELBAUM) before we get to 76, at
7 that meeting did the Governor say anything?
8 A. Again, I think he would have reminded us of
9 Joe's interest in using the helicopter. He would
10 have told the story again.
11 Q. Is that what you recall him doing?
12 A. Yes.
13 Q. When you say "the story," the earlier
14 discussion between the senator and the governor?
15 A. My recollection is that Eliot told the story
16 to the group, then told it to me. And it was just
17 like there was no animus. There was no sense that
18 something big was going on. It was just like --
19 remember, at the time we have got a main concern.
20 And that was: Is Eliot's use appropriate? And
21 that was our overriding concern at the time.
22 Q. The "story" that you are referring to is the
23 conversation between Governor Spitzer and Senator
24 Bruno where Senator Bruno had urged the Governor
not to give him any problems with respect to use
of the aircraft, and that took place early on
which you already testified to; correct?
A. Correct.

BY MS. TOOHER:
Q. Commission's 76 is an e-mail from Mr. Baum
to you. Can you identify this document?
A. Rich is writing to me.
Q. This is on May 17th?
A. That's right.
Q. On the subject line: Re: E.S.?
A. Eliot, the Governor.
Q. "Wants to talk to you ASAP." This is you
writing to him first, and "wants to talk to us
ASAP" and Mr. Baum writes back, "Okay. Call me on
my cell." This is on the 17 at 2:17. Do you
recall what this is in reference to?
A. I don't think it is pertaining to the travel
thing. I think it was something else at the time.
And, remember, the moment where we're trying to do
to do what we call unifying the office to field
to theory. We were trying to have the Senate meet
the Senate's need for congestion pricing and the
Assembly's need for campaign finance and our need
for some capital projects. We were linking the
two and we were engaged in how to outreach to
lawmakers to sort of set the stage. This stuff,
forgive me for saying so, we talked about it. But
the business of the day is the legislative
session.

Q. But Mr. Baum's e-mail to you originally
concerning your statement in Commission's 41 is at
1:54. This is some 20 minutes later. When did
the meeting occur following Commission's 41?
A. Forgive me for not really understanding --
if I thought about it, I could try to parse it
through. I just don't have the recall of it right
now. I just don't remember that day in that great
detail. I could have been involved in the thing
but I don't think so because Eliot was not that
involved in the initial discussion other than:
Put out the news release and conducting an
internal review. That was me, Rich, and David,
basically.

BY MS. SULLIVAN:

Q. In the May 17th meeting on Commission's 5 is
there any discussion amongst the group about that
document being a public document; that being
1 Commission's 5?
2 A. No. We kind of assumed that it was.
3 Q. Based on Mr. Howard's statement to you?
4 A. Based on two things, really. It's like,
5 number one, remember what the original request
6 was: What do you have that would be responsive to
7 a FOIL request? That triggers a process within
8 the State Police that they wouldn't give us
9 something unless they concluded it was public.
10 And Billy Howard got it, and I assume that he
11 reviewed it and I assume that it's okay to give to
12 Darren. Because if you give something to Darren
13 he is most likely going to give it to a reporter
14 because it's a public document. And we sort of
15 looked at ita. It really just comports with our
16 schedules with less detail. It's a schedule with
17 less detail than I was routinely releasing. So,
18 nobody really questioned whether it was a public
19 document.
20 Q. Is the discussion that you had with Mr.
21 Howard in which you said to him: Give me what you
22 have subject to FOIL, is that clear in your mind
23 that that is what you said to him?
24 A. Yeah. That's what I do. When I go to --
whether it was Bill or any other Deputy Secretaries, it's in response to media inquiries. I am asking them: What do you have? What information is available? What are you saying? That's who I am. That's how I operate.

BY MR. TEITELBAUM:

Q. Why did you mention FOIL?

A. Because in my conversations with reporters it was kind of a broad extensive request: Who's using the aircraft since the 1st of the year?

That, for me, triggers a kind of process whereby are you asking for a day, or even a week, for use first aircraft, that's fine. But if you are asking for a comprehensive accounting, put it in writing. That's what I would always tell the reporters. And, again, it's like it might seem arbitrary to you but it's an easy thing to get a schedule for the day. It's an easy thing to get a manifest for a specific flight. But when you're talking about everything that happened, then you have got -- somebody has to sit down and somebody has to bring it all together. And I have had these conversations with reporters from the beginning of May when they said: What have you
got that's available? And I would have said: The manifests that you guys have seen before and all of Eliot's schedules. And they would have said: What else you got for Bruno's and his use? And: I don't know but I'll check. And I talked to Billy, and Billy came back with: This is what you're after.

Q. Is that what reporters do say?
A. Yes.

Q. What reporter?
A. Mainly, Mr. Odato because he is an extraordinary individual with an avid interest in aircraft. And the package of articles that I will provide to you demonstrates this. He was the one who broke the story about Eliot obtaining a plane ride from a person who is a lobbyist.

Q. Did he mention FOIL to you?
A. He would have said: What do you have that is available?

Q. Is that what he did say?
A. Yes. I don't think that FOIL actually came up at that particular moment. This is me doing my job. When he's inquiring in that fashion and it's clear to me that he's going to make a
comprehensive request, I immediately start thinking: Yes, here's my jackpot. Is Spitzer using the plane properly and are we being proper stewards of the aircraft. I better find out. So, I turn to Bill -- apprise the others and then turn to Bill and say: What do you have in response to a FOIL request? My fault, perhaps, because there's a little bit of discrepancy. I didn't say, "but I don't have it in my hand right now."

I just said, "What do you have that would be responsive to a FOIL?" So, that act of commencing the review before actually receiving the FOIL, lawyers might perceive as somehow irregular. Any communications director worth his salt recognizing exposure, recognizing potential jackpots, would commence a review and bring it to the attention to his principal for discussion.

Q. What is a "jackpot"?
A. A problem, a matter that could result in negative media attention. Sorry about that.

BY MS. SULLIVAN:

Q. At the May 17th meeting when you showed Commission's 5 to Mr. Baum did he react in any way to where you had received that information?
A. Not to where I received it. It was sort of understood. Nobody raised a concern about production of documents, how the process was operating. It was just like they knew I made a request for public documents through Bill. They knew the State Police had considered the matter, supplied something that Bill looked at and I then looked at and I was presenting to them. No, nobody looked at this and said: Oh, my gosh. This is a security concern, or this might not be appropriate. We shouldn't release this. The truth is we discussed it numerous times. None of that ever came up because everybody recognized that. The information that we provided in terms of Eliot's schedule, this pales in comparison. 5 pales in comparison to the level of detail that we were providing about Eliot.

Q. There has been testimony that the Senate counsel expressed concern that the executive chamber not receive the Senator's schedules. So, now, when Commission's 5 appears on the table there was no concern raised?

A. Sorry, but I have like -- I feel very confident in saying I was never aware; that nobody
apprised me of such concern. It would have been a red flag as would if somebody said to me, oh, these documents are phony and were reconstructed. Had I heard something like that, most assuredly I would have sensed that it could create a problem for the administration and raised the problem with the group to figure out what to do. But what you describe is brand new to me. And, if so, I'd be a little bit miffed that no one raised it in our discussions of the matter.

BY MS. TOOHER:

Q. When you finished your discussion of this matter of Senator Bruno's use of the aircraft on the 17th and you leave that meeting, what do you think you are doing from that point on?

A. Standing down, continuing to monitor but standing down; not doing anything in particular.

Q. So, you are not gathering additional information?

A. No. Bill would be apprising me of additional developments as they occurred.

Q. Are you responding to the FOIL? Are you discussing the concept of the FOIL?

A. I discussed in this particular meeting
releasing information to the media. Remember, my
press statement was a response to those media
inquiries. And what was sort of posed to me is,
look, do you have to get back to the reporter
right now? And, he said: Dude, I know there's a
lot going on. I can wait and probably buy us some
time in that regard because so much else is going
on. Remember the sequence. They asked me in
early May --

Q. Who asked you in early May?
A. Reporters.
Q. Which reporters?
A. Odato, Gershman, Dicker, but not in a
pointed way. It was basically Odato. He's the
one pushing it the most. "I want to know,
Darren."
Q. And they are asking you specifically what?
A. Was the Governor using the aircraft for
fundraising and what do you know about Senator
Bruno's use of the aircraft?
Q. Had you gotten any type of FOIL request at
this point?
A. No, just -- as I was trying to explain to
Herb, it's like any guy worth his salt hearing the
conversations and being peppered with questions from reporters, as Communications Director would commence this process because of the exposure. I won't use the word "jackpot" again, but because of exposure to the administration.

Q. So, you don't have an actual FOIL request at this point?

A. That's why I say to Billy, "What do you have that would be responsive to a FOIL request? I think it's coming."

Q. Did you say that to Howard, "I think it's coming"?

A. I don't think I used those particular words. What I said to Bill was, "I have media inquiries." I take it back -- no. I have got media inquiries. And, basically, I said to Bill, "What do you have that is responsive to media inquiries?" And I said that to Bill. Bill then says to Preston, and Preston, in your testimony says, "Yes. I heard there is a FOIL request." It's a little bit disjointed there. He thought that there was an actual FOIL request, but I said "anticipated" FOIL request.

Q. "He" being --
A. The Superintendent of State Police. I never had a conversation with him, never talked to him. I am just reading in subsequent testimony.

Q. You are just surmising from what you have read that Superintendent Felton --

A. Believed that there was a FOIL request. And for all intents and purposes, my intents and purposes there was. And, based on what I was hearing from the reporters I knew it was coming.

Q. Did you ever say anything to Bill Howard about an oral FOIL request?

A. I didn't specify it. I just said, "Billy, what do you have that would be responsive to a FOIL request? I have got reporters questions."

And that was it.

BY MR. TEITELBAUM:

Q. Did Odato ask you for types of documents or particular information?

A. Yes. Odato would have said, "What would I get?"

Q. Not what he would have said. What did he say?

A. He said, "What am I going to get here? What's available?" And said, "Well, I know for
sure what's available on the Governor. I can give you manifests and I can give you his schedules which amount to an itinerary, complete schedules and manifests." And he said, "Well, what does that show?" And, I said, "Dud, you've seen these things before. It's everybody who's on the aircraft, where it's going, where it took off and where it landed." And on schedules, I said, "You've seen that before, everybody who's meeting him. We are committed to giving you all of that stuff." We talked about a few other things, and he said, "What about for Joe?" "I know for sure there will be the manifests. But I don't know what else is there. I'll find out." And that's when I turned to Bill and said, "What do you have that would be responsive?"

Q. So, you explained to Howard what Odato was asking for?

A. Yes.

Q. And with regards to Senator Bruno --

A. Sir, I don't think I would have used Odato's name, or any individual reporter's name because, again, the way I do my job is a bunch of reporters come into my office or I walk upstairs where the
LCAers gather and they descend upon me. And there's a bull session and I meet with all kinds of inquiries. And Odato grabbed me aside and he said, "Can I talk to you more about that?" And later on, he came down and we had the discussion.

Q. So, when you spoke to Mr. Howard after Odato had this conversation with you with respect to Senator Bruno what were you asking Howard to give you?

A. I wasn't asking him to give me anything. I said, "What's available pursuant to a FOIL?" And I may have said to him: We will probably be supplying manifests and schedules for the Governor. Does the same thing exist for Joe? And it was at that point he said, "I'll come back to you on that, but the records exists going way back." And I didn't know exactly what records exist, but I took that to mean not the manifests that do go way back because you have to have those, but some type of schedule or itineraries because that was the specific request from Odato. Remember, I said to him, "I'll give you manifests and I'll give you schedules," and he said, "Is that same thing available for Bruno and can I get
Q. You said I think that the subject of FOIL didn't come up at that point in your conversation with Odato. Is that what I heard?

A. Not specifically. I just interpreted it as interest to produce a FOIL at some point.

Q. Did you thereafter have a discussion with him about a FOIL request with respect to the documents that you asked Bill Howard to see if they were available?

A. Some time passed. Jim would have asked again, and I said, "They're working on it. But because you're asking for so much, I would like you to put it on paper. Again, my code -- forgive me -- this is how I interact. That's code for: You really should FOIL for that since it was such a comprehensive request and since it would involve a lot of people sitting down and trying to collect the documents.

Q. How soon after the first conversation you had with Odato concerning what documents might be available regarding Senator Bruno did you have the conversation in which you told him you wanted it in writing?
A. I said to him "I'll figure out what's available." Well, he raised it again in a couple of weeks. He raised it periodically because he has an avid interest in it. You remember, he writes all the Abbruzzese stuff about Joe. And understand there's a real interest in the Senate Majority leader's travels in many capacities. I think it would have been ten days, inside -- from a week to ten days.

Q. The second conversation you would have asked for the request to be put in writing, which is your code for get a written FOIL request.

A. Yes. But something intervenes, the dynamic end of the legislative session and he doesn't get back to me for an extended period. And it's at that point I just let it lie pursuant to the direction I would have been given from the group: Let's not encourage this, but if he comes back we'll cross that bridge when we come to it.

Q. You're saying those were the instructions you were given?

A. Yes. Nobody says: Darren, you do this.

Q. I am not inferring from the instructions that anybody was waving a finger or being
dictatorial, as it were. Someone was telling you what was expected, let me put it that say.

A. Basically, they were telling me stand down for now. We will cross that bridge when we come to it if the reporter comes back.

Q. With whom was that conversation?

A. Rich, Nocente, and others in the room as well. I don't remember. Marlene Turner might have been there.

Q. It's not the same conversation that you testified earlier was in Baum's office; is it?

A. The same one.

Q. The same one; on the 17th?

A. Yes.

Q. So, by the time the 17th rolls around you have asked Odato via code to give you a FOIL request.

A. I didn't ask him, you know. That would be wrong because I am not trying to jazz this up. But I am saying: If you want that, you really ought to put it in writing.

Q. That's before the 17th?

A. Underscore one point? Tremendous exposure to Eliot. This is something I'm trying to avoid,
not jazz up. I think so.

Q. On the 17th, you receive -- it's the sense of the group so I used the word "instruction." The sense of the group is that you are going to stand down until this is raised again --

A. Right.

Q. -- by Odato?

A. Or somebody else coming back and asking for it. I did apprise them, though, that these issues are hot, and sooner or later somebody is going to come back.

Q. So, you stood down?

A. Yes.

Q. Did you tell Bill Howard to stand down?

A. I went back to Billy and said, "Let's continue to watch the situation, you know. We don't want to do anything at this time."

Q. What did you mean by "watch the situation"?

A. Just remember, we had this serious obligation to ensure that everybody is using the plane appropriately. We didn't have enough to go on to conclude definitively that he was misusing it, but we would watch in the future, you know.

If you had an itinerary or information that he was
going to a fundraiser and nothing else, we had an
obligation to act. We would be watching to ensure
that didn't happen.

Q. So, watching and obtaining information from
the State Police?

A. Watching would be Bill interacting with the
State Police to make sure the use is appropriate
and him alerting us in case it wasn't.

Q. My question is: If you would be getting
information from the State Police "watching" would
mean you would continue on an ongoing basis to get
information from the State Police?

A. That most assuredly would.

Q. Did Mr. Nocente know that was happening;
that on the 17th that while you were being asked
to stand down, you were telling Howard to continue
to get information on Senator Bruno from the State
Police?

A. He was, yes. That would have been the
upshot of the session. Having said that, I don't
think anybody would have, you know, in their
wildest imaginations would have viewed what was
going on as in any way unusual or that information
would be obtained improperly. To this day I still
don't know that information was obtained improperly, but people allege it was. In our sessions we just assumed Bill is the liaison to the State Police. You're going to do what's appropriate. We trusted him and trusted the State Police.

Q. So, Mr. Nocente knew while you were being asked to stand down, Bill Howard was going to be instructed to continue to get information from the State Police; is that correct?

A. Yes, I think so.

Q. Is that also true with Mr. Baum?

A. I knew more assuredly that Baum knew it than Nocente did.

Q. Why is that?

A. My familiarity with the two guys. And David's role as counsel is just extraordinary in terms of volume. I don't know that David fully appreciated what was going on. I don't know that Mr. Baum did, but I was pretty sure that he did.

Q. When you say "appreciated everything that was going on," that Howard would continue to get information from the State Police?

A. Right.
Q. My understanding is that you didn't tell them that Howard would continue to get information from the State Police?
A. It came up in the session. And, then when we said we would continue to monitor, that was implicit. We had a serious obligation to ensure the use was proper.

Q. Is it your testimony that the interaction between Bill Howard and the State police was usual and not extraordinary; in other words, the communication was just the means of operation that was standard?
A. I knew of no difficulties in that regard, and I assumed it was totally standard. And that was the impression I got from Bill.

Q. Bill Howard gave you the impression that he was receiving information on an ongoing basis on the travels of Senator Bruno in connection with his role in the executive chamber. Is that what you are saying?
A. He didn't say it in those particular terms.

Q. In substance?
A. In substance. I understood that he would be in communication with the State Police on that
Q. On an ongoing basis?
A. Yes, and that he had been and would continue to be.

Q. What was your understanding of Howard came to be that that would be his role? Was it as a result of what you said to him or somebody else said to him, or that nobody said to him? How did it come to be?
A. It's really through his job title. He is the liaison to the State Police and he would be the only person responsible for such a --

Q. You are telling us that in his capacity as liaison to the State Police one of his functions was to receive on an ongoing basis information concerning the travels of Senator Bruno? IS that what you're saying?
A. If there was a question about it, yes. And the question did arise.

Q. From the group on the 17th?
A. Yes. Well, prior to that with my request prompted by the reporters.

Q. On the 17th, that question persisting and as a result, you are saying, of that question
persisting, it was your understanding that Howard would continue to do what he had been doing which was on an ongoing basis receiving information from the State Police with respect to the travels of Senator Bruno?

A. We, being the group, had to know and wanted to know.

MR. TEITELBAUM: Okay.

BY MS. TOOHER:

Q. And, after this meeting do you have any feelings about where this is going in terms of the statement itself and your work with looking at the use of the state aircraft?

A. Somebody said I was upset about it. And I said I have got a thousand things going on. And it's like remember, guys, you have a little bit of exposure here. Someone else is going to ask us some day about our stewardship of the aircraft. I kind believed that the appropriate thing to do would be review it internally. Now, what they didn't want to do at the meeting was, they didn't want to have a confrontation with Joe. And any internal review would necessarily entail double-checking to be sure the information on the
disclaimer is being followed and was accurate.

"Legislative business meetings" is what Joe would say and. If you are going to conduct a meeting for internal review you had to go to him and say:

Now, what meetings are you engaged in? What are you really doing? I sort of reminded them in previous administrations we pretty much did that.

But when we all came to the conclusion: Let's not go down this path at this moment based on the fact we have no clear evidence of wrongdoing and we are trying to get the guy to come to the table to negotiate a resolution in the interest of all New Yorkers. Let's just not do it. And I agreed completely that that was the overriding concern.

Q. Now, Commission's 41, your statement appears to be a statement to the press; is that correct?

A. That's right.

Q. That doesn't look like an internal review.

A. Some people have concluded that. But you would only do that subsequent to receiving the information that the action is necessary and appropriate based upon an internal review. Please don't hold me to this particular thing. I wrote that in maybe fifteen minutes knowing that a
meeting was coming up. I sat down and ripped it off. And it's not like a work of art. It's just, guys, if we are going to conduct an internal review it has utility for me because I can then get the reporters to back off. They were hitting me with the questions. And I can say: Questions have come up from you, being your inquiries, and we are going to review them. That's what that was all about. This is what this is about, but we decided not to do that.

Q. But that was intended, Commission's 41 and the statements contained therein, was intended as a public statement?

A. All I care about is responding to the media. And they are having questions about it, and this is my responsibility. This would have gotten me out of this.

Q. "This" being Commission's 41?

A. Yes. This would have answered the reporters and bought me a ton of time to put those inquiries at bay. How and why? Well, they are asking: Is he using it? Is he using it appropriately? And we are saying: Well, we don't know but we are going to review it.
(Commission's Exhibit 77 was marked for identification.)

Q. Showing you what has been marked as Commission's 77, can you identify this document?

A. It is to me from Christine, I believe, as opposed to the other away around. But I'm not positive about the distribution at the top.

Q. I believe it's Darren Dopp to Christine Anderson. Again, the May 17th date. May 17 is below and the subject is, "Argh."

A. I just was apprising her of the discussion. It wasn't something that she was participating in. She was my new press secretary and relatively young. And I always went out of my way to let her know everything we were discussing in the so-called inner circle.

Q. Well, "argh" relays something to me. What did it relay from your perspective?

A. I wish I could give you some definitive answer. I don't know what "argh" would have entailed. It's like: Oh, well. I wouldn't even want to project. I don't know exactly. Truthfully, there is nothing like nefarious about it.
Q. It's just frustration, disappointment. It doesn't seem like a positive connotation. But I'm asking you. You don't relay anything else in the e-mail besides the statement.

A. Respectfully, I wouldn't read too much into it. I don't believe I had some virulent reaction at the time. Part of me thought we had an issue that we should address ethically. When you know that there is a possible misuse of something you should address it in some fashion. The group didn't want to. But did I have like aggressive feelings about it? Mild feelings that we really should do it.

Q. I think in the D.A.'s report Christine Anderson says you were upset following the May 17th meeting.

A. I disagree with that. I didn't have intensely strong feelings about it. To the extent that during this process I did have strong feelings about it, they are influenced by something we will get to in a minute which is Peter Pope's advice.

MS. TOOHER: Shall we break for lunch? If you want to finish your thought, go ahead.
MR. TEITELBAUM: Go ahead.

INTERVIEWEE: Basically, to the extent that anyone would suggest that I was upset, it's a function of, you know, two things -- three things: The history of my involvement with the issue going back to the Cuomo era. The fact that I believed in like public disclosure of these matters, and the fact that Mr. Pope -- again, my friend -- he comes and sits down on my desk and he dials up the I.G.'s web site and says I have an obligation, a legal obligation to refer the matter to the Inspector General. And, you know, this is what we get to. First, I said maybe we should conduct an internal review. Later on, I convene the guys and say, "Peter really thinks we should refer to the I.G. And I said -- I told them he went to the section of the law showing me the penalty for not doing so. My guys' response to that, Nocente's, Baum's, and to an extent even Eliot's, is to poo-poo it, sort of in a friendly way make fun of Peter's prosecutorial impulse.

BY MR. TEITELBAUM:

Q. Who is telling you the Governor and Nocente is poo-pooing it? Are you getting it is directly?
A. I took it to them. This is after the 17th meeting where they stood down from the internal review. Then, after I talked to Peter, and Peter and Rifkin were both kind of adamant that: You really should do something with this, Darren. That's when I took it to them again individually to say: You won't believe what Peter did. And each had like humorous comments to dismiss that notion.

Q. What did they say?

A. "What is he, nuts?" And Baum's comment was like -- Nocente's comment was, "Come on. You have to report it in a timely way." And he said, "Come on, Darren. The I.G. doesn't have any involvement or influence over legislative officials. And, further, Peter doesn't know what he's talking about." That's Mr. Nocente. Baum: "What is he, nuts? We don't know without seeing the schedules." When I told Eliot that, he was sort of, "What do the others say?" And I told him what they said, they dismissed it. And, he said, "Yeah. That's not the way to go." And, subsequently Rifkin and others said what about other entities?" And, again, I took it back to
each one and said: What about this? What about this? What about this? And, what about Andrew? What about giving it to the Attorney General? Bringing it to the D.A.? What about Ethics? What about Legislative Ethics? Pope came back to me a third time to say, "We can give it to the Feds." And that's one of those e-mails I'm sure we'll get to later on.

With regard to the Feds, there's a big story about the Feds investigation of Abbruzzese and Bruno air travel. And what Peter suggested to me is that this would fit into that mix. If they're looking at air travel, maybe they want to look at Bruno's air travel.

Q. What did they say about referring it to the Attorney General?
A. They didn't trust him. They didn't want to go down that path.

Q. Who said that?
A. Pretty much Baum and Nocente at that time.

Why would we want to do that? There was a little bit of irony and antagonism there.

Q. Between --
A. The Governor and Andrew, the Attorney
General. I'm the intermediary there. Remember, he's my friend. I worked for his dad and who's the one that brought them together and always tried to minister in these relations. If you want a kicker on the whole thing, I informed Andrew in May of these inquiries.

Q. Of the inquiries --

A. From reporters about use of the aircraft. I told them: Something weird. I can't quite figure out. Something weird. I can't quite figure out whether Joe is misusing it. We've got some jackpots, too. I told Andrew that earlier.

Q. What did Andrew say?

A. In what respect? I started off by saying to Andrew, "You don't use the aircraft; do you?"

"No, no. I don't touch that. You remember the old days." Well, I've got this issue. We kind of debriefed weekends. And I was endeavoring to keep Eliot and me close together by informing him. It was like sanctioned activity. I kind of -- again, he's my friend. I don't want to say anything bad about anybody. But I had from the conversation that he had some preconceived notions about going into this matter.
Q. Who did?
A. Andrew.

Q. What were the preconceived notions?
A. The second floor is reviewing Senator Bruno travel for an extended period. And, basically, that was true. But his mind worked in a way that was kind of suspicious.

Q. He thought there was something wrong with the second floor doing that?
A. No. I think he thought we thought we had some way to discredit Joe. And I'm like: No, I told him I am more concerned about Eliot's exposure because he did take trips that were political. One everybody knows about it, and another nobody knows about.

Q. What was that one?
A. It wasn't like a missing itinerary or anything like that. It's just that we reimbursed for one of the trips. We were so concerned about the perception of doing things by the book that one of the trips from Albany to Teterboro we reimbursed because that was the famous California trip. He took a plane from Teterboro to California. And, under the law and under the
policy you're supposed to go back to your home, not someplace else. So, we thought that the leg Baum thought the leg ought to be reimbursed for any loss. And that was it.

Q. Is that the incident that has not been made public?

A. Yes. No one knows that we were so concerned about misuse that we reimbursed for one of the legs of the trip.

BY MS. TOOHER:

Q. That's Eliot's use?

A. Yes.

BY MR. TEITELBAUM:

Q. What was said about referring to the D.A.?

A. Hands full, buried, steroid probe, and a host of other things.

Q. Which District Attorney?

A. Soares. He's overwhelmed; he has too much stuff going.

Q. Was there anything referring to Bob Wolenkamp? (Phonetic)

A. No, not until later; not at the moment.

They would have held him in high regard given Mr. Spitzer's connection to it. But, again, absent
the schedule, nobody, myself included, thought there was any definitive proof. But I truthfully believed we should have reviewed it, and I expressed that.

Q. And the Legislative Ethics Committee, what would you do there?

A. I hate to be derogatory but they all laughed at it as an ineffectual and moribund body.

Q. The New York State Ethics Commission?

A. It's not for them. It had no jurisdiction over Joe. And the Feds, you know, when Peter made that suggestion, it wasn't a federal crime. What is he thinking? Pope, rigid, a prosecutor's prosecutor who said whenever you had a question, dump it. Give it to someone to investigate. I was influenced by him because he's my buddy and sits down at my desk saying, "You could be criminally liable for not doing so." So, my point it to the extent along the process that anybody sort of thought that Darren -- forgive my French, but Darren had a hard on for this guy and wanted to do something, it's because Peter told me that.

And it's like: You've got to do this. And when I related it to the others, they said: Don't worry
about it, stand down. And we did. We stood down waiting for another media inquiry that came once the legislature session was concluded.

MR. TEITELBAUM: Is this a good time to break? Shall we resume in 45 minutes?

(Luncheon recess)

AFTERNOON SESSION

MS. TOOHER: Back on the record.

BY MS. TOOHER:

Q. Mr. Dopp, before we move off the 17th, I just wanted to ask you one additional question on what has been marked as Commission's 77 concerning your statement. In this instance, the statement on Commission 77 says: Statement by XXX.

A. Yes.

Q. In the prior version it indicated Darren Dopp.

A. You sort of have a number of options for disseminating information whether Darren was the person disseminating it, Eliot, or somebody else. And it merely was a recognition of in the discussion where we sort of like cast -- well, maybe we'll have somebody else make the statement. Maybe you should say it. Maybe Eliot should say
it. It was just a range of options discussed as to how we put it out.

Q. So, Commission 77 is a version after those discussions?

A. Yeah. But, again, it was sort of like resolved and I'm not sure when exactly when it would have been sent.

Q. The time on the e-mail is 4:41 p.m.

A. That would have been in the evening, and the original version with my name on it would have been from earlier in the day. I just would have sent it to Christine afterwards to apprise her of the developments. And at that point the issue had already been decided. So, it was whatever I -- I can't really explain what the upshot is. It's just that I'll do that when there's a question about who is issuing it with no particular significance other than that.

Q. So, it is reflected at that point that if this is going to be issued, there is no indication who it would come from? There's no decision at this juncture?

A. It might have been as simple as me writing from my computer on a side screen before I put in
my name. I just don't recall. I can't relate a specific significance beyond the fact that we discussed who might release it if it wasn't me.

Q. Following the meeting on the 17th did you have further discussions with Bill Howard concerning Senator Bruno's activities?

A. Yes. He came back fairly quickly, probably the next day to say: What are we going to do? Is there going to be an internal review or are we going to release it to the media? It was at that point I said, "Stand down." I just wanted to respond to the situation.

Q. So, Mr. Howard came back to you and specifically inquired on the issue of what was going to happen?

A. What was decided, he asked.

Q. Had you discussed with him the potential at that junctures for releasing it to the media on the 17th?

A. I would have said to him: We are going to being talking about it. I don't know that I would have delved into how, what the options were at that point. I don't think I talked to Billy to say we are thinking about doing an internal review
or we're thinking about releasing it to the media.

I can't remember. He was responding to my
original inquiry of him, you know, that I have got
reporters' questions. What have you got? We will
decide and maybe the senior staff.

Q. So, and did you discuss what he should do in
the future about Bruno's itineraries?
A. Not in great detail, just the notion of the
group, the consensus of the group that we continue
to monitor. And it wasn't attached to: And I
want regular reports or anything like that. It
was just: Let's just watch the situation.
Q. Did you specifically ask him to provide you
with information?
A. I don't recall doing so. I don't recall
saying I want it on a regular basis. It was just
like: Let's continue to monitor. He accepted
that, and that was the end of the conversation.
Then, we moved onto like three other topics that
we had.
Q. Did you say anything to him about getting
additional documents from the State Police at that
time?
A. No, but that was pretty much the
understanding. He was implicit in: Let's continue to monitor.

Q. Because he had been previously providing documents?

A. Yes, that's right. I would have conveyed to him and said we decided to stand down for now, and I think he would have understood that it was not like a hard and fast decision; that for now, we're standing down means we decided not to conduct an internal review. We decided to let it lie for the time being, but want you to continue to watch.

Q. That was your understanding on May 17th as to the status of this?

A. Yes.

Q. Did he provide you additional information?

A. He did periodically come back and say he understood another trip was planned for -- blank. Remember, in the intervening time I had a couple of additional questions from reporters. I don't really recall exactly what they would have been precisely, but he would have been keeping me informed as to any developments that came up and he would have been responding to any question I would have had on this matter nature and other
matters.

Q. And in your discussions as to standing down on this now and continuing to monitor, was the Governor part of those discussions?

A. Like I said, he came in. And for a moment he was just like "Eh," without knowing what's on the schedules we really don't know. But, the Governor was not there when the group decided: Let's officially stand down for now and continue to monitor. No, he wasn't standing there when that was decided. I think Baum -- Rich might have conveyed that to him that that was our discussion. But I just sort of let the matter lie at that point knowing I would be back to them at some point. Sometimes he asked a questions about where is that? Whatever happened to -- other times I said, "Hey. There's another trip," or "There's another inquiry, or: We've got to be especially careful given the scrutiny.

Q. It was your understanding that the Governor was aware of the status as far as standing down and continuing to monitor?

A. Most assuredly, he said: Nah, I don't want to go that route. And that was clear from his
testimony to the D.A., the news release he was not specifically aware of, I don't think. But he was aware of the notion that we would do something internally to review the senator's use. I know that for a fact because I mentioned it to him.

Q. You mentioned what to him?
A. When he asked me again about what was going on with the aircraft again, I said we just decided to hold off and that was it. Hold off for now.

Q. When was the next time? When you say when he asked you again when was that?
A. In the days that followed, close to the 17th, a few days afterwards. I think the catalyst for that was Rich telling him. It might have been the 18th. Rich probably would have told him: We're not going to do that. Instead, we are just going to watch things.

Q. Do you know that Rich told him that?
A. I assumed so, because when Eliot came back to me it was with the understanding that we had stood down.

Q. And, was it with the understandings that you were continuing to monitor the situation?
A. He didn't say that specifically, but it was
all kind of implicit. He didn't say again -- He
didn't directly do anything in particular. Put it
that way.

Q. Do you recall what he said?
A. He was really quick and really kind of
cryptic. It's just like: Anything doing on the
aircraft issue? And it's like, no. I think we
have conclusively concluded that with the
exception of two trips for you we should be okay.
And then: Well, what about Joe? Well, we're just
going to watch it. And that was it.

Q. And when does Mr. Howard next come to you
with information on Senator Bruno after the 17th?
A. I wish I had immediate recall of it. It's
probably an e-mail or a note that he would have
sent to me which is in your packet. But it
doesn't occur to me what the next thing was.

BY MR. TEITELBAUM:

Q. What was the conversation just before with
the Governor?
A. Probably the 18th or 19th, shortly
thereafter, a quick one. I mean you have to
understand, I'm like with him throughout the day
numerous occasions, so --
BY MS. TOOHER:

Q. Let me show you what has been marked as commission Exhibit 62, and I ask you if you recognize this document.

A. I do recall seeing it, yes.

Q. Can you identify this document?

A. I think Bill is forwarding it to me and it is representing something that Felton was forwarding to him.

Q. At the body of document, Commission Exhibit 62, the e-mail from Felton to Howard: "Just received another request for ground transportation from that same individual we had last week in New York City." Do you know who that is referring to?

A. I would assume Joe Bruno, the Majority Leader.

Q. And, when this was forwarded to you from William Howard to Darren Dopp, he indicated: Another request had been made. And who did you think that referred to?

A. I assumed it was the Majority Leader.

Q. What was the nature of that request?

A. Asking for use of the aircraft and ground transportation.
Q. Is that the only type of information that Mr. Howard is providing to you at this juncture from the State Police?

A. Yes. Pretty much that's all he ever did. I would occasionally ask the question in response to an inquiry about background information, but beyond -- he never provided me with anything other than that.

Q. Did you get additional information from Bill Howard?

A. Bill Howard, really just like anecdotal stuff about like what transpired in the previous administration. Sometimes they were humorous stories. Sometimes they were: How did you handle the issues? Part of what I always endeavored to do is make sure our actions sort of comport in a well with what others might have done. So, at one point I said, "How did you guys handle these situations?"

Q. What was his response?

A. I think you saw the e-mail that sort of explained how they handled the Governor. But when it came to Joe's use of, you know, ground transportation and use of the helicopter I kind of
1 got an earful.
2 Q. Could you give us a synopsis of the earful?
3 A. There were flash points. They grounded him
4 at one point.
5 Q. This is during the Governor Pataki
6 administration?
7 A. Correct, all during the Pataki
8 administration. And Bill relates these stories in
9 ways that were -- he is taciturn, not like an
10 excitable person. He relays them in ways we
11 really had some issues here. And at one point we
12 grounded him, and at another point he was awfully
13 angry at me. He told me a story that at one point
14 the State Police called up because Joe wanted
15 lights and sirens. At another point the State
16 police called up and Joe had made a specific
17 request for a specific type of vehicle. And Billy
18 sort of relayed that this was a source of internal
19 discussion in the previous administration about
20 procedures necessary, lights and sirens. It's
21 like Bill said the lights and sirens he put a stop
22 to, and that made Joe angry and he called to
23 Cahill to complain about Bill's directive. Again,
24 it wasn't not -- like Bill kind of chuckled about
it. We didn't like think a great deal of it. I
go way back with Joe. I know he has a strong
desire to get from Point A to Point B on time.
When we took office in the administration I said,
"I want to be like Joe. I want our news
conferences to go off at 1:00 as opposed to like
1:30. There was a joke in the LCA about "Pataki
time." You set a one o'clock news conference and
it doesn't go off until 2:00. Those are the kinds
of things that I want to change. And when Billy
was describing this about Joe, I just said I kind
of thought that's Joe. And that's kind of
admirable in a certain way.

Q. Did you get the impression that Mr. Howard
had strong feelings about Senator Bruno's use of
the aircraft?

A. That's a really good question. The notion
-- I think he said, "Yeah, he even tried to get me
fired once." And I relay that to you because it
sticks in my mind.

Q. You are staying Mr. Bruno tried to get Mr.
Howard fired?

A. Over this very point if he said no to having
the lights and sirens on. And I say this in
defense of Bill. That might have led to somebody
thinking, you know, I am getting to get that SOB
for what he tried to do to me. That wasn't Bill.
I'm fairly confident of the guy's mindset. He
wasn't like that at all. He kind of chuckled
about it. But he did relay the story in the
case of telling me about the difficulties they,
meaning the Pataki administration, had with the
issue previously.
Q. The issue of the aircraft?
A. And ground transportation.
Q. And, following Commission's Exhibit 62 which
you have in front of you concerning ground
transportation, did Mr. Howard provide you with
additional information on that ground
transportation he speaks of?
A. He must have. I don't have a recall for it,
but I don't believe I responded to this. I could
be wrong. I just don't recall responding to it.
He was so quick after the 17th, and in my mind it
wasn't that which of a deal. The only thing I do
recall with some clarity as more information
became available including stuff like this, I then
made another round a second time with the relevant
people on the second floor to show them the
documents and asked what they thought we ought to
do. It was at that time Mr. Pope said, "You
really ought to refer it." And Rifkin at one
point like he said: This is an issue. And the
next point after studying it, a couple of days
later came back to me saying: I don't think so.
Q. "He" meaning who came back to you?
A. Rifkin. His initial take was given our
policy, if he's conducting, you know, other
business he might have a problem. Now,
subsequently, Rifkin came back and said, "You
know, Darren, I need to remind you that I wrote
the policy that Pataki was going by. And you
remember" -- and it was a recitation of what we
talked about on the 17th meeting, which is
Rifkin's exact words: As long as there is an
ounce of governmental it covers a pound of
political.
Q. And do you recall when he said this to you?
A. Sometime after the 17th, I know as a result
of me going back to my people the second time to
say: Here's some additional information. He has
used it on at least two times that we know of.
And, again, you know, it's like I just want to double-check because we are standing down. We are in stand-down mode on this. But Mr. Pope says we might want to refer it. What do you think? I queried everybody about Pope's notion that we refer it.

Q. That included Rifkin in that?
A. Yes. Remember, I said at the top that I'm only as good as my ability to interact with people and gain their knowledge. I had three guys that are extraordinary. Not to be insulting, but they rival your experience in ethical matters, with Rifkin Nocente, Pope, and Spitzer. So, it wasn't a situation in which I'm like doing anything other than trying to glean their best intelligence on what to do. And they were all forthcoming about it. It wasn't as though they like dropped everything to review it and search statutes and did a research project, but they gave me the benefit of their off-the-rib thinking.

Q. Part of the benefit of Richard was he relayed to you that he had participated in forming the policy?
A. Richard was: Let me think about it. And I
came back to him a couple of days later and he said, "I looked at the statutes and I need to tell you this." And that was the pounds versus the ounce comment.

Q. And that was based upon the policy as put forth from the Ethics Commission?

A. Then I kind of challenged him: Does it make a difference that we have instituted a disclaimer policy that says otherwise? And he said, "I want to think about that a little bit, too." A couple of days later I sort of reminded him of it but he hadn't had a chance to sort of delve into it. Having known him, he's is in middle of a NYRA negotiation and he was a little preoccupied. He was in contradiction. There's a little bit of contradiction. He was all pound of political versus ounce of governmental versus this notion that you're only supposed to be government. And when I did press Richard on it, he said it would only be a problem if there was absolutely no governmental whatsoever. That drove us back to what we had in the itineraries, which is clearly there are venues for it.

Q. Venues for what?
A. Venues for governmental activity taking place. In each of the itineraries that were produced there were clear things that said, you know, meeting with Mayor Bloomberg covers governmental. Oh, meeting with C.V. Starr; that covers governmental. I can't remember what the third itinerary showed, but each of them showed clear cover for Joe, that he was doing things legally. We sort of took it all with a grain of salt. Obviously, he could point to those things which I said before sort of kind of speaks to if the product of a so-called plot is the travel itineraries, but they show the venues where he was possibly was doing government activities. So, how could we be scheming to damage and smear him when everything we're producing could clear him. That was always like -- I was trying to make people understand that, but nobody seemed to understand it.

BY MR. TEITELBAUM:

Q. When did the conversation take place between you and Rifkin?

A. After the 17th.

Q. How soon after?
A. A few days after. I can't nail it down precisely.

Q. Within a week?

A. Yes. I consult him fairly regularly because -- I don't know if you know him, sir. He's what -- there are three guys with institutional knowledge; me, Nocente, and Rifkin. We are the only ones that really served in the administration before. We brought in a ton of very smart lawyers with no context of things that we were doing. So, I frequently relied on him.

BY MS. TOOHER:

Q. I am going to show you what has been marked as Commission's 34 and ask you if you can identify this document.

A. Again, it looks as though Bill is keeping me apprised of what he is hearing from Preston and others regarding the senator's travels.

Q. And your understanding of what is contained in this e-mail, the bottom half from Anthony Williams to Preston Felton as per Leslie with a schedule below it, whose schedule is that?

A. I would assume it's the Senator's schedule.

And what was described to me was that the State
Police really didn't concern themselves with who
or what he was doing. They just needed to know
where he was going so their investigators --
Actually, it was a key point because that was
another sore point that Bill relayed about the use
of ground transportation by Senator Bruno was he
had asked for investigators to travel around and
specific investigators sometimes. So, I maintain
to you that this wasn't spying. It's just what
was essential for the investigator to do his job
of providing transport services. We don't know
who he was meeting with. We don't know what he
was doing. We only know the places he was driven.
And, you know, that's why when these travel
itineraries and this information came up it didn't
strike me as at all problematic or extraordinary
because what is it that I turn over to the
reporters: Who, what where, when, and why for
what Eliot Spitzer is doing. What I was preparing
to turn over to reporters regarding Mr. Bruno was
just what the State Police did in taking him to
various locations, the use of a vehicle as opposed
to a schedule. That's why, again, absent knowing
was his real schedule was -- Russo's Restaurant,
that could be a dinner or a meeting in the back room. The Sheraton, that could be like, you know, a fundraiser or that could be meeting in a suite on official business. And we wouldn't have any way of knowing that.

Q. Did you do anything to determine what these activities were?

A. No. Again, it's like we would have and could have through internal review. What you could have done at that point it to say: Joe, the itinerary from the State Police shows you were here and here. You are conducting official business; aren't you? And that was, you know, we had that conversation on the 17th as to how you go about it. And it was at that point that I said, you know, that is what you did in the old days. That's what you did under Cuomo, Mario. The version of Marlene Turner was Pamela Brodt at the time. Pamela would have called up and just double-checked. It's like: Guys, it's not anything frivolous; it's real stuff, right? And they would have said: Yeah. We were doing blank and blank. And, so matters were resolved in that fashion.
Q. To your knowledge, did Marlene Turner do that?
A. As of the 17th we just decided to stand down and watch and, I think, monitor. In retrospect it's a little too strong of a word because it involves active review. It was just: Keep us apprised.
Q. Now, we are at the 23rd?
A. Yes.
Q. And, this appears to be another trip by Senator Bruno?
A. Yes.
Q. I am going to show you what has been marked as Commission's 63. And, again, this is the 23rd. There's a note from William Howard, at the top: Fort Drum today. Meeting with Bloomberg added to Bruno. A little further down the thread, Felton to Howard: Note change in schedule.
A. That kind of reassured us that probably wasn't going to be to issue simply because it wasn't clearly official business going on. But, again, remember, continue to watch the situation, continue to monitor. And, to the extent we now know he is meeting with Mayor Bloomberg it's like,
okay. It appears that throughout the process we
go kind of back and forth. Sometimes we think
there really might be something going on here that
we might want to look into. Then, other times,
obviously he's meeting with the mayor. That's
cool.

Q. When you say "we go back and forth," who are
you referring to?

A. The whole group. Remember, I take to
Nocente and Baum and, to a certain extent Spitzer,
the comments of Howard, Pope, and Rifkin. And I'm
a catalyst for kind of internal discussion, but my
stock and trade is accurately reporting what my
people are saying so that the Governor and our
collective group that's the decision making body
has good information from which to decide what to
do.

Q. Did you take the information contained in
Commission's 34 and 63 to those people?

A. I don't think I actually handed them -- put
that in front of them.

Q. Did you give it to any of them?

A. I don't think so. I just would have said:
There's additional trips but they look okay.
BY MR. TEITELBAUM:

Q. You say that you would communicate with Mr. Nocente and Mr. Baum and the Governor the positions being put forth by Rifkin and Pope.

A. Right.

Q. Now, as of the 23rd what was Pope's position that you were communicating to Mr. Nocente, the Governor, and to Baum?

A. We had -- Pope began with the notion that I really should refer to the Inspector General. He didn't change his view, and I reporter that. He didn't change his view on referral until another story appears where the Times Union writes about flights that Bruno is taking with Abbruzzese. It was at that point that he stopped by to say, "I have links to the feds". He didn't describe which feds, but, "We could refer to them."

Q. We are going to get to that. So, as of the 23rd, at least, your testimony is that Pope continued to press for the referral to the Inspector General?

A. Peter wasn't actively involved in the discussions with the group. I consulted him because I valued his opinion and I'm pretty sure
that he maintained that view.

Q. You were communicating his views to three other people. Was that the view that your counsel communicated that he continued to want the referral?
A. Yes.

Q. The same thing regarding Rifkin, what was Rifkin's view that you were communicating to the Governor and to Nocente and Baum as of the 23rd?
A. It's hard for me to nail it down in that period because, remember, Richard had two different views. First, he was of the notion that it really should be.

Q. Should be referred?
A. Yes. And, secondly, he said, "I really don't" because, you know, remember, the ounce-pound comment. So, I can't remember when I would have brought that to people, but I would have noted it at some appropriate point when we were discussing it.

Q. That Rifkin was holding within his head two positions that might be contrary to one another?
A. At one meeting I would have said: Pope and Rifkin both think blank, and now Richard doesn't
think so anymore.

Q. "Blank" meaning referring to the Inspector General?

A. Right.

Q. You testified that the idea was that on the 17th you were to stand down.

A. Yes.

Q. And Bill Howard was going to continue to receive information from the State Police; right?

A. Correct.

Q. And, at least as of the 23rd, you also received information from Rifkin that an ounce of state-related business can justify a pound of non-state related business with respect to the use of aircraft; correct?

A. Correct.

Q. You also testified that you can't tell from these itineraries whether state business as being done or not?

A. That's correct.

Q. So, why are they being collected?

A. We had an obligation to ensure appropriate use of the aircraft.

Q. How are you doing that?
A. Well, I mean, as I sort of related to you before, I thought the best way of doing that would be conducting a review, but we didn't choose that. That's what I sort of advocated and continued to believe. I think you could read from my continued desire to relay information from others on staff that I thought it was not sound long term strategy to let it lie. But, again, it's like -- forgive me. I don't want to sound wishy-washy. But once the decision was made to stand down I wasn't going to, like: Okay. Yes, sir. That's what we will do.

Q. Why are these documents being collected? These documents, as you pointed out, Mr. Dopp, these documents -- and I'm referring now to 34 and 63 -- tell you nothing about the nature of what is going on. For example, at 6:00 p.m. reading from 34, now, a meeting in Russo's Restaurant; right?

A. Correct. Those particular ones tell us little. They're not useless, but that doesn't like -- if you have the obligation to ensure that the aircraft is being used properly and the only source of information is these things, you don't simply discontinue a review. It's like you have
to continue to monitor.

Q. Why? Why is what you are receiving meaningful information given what you have testified?

A. Well, I mean it wasn't particularly -- it wasn't compelling for those two. But what about something in the future? And, then, you'd have to act on that in the future.

Q. You mean if there were itineraries that said, for example, Russo's Restaurant: Raising money?

A. Yes, exactly.

Q. Do you have any itineraries that say those kinds of things?

A. As a matter of fact, yes, the Sheraton. Look at the Sheraton restaurant. That's the same event where he's holding the annual Republican fundraiser. That's one of the catalysts. That's why it's raising our eyebrows.

Q. That's on Commission's 5?

A. That would be Commission's 5, right. That's the thing faxed over from Bruno's office. They told us little, but I maintain to you that we still had an obligation to at least consider what
they were telling us.

Q. Well, forgive me but you, yourself, point out you didn't know what was going on with C.V. Starr; correct?

A. Correct.

Q. And C.V. Starr he may have been conducting government; right?

A. Correct.

Q. And, if he was, then the use of the aircraft was okay according to what you were told by Rifkin; correct?

A. Exactly.

Q. At the Sheraton New York hotel which is referenced here, I mean it may have been a fundraiser; correct? It may have been also doing government business there?

A. Correct. That's what he maintained after the fact. But it was the site of his big fundraiser.

Q. I understand that, but he could also have been doing government business there for all we know.

A. Absolutely.

Q. Unless you look behind it, you will never
1 know; correct?
2 A. You would have a hard time establishing it
3 for a fact, yes.
4 Q. It would be insufficient, certainly, to be
5 condemning it?
6 A. Yes.
7 Q. So, I come back to my suggestion to you --
8 and I am not being critical, understand -- but
9 without going behind what is contained in these
10 itineraries to find out what actually was
11 happening at these various venues these documents
12 are completely irrelevant, are they not, to make a
13 determination as to whether state business was
14 taking place?
15 A. I disagree with the notion that they are
16 irrelevant. They can give you a sense, but they
17 are not conclusive.
18 Q. How does "C.V. Starr" give you a sense of
19 anything?
20 A. What if C.V. Starr was the site of a
21 fundraiser.
22 Q. But we don't know; correct --
23 A. That's correct.
24 Q. -- unless there is an inquiry beyond the
document itself. The document itself really tells
you nothing concerning whether state business was
taking place. Can we agree on that?
A. We can agree on that. I actually make that
point in trying to get you to consider the fact
that if this were some kind of plot to smear, the
product of the plot would not be so helpful to
Bruno in demonstrating that he was doing state
government work. Why were we collecting this
information? We had information from the
reporter. He said, "I want to see itineraries
from you and Bruno and I want to see flight
manifests from you and Bruno." The only thing we
had that passed as itineraries was this very
sketchy document.
Q. When you provided these documents, the
itineraries to Odato -- and it was at the end of
June; right?
A. Right.
Q. Did you communicate to Odato that the
executive chamber had formed an opinion that an
ounce of state business justifies a pound of
non-state business?
A. We would have discussed what the law was.
Q. You did that?
A. Yes.
Q. You did that yourself?
A. Yes. More to the point, I said, "Dude, you're going to have to figure out what this means because you're not going to know too much unless you get the schedule."
Q. But you communicated to him the ounce and pound notion?
A. Yes. It was well established.

BY MS. TOOHER:
Q. After you received the information by e-mail, 34 and 63, did you continue to receive information from Mr. Howard?
A. I believe so, yeah. Basically, it's sort of like, you know, every time he was using the aircraft we were notified.
Q. Every time Senator Bruno was using the aircraft you received notification from Mr. Howard?
A. We received some note.
Q. That commenced in the middle of May?
A. The beginning of May.
Q. How long did that continue?
A. Right up until the time that the FOIL request was honored.

Q. You received e-mails from Mr. Howard?

A. E-mails. And, he came down and mentioned "another request today."

Q. And, did you get other information from Mr. Howard beyond the itineraries?

A. I don't recall any other information than just those.

Q. When you discussed earlier that there was a point where Bill Howard relayed to you that the documents went way back.

A. Um-hmm. Early on, in early may. And I think there is an e-mail where I sort of conveyed to Rich. We were trying to figure out, well, we have this obligation to monitor but what can we use to sort of ensure that it is being used properly? And, that's when Bill told me that and that's when I shortly relayed it to Rich, after the fact.

Q. That fact being --

A. That there are records going back.

Q. What was your understanding as to what those records were?
A. Something that was a reasonable facsimile of an itinerary or schedule akin to what Eliot was providing, what Eliot would provide, because that was my request to Bill: As I am going to be providing the manifests, the schedules, what do you have that is similar for Joe, if anything.

Q. And did you relay to him that you wanted schedules similar to what you provide for Governor Spitzer?

A. No, because I knew that we didn't have a schedule. But Billy's thought was that we had something that spoke to wherever he was being driven.

Q. This was after he provided you with Commission's 5?

A. I think it was before -- I think it was before. It was early in the month when we talked about what would be available. Remember, that's what sort of Odato asked me: What's going to be available, and I would have checked with Billy and he would have said that.

Q. You believe that was early in May?

A. I think so; before the 17th.

Q. Was it before or after he had given you
Commission's 5?

A. Before. Remember, the sequence is:

Reporter asked me what's available. I say: I don't know. I will find out. I turn to Bill and Bill says, well, obviously, the manifests and I will see what else is available. And I would have said: Well, the reporter would be looking for anything akin to a schedule or itinerary. And he said, you know, "I'll check." And, maybe a day later he came back and said, "I think the records go way back." That's when I sort of relayed to people -- or subsequent to that I relayed to people there were records going back that speak to a kind of on-the-ground, you know, itinerary, log, some type of record of what he was doing when he was there.

Q. Did he ever provide you with the records going way back?

A. You now, when I said later on, "Will that be FOILable and do you have that," he said, "I'll go back and check." And the only thing he came back with were the Commission's 5. Whereupon, I said to him, "But I thought you said the records go way back." And he said, "I will find out what the
deal is." And, then, he came back with the travel records, and then I said to him, "Why does one look different from the other?" And, then, he said, "Because sometimes they are called in and sometimes they are faxed over."

Q. So, at this point your testimony is that he indicated to you he had the records he provided you with?

A. He didn't say he had them.

Q. He said they existed?

A. Yes.

Q. He provided you with Commission 5?

A. Right.

Q. And, then, you asked him for additional records?

A. I said, "What about the rest?" And he said, "What do you mean 'the rest'?" And I said, "I thought you said the records go way back." And he says, "oh, I'll find out."

Q. I am going to show you what has been marked as Commission's 45. Do you recognize this e-mail?

A. Yes.

Q. And, this is an e-mail from you to Richard Baum?
A. That's right.

Q. And this is, apparently, May 23, 2007?

A. Yes.

Q. Can you identify this document?

A. Remember, on the 17th we concluded that we would stand down. But there were open questions. Which Herb has sort of pointed out, what can you really tell from this from this. It was thereafter that, you know, Bill came forward with this information. And it was right about this time that I consulted Pope.

Q. When you say "this information" what are you referring to?

A. The fact that there would be additional itineraries, ground travel things. And it was then that I kind of showed it to Pope and that's when Pope sat at my desk and said, "Here's what I think you should do."

Q. What is it you showed to Pope on the 23rd?

A. The itinerary or itineraries. I don't recall whether I had one or two. I think it was just the one.

Q. Commission's 5?

A. Yes. And the "new and different" way to
1 proceed was rather than conducting an internal
2 review which we had already said we would stand
3 down from, maybe we should refer to the I. G.
4 Q. Why do you say, then, "new and different way
5 to proceed" regarding the media?
6 A. Because referral to the I.G. would relieve
7 me of the obligation to interact with the media.
8 All's I would have to say is that the matter is
9 under review by the Inspector General. We have
10 referred it to them for their review.
11 Q. So, this is not taking the back to the
12 media, but passing it --
13 A. No, no. We made the decision not to go to
14 the media. But when Pope says: You really ought
15 to go to the I.G., that in effect is really a
16 media strategy because it relieves me of the
17 obligation. If the reporter said: Give me the
18 information. And, what would I be able to do at
19 that point is say: I'm sorry. I can't comment.
20 I have no information for you. It's being
21 reviewed by the Inspector General.
22 Q. Did you discuss the media aspect of the
23 decision to refer to the Inspector General with
24 Mr. Pope?
A. No. I was kind of shocked that he was
telling me the things he was, and I quickly ran to
Baum and Nocente.

Q. When you say you were shocked what were the
things he was telling you?

A. That I have a criminal liability if I didn't
refer it. And he shows me the statute of the
damned law that said -- forgive me for not knowing
it; I don't recall it. But the upshot of it is if
you had information about possible misuse of state
aircraft you must refer. And I said, "Peter, we
really don't know." "Darren, 'possible' means any
possible." I kind of -- He spooked me a little
bit, to tell you the truth.

Q. So, Mr. Pope was saying to you that you had
an obligation?

A. Me, personally, right.

Q. To refer?

A. And to do so in a timely manner.

Q. And what was it that he felt you were
referring to the Inspector General?

A. The records and other information regarding
Senator Bruno's use of the aircraft.

Q. And that was based on Commission's 5?
A. Based on Commission's 5 and the disclaimer.

Remember, the lawyers on staff kept matching up the two and kept trying to determine whether attesting in writing to the fact that you are only conducting legislative meetings, you know, how that compared with the standard policy and practice of ounce versus pound. Now, did our disclaimer influence ounce versus pound; right? How would you weigh those two things? That was the lawyerly discussion that happened.

Q. That discussion occurred with who?

A. You know, pretty much everybody. It's like Rifkin, Pope, Nocente, and Baum. I didn't really participate in it except to listen to what they were saying.

Q. You were present for the discussion, though?

A. I was sort of like the catalyst for it, because once Peter said what he said to me, I immediately went to Nocente and then I told Baum about it. And it's like when I tell you that we discussed in ad nauseam internally, we were like agonizing over what the ethical thing to do was with Pope and me at various point saying we really ought to refer, but with others saying, just as
Herb has noted, but we really don't know anything from this. There's no smoking gun. There's nothing that says you can't but, more to the point, it shows places where he might.

Q. But did you show that to Pope? Did you indicate to Pope the ounce versus pound analysis?

A. No, just to the others. I might have, but it was kind of quick. Peter comes in and makes pronouncements and then departs. He came in. I showed him the materials. He sat down -- he says, "Get out of there." And he typed up the I.G.'s web site and shows me the things. I didn't wait too much longer to go to Nocente to say what I heard.

Q. He told you that you might be criminally liable and walked out?

A. Yeah. That's his style. It's like, you know, yeah. I mean we laughed, but I was kind of spooked about it.

BY MR. TEITELBAUM:

Q. This wasn't a joke; was it? Did you think he was kidding you?

A. No. But I mean he just like punched me in the shoulder and then departed. That's Peter.
He's a prosecutor's prosecutor. Whenever there was -- I would push back and say, "Oh, come on, Peter. We really don't know." And he said, "Whenever there's a question you should refer." That's why I went to Nocente and Baum. And they were dismissive, but he made quite an impression on me. And they said don't worry about it, never mind. And I said he said I have to do it in a timely fashion. And the comment was: It all depends on what "timely" is because we just don't have anything now. More to the point, you know what Bruno's going to say; he's just conducting official business. I said okay. A little weird, but okay.

BY MS. TOOHER:

Q. When you say you were discussing "in a timely fashion" with Baum and Nocente, is there any discussion about continuing to gather the information?

A. One didn't naturally follow from the other except in my mind which was that knowing what Peter was saying, it was imperative for me to at least continue to have Bill review and monitor the situation.
Q. Because, now, you are concerning about your
own personal liability?
A. Yeah. It's like Peter's a dramatist at
times, but he's the former head of our criminal
division for eight years, a good friend, and
former Inspector General. And, I said, "Are you
sure?"
Q. And did you say to him: Are you sure?
A. Yes, I did, "Are you sure?" And, more to
the point, it's like, "What do you want to do
create World War 3 here?" But, then, I'm like --
the reporters are going to be asking about it.
This is going to come out sooner or later. Don't
we want to have done the right thing by either
internal review -- and I raised internal review
again -- or referring it some place? And it's
like: No!
Q. They specifically told you, no, don't pursue
it?
A. Yes, it's absurd.
Q. And, did they tell you not to pursue the
issue of Senator Bruno's use of the aircraft?
A. That didn't follow. It was just the kind of
understanding that you would continue to monitor
in the event that -- you're right, these things didn't tell you a hell of a lot, but maybe something in the future would that you'd have to act definitively on. I think that's what they were thinking. I can't really put myself in their shoes at that point, but most assuredly I presented Pope's notions to them and they said no. But it truly would have been unethical to say: No, never mind. Let's not ever look at this again. That would be turning your back on possible misuse use of taxpayer money. That's not what they were doing. They were just saying no, not now. We just don't have enough to go on. But what was unsaid or maybe even said is, "Let's continue to monitor.

BY MR. TEITELBAUM:

Q. Was anybody else use of the aircraft being monitored?

A. Everybody's use of the aircraft was being monitored. It's just that Joe was the most prolific user. Patterson was the next most prolific user. And I asked that very question. It's like, ultimately, records for everybody using the aircraft during that time were laid out. I
knew for a fact, and I asked, "What about Shelly"?

Shelly had every so often a religious obligation
and had to be certain places by sundown. And
every so often in the past during the Cuomo years
he made a request of Eliot, "I need to get there."

Q. You mean Mario Cuomo?
A. I'm sorry; I mean Mario. "I need to get
there. I will stay with you at the leaders
meeting, but can I have the chopper to get me down
by sundown?" So, this is the way it was. So,
Shelly used it. I asked for everybody else's use,
so I may as well.

Q. So, am I to infer from what you just said
that Howard was collecting information from the
State Police on anybody who used state aircraft?
A. He would have had anybody else who had been
using it, right. But the only other person was
Patterson, and I already had access to that
information from Marlene Turner.

Q. You are saying -- the only person you are
saying who had information with the State Police
who wasn't with the executive chamber was the
Majority Leader?
A. It wasn't worded exactly like that. Marlene
Turner signs off on all the requested uses of the plane. When Marlene Turner told me it's Joe, I then turned around and said to Bill, "I understand Joe is using it. What records do you have?"

When it was Patterson I said to Billy and Marlene, "What records do you have?" It was Marlene that produced Patterson's records. Actually, I take it back. Marlene gave me a description of what Patterson was doing. I had to go to Patterson's people to obtain those specific records.

Q. Was that in connection with the press request or was that in connection with an ongoing internal monitoring?

A. It was all prompted by my initiative early in May based on the reporter's inquiry: Who else is using the plane? So, I would have turned around to Billy and Marlene and said, "Who is using this asset?" "Eliot, David Patterson, and Joe Bruno were the only ones using the plane during that period of time.

Q. Was the monitoring going on in connection with the press request or something else?

A. The start of it was as a result of the press request. And, you remember, it's the press
1 request that gets us looking into it, knowing that
2 we have an obligation to ensure proper use. So,
3 once the monitoring had begun, once the review had
4 begun, to all of a sudden discontinue it, even
5 though, as you say, you are not finding anything,
6 you have an obligation to continue to review
7 because you know the request is coming for
8 comprehensive information on who is using it.
9 Q. Before May was Senator Bruno using state
10 aircraft?
11 A. Yes. There were twice monthly trims from
12 time immemorial.
13 Q. Were you monitoring those?
14 A. No, only after the 1st. The State Police
15 were keeping records on those, but that
16 information is only being forwarded to us after
17 the reporter's request came in.
18 Q. So, the internal monitor procedure commenced
19 as a result of the press request? Is that your
20 testimony?
21 A. And the subsequent conversation internally
22 will concluded that we should be monitoring. The
23 press request raises it.
24 Q. Do you mean on the 17th?
A. No, a little bit before that. Remember, I go to my people being the Governor and Secretary saying: Some pretty comprehensive requests refer for explanations of who is using the aircraft. And the result of that thing is: Well, we'd better find out. You'll take care of that, Darren? Yes, I will. I will talk to Bill. So, yes. Early May is when we start to say: Wait a minute. This could be a problem for us. We better know is using aircraft and for what purposes.

Q. On the 17th or at any time before then did you represent to Baum that you had a FOIL request?

A. I don't think I used those words. I just said I had a lot of reporters' inquiries. And I hope wouldn't have been shy about saying they were pretty intensive, pointed ones.

Q. Is your answer no?

A. Yes. I never used the word FOIL to Rich, not until later.

Q. In words or substance, did you communicate to them you had a FOIL request?

A. No. I am positive that at some point I said it's going to be FOILEd.
Q. That's not what I'm asking you. I'm asking you: On the 17th or before did you represent to Mr. Baum that you had a FOIL request?
A. No, because I didn't.
Q. The same question with respect to Howard.
A. Same thing. I didn't have a FOIL request.
Q. Did you ever make that representation to Mr. Nocente that you had a FOIL request on or before the 17th?
A. I never told anybody that I had a FOIL request because I didn't have one. I would have instead said I have a lot of reporters' inquiries. What do you have that would be responsive to a FOIL request?
Q. To "the" FOIL request?
A. Or to a FOIL request. What do you have that would be responsive to a FOIL request? That's what I said to Bill, and that's the only way I could have proceeded. But I did not have it, no. Again, I like maintain to you, given the intensity of the reporters' inquiries I was not a genius in concluding that there would be a FOIL request. It was like obvious from their intense questioning and I knew what was coming. And any
communications director worth his salt commences
that and knows the answer to the question before
it finally comes.

BY MS. TOOHER:

Q. In your understanding as to what was coming,
was a request concerning travel?

A. We discussed it fairly thoroughly, Odato and
I. It's like, "What have you got? And I told him,
"I am going to give you schedules and manifests
for Eliot. For Joe I just have manifests." "Well,
what about schedules?" "Well, I don't know about
that." "How could you not have schedules? How
can you not have some kind of itineraries?" "I
don't know. I'll check." That's what encouraged
me to go to Billy and say, "What do we have that
corresponds to a schedule or itinerary?"

Q. Would it be your understanding that
Commission's 5 was a document of the executive
chamber under a FOIL request?

A. I don't follow you on that. Commission's 5
to me would have been produced to me in response
to my request to Bill about what do you have that
would be akin to an itinerary or schedule. And he
would have said: This is all we have.
Q. And if he said to you this is not something that would be produceable under FOIL --
A. I'm the press guy. I am responding to media inquiries. I say to him, "What do you have that would be responsive to a FOIL request?" Here's my filter. Felton and Valle and all of those other guys there, they wouldn't have given it to him unless they concluded it was a public document. Billy wouldn't have given it to me unless it was a public document. I looked at it and said, "Ah, this has got to be a public document and responsive to a FOIL." I wouldn't have stopped there. I then would have showed it to everybody else. Nobody at any time said: This is not going to be FOILable, or: This isn't a public document. To the contrary, we looked at it and knew it paled in comparison in specificity to everything that we were voluntarily providing to everybody from the Governor.

Q. If Mr. Howard have given it to you in response to your internal inquiry, and if he had said to you: This is merely for use on your internal inquiry; this is not something that would be produced under FOIL --
A. That would be burned on my forehead for all eternity, but that never happened.

Q. If you had said to Mr. Howard that: I am looking for documents pursuant to an internal inquiry and he had given you documents --

A. Internal inquiry is --

Q. Would those be something that you would consider to be records you would turn over under FOIL?

A. There's a red flag. That means someone in an internal review, like David, like Mariah, or somebody else, has to go over that with a fine tooth comb to be sure it's appropriate because, Bingo. You have reached a trigger for me, because if there is an official internal review and investigation, A, you don't give anything to anybody during that because it's an ongoing investigation. And, B, you have to ensure it's appropriate for release. But, remember, my request to Bill and remember my media inquiries: What have you got that's responsive to a FOIL.

Q. I thought you testified earlier that you were gathering these documents in furtherance of your own intentional inquiry.
A. No, no. I suggested that we conduct one.

But my purposes were only: What do you have that's responsive to a media request? I wouldn't have conducted the internal inquiry. I suggested that it might be a course of pursuit based on my experience in the Cuomo administration, but I wouldn't have been part of that process. That's why I liked the process of an internal review because it put the brakes on me giving anything to any reporter. I never would give anything to a reporter when there's an ongoing investigation. Boom! It gets me out of my media problem and, to me, it was the ethical and right thing to do because, like Mr. Pope said -- and he gave it to me good -- any time you have something, you should really do something with it.

BY MR. TEITELBAUM:

Q. I thought you testified that after the 17th the purpose of your receiving information from Howard and his purpose of receiving information from the State Police was a monitoring purpose; is that correct?

A. Correct.

Q. It was not for the purpose of handing
documents over to the press; correct?

A. Once they told me to stand down that was the case. But remember what I advised them. They are going to come back, meaning the reporters are going to come back, and ask for the information, at which time that happened -- and guess what I did. I consulted everybody saying, hey, I've got a request. What do you want me to do with it?

Q. Did you tell Howard that you were monitoring the senator's travel for internal information or words to that effect?

A. I believe I told him we decided to stand down for now in terms of conducting an internal review and we had not decided what to do, whether to follow through on the media or whether to do something else.

Q. How could you then rely on the notion that what you were given was FOILable at that point?

A. I just like assumed.

Q. Why?

A. Because that was my original very clear
request of him: You know that I am preparing in
response to media inquiries.

Q. But it changed; didn't it?
A. Yes.

Q. In other words, the notion that this was
press inquiries or activities in response to a
press inquiry -- that, understandably, had changed
on May 17th. It was no longer monitoring for the
purposes of press inquiry; it was monitoring for
the purposes of internal use?
A. Not inexorably. We still could have
revisited internal abuse. We still could have
revisited referral. We could have released to the
media based on whatever we found.

Q. Were you concerned, Mr. Dopp, that after you
told Howard that the indication was to stand down
and you didn't know --
A. Stand down from handing the media.
Q. To the press, right. You were going to
stand down from that. You didn't know -- what I
say "you", you and the executive chamber didn't
know what direction you were going to take after
that, all right, weren't you concerned about
whether having delivered that piece of information
to Mr. Howard that he was giving you documents that from his perspective or from Felton's perspective were FOILable?

A. No. It didn't raise a concern for me. I apologize if you see something wrong with it. FOILable documents are public information that should eventually be released. And, remember, my position with all of my colleagues, you know, was that sooner or later they are going to ask for this information and I believe we are obliged to provide it.

Q. I thought you said having told Howard that this was in anticipation of a FOIL request prior to the 17th that you had assumed, well, Howard wouldn't give you documents that shouldn't be released to the press because Felton wouldn't give Howard documents that shouldn't be released to the press. But, come the 17th the releasing to the press is no longer the necessary strategy; correct?

A. It wasn't like a final decision. It was like for now. 'Stand down' doesn't mean never. It just means we don't have anything to go on. Why would we conduct an internal review?
Q. I understand. I'm just trying to get at the reliability of your assumption that the documents that you are getting from Howard and he is getting from Felton, once Howard receives these pieces of new information as to the ambiguity of the purpose for which he is delivering documents to you, your continued reliance that people are looking at these documents on the assumption that they are going to be released to the press. That's all I am trying to get at.

A. It may have been a failing on my part that I didn't like think of it in the terms that you are describing. But I just wasn't -- that didn't occur to me. I see your point at this point, but in the course of doing it, moving fast on a whole host of issues, I was just like -- this administration has a serious obligation to ensure appropriate use. If we are not going to conduct a further internal review, if we're not going to refer to somebody else to do so, we better sure as hell at least continue to monitor. I would do nothing with the information that was provided to me without then going back to double-check that they are public documents before any of the
options. I was in possession of them and, if at
some later point we decided to do a review I would
have turned them over. If at some point we
decided to make a referral I would turn them over.
If I was going to release to the media I would
most assuredly say: Here's what I have. The FOIL
request is coming. Should I release?
Q. And you did that, you said?
A. Yes, sir.
Q. You checked with Nocente?
A. Nocente was out on the given day the FOIL
request came in. I checked it with Baum and
Spitzer. And, subsequent to that I told Nocente
about it.
Q. You showed the Governor the documents?
A. Yes. It wouldn't have been at that
particular moment. It would have been a couple of
days before it went out.
Q. Before they went out to the press --
A. Yes.
Q. -- you showed him the documents?
A. He looked at them.
Q. Did you show him before the request?
A. I believe it was before the FOIL request.
came in, but it was at a time I was confident that
a reporter is coming down. And what I said to him
was, "Odato's coming down. I know what he's going
to ask about. Are you okay with releasing the
documents?" I showed them to him. And one of the
minor errors is the Soares' report was that it
wasn't Nocente who said Orenstein to me; it was
Spitzer who said Orenstein to me. Spitzer looked
at the documents and said, "Dan Orenstein." He
then proceeded to tell me the story of how there
was a new prosecutor on the case and it concluded
-- I'm not a lawyer and I might mangle this -- but
the upshot to me was that legislative business and
fundraising, that one does not preclude the other
legislative business. He then thought it's like
we are obligated to release it since the reporters
are asking for it. His mindset and Baum's mindset
at the time was to trust my judgment on these
things. And, "How? What's going to happen?" And
what I said to him was, "I think we take a little
bit of a whack. I think Patterson takes a little
bit of a whack. We've got two trips; Patterson's
got one trip. And, basically, all we have on Joe
is three trips for which he has total cover. So I
don't know how this story ultimately turns out. I think it's like any one of the dozen stories on this that have had occurred since I've been in public life where we all take a little bit of a whack for expensive use of taxpayers' aircraft where we mix politics and government." And the boss was, you know, a little nervous about it. And that's why in subsequent e-mails he was constantly asking, well, "How's it going to come out? How's it going to come out?" That was our expectation at that particular moment; that we would give the story to Odato who was notorious for doing this that whacked us all pretty good. That is responsive. I think I can follow through a little bit. But I learned from Odato a couple of days -- after the FOIL was in, he said to me, "You'll never believe what Bruno is doing. He blew me off, wouldn't give me schedules." He was really angry with him. That's neither here nor there. This was communications policy. But I submit to you that the scandal was produced by Joe's communications staff staying: Screw you to Odato. They wouldn't tell him what the use of the airplane was all about. They wouldn't confirm
that government business had been done. So, at
that moment, you would have had the story that I
predicted with Spitzer taking a whack for the
Monroe County trip and the California trip,
Patterson taking a whack for meeting with the
National Party Chair, and Bruno taking a whack for
attending his party's fundraisers while also
mixing together with business.

The story would have went on to say that
everything under the law was fine. But that story
-- you'll see in my package -- has been written at
least six times since I have been around in
government.

Q. When you say you showed the documents to the
Governor, you showed him all of the documents that
ultimately went into the hands of Odato?
A. It was a big package. I showed him
representative samples of each. I showed him a
itinerary, your Exhibit 5. I showed him the
flight request. I showed him manifests, and
showed him our schedules. And, again, his
interest was -- Joe was like an afterthought to
him, you know. He was just concerned about how
bad of a whack we were going to take.
Q. Because of his use of the aircraft?
A. Yes. He didn't want to look like a hypocrite. And I'm like, "Boss, I think we're really covered, especially when you look at the range of people using it. They all have some government apparently. We just don't know about Joe. We think so. We think he's got the venues to point to. But without the schedules we just wouldn't know. What did he do? He then repeated what I just said to him. Yeah, without knowing the schedules how would we ultimately know? And I like, "Are you okay with releasing? It's like they're asking for it." And he said "It's all public information." And my response was, "Yeah, public information." "When's it going to happen? When is he going to run the story?" "I don't know."

Q. And, you told the Governor that it was public information based on what?
A. Just the review of everybody that I would have brought it to.

Q. Who was that?
A. Pope, Nocente, Baum.

Q. I thought you testified that Nocente wasn't
Q. So, Nocente looked at those documents and they are releasable?

A. In an early form. He didn't say: These are releasable. Go ahead. But I said everybody concludes these are public docs. He looked at them and he asked me one question on point about the manifest. And he said, "This is what they have?" And I said, "Yes. It's the way they keep their records." He looked at the other materials, the sheets. Respectfully, anybody who looks at these cannot conclude that it's not a public document. "Did they study it and go back and consult the law?" "No, because it was like a no-brainer that it was."

Q. When did Nocente look at the documents?

A. I don't think he saw the final package before it went out. I think he would have seen them in one of our sessions between the 17th and the time the FOIL was received. And at the time I finally put it out he would have seen the scheduling information, the manifests, and some of these.
Q. "These" being the itineraries?
A. Yes. And he also would have seen the
disclaimer which he was proud of for having
instituted.
Q. Did you tell Mr. Nocente at the point in
time when he was looking at the documents that you
didn't have a FOIL request in hand?
A. No, I didn't say that.
Q. In substance, not those exact words, and
inform him that there was no FOIL request?
A. No, I didn't say it like that. I just said
there's avid media interest. I might have said a
FOIL is coming.
Q. And Pope looked at the documents, too --
A. Yes.
Q. -- around the same time?
A. I can't nail it for each one because they
are staggered. Rifkin did too and, of course,
Rich. And Eliot did as well.
Q. And all of them saw Exhibit 5?
A. Yes. That was the one that was like
directly from Joe. I mean I don't want to like
misrepresent it. It's like I brought it to them.
Did we sit down and pore over it in massive
detail, no. They all did this. (Indicating) And, what else? What else have you got?

Q. How long did it take to look at the documents? More than five minutes or less than five minutes?

A. I think less than five minutes. It's a quick trip from the manifests. The Governor at one point looked closely at the flight request, the disclaimer, because that was kind of the lynchpin of it for him. I apprised him of the legal discussion between -- does the disclaimer change the ounce versus pound dynamic.

Q. I take it from your testimony that Marlene is not part of your group? While she may -- I just want to confirm that.

A. I confirm that.

BY MS. TOOHER:

Q. After you received the e-mails from Mr. Howard concerning the senator's schedules that you received on two occasions, e-mails from Mr. Howard, did you discuss it further with the Governor at all, the e-mails that you were receiving?

A. No, not really.
Q. Did you discuss them with Mr. Baum?
A. I just would have told him that Billy continues to inform us. But most of the time he already knew that because the request is actually coming to Marlene. So, she would at this point after having the concern raised and raised in a significant way, Marlene and Rich were discussing in detail whether to approve.
Q. So, Marlene Turner is letting Mr. Baum know as the requests are coming in now?
A. From the Majority Leader.
Q. As each request comes in?
A. Most assuredly, because Rich is the one who has the ultimate sign-off. Now, we have got two principals in the process, Eliot and Rich. I need to protect Rich and make sure he is doing the right thing because he is the one who is ultimately accountable for sign-off. And I would have informed him to do your -- in the Cuomo years, Andrew Zambelli didn't have a problem with saying: No, we're not going to give you the aircraft at a given time. And he was kind of surprised by that. And I said, "Dude, you don't understand the power you wield here. Your word is
final on the matter. And, furthermore, you have
got an obligation because at some point down the
road they will be looking at it. And if we are
lax and look the other way, there's a problem for
you and for Eliot and the whole administration."

Q. So, your understanding following the 17th is
that Marlene Turner is checking with Baum as each
of the flight requests are coming in?

A. Yes. He actually sort of confessed to me
that he wasn't paying too much attention to it
beforehand and just allowing Marlene to sign off.

Thereafter, he had he was.

Q. After the 17th?

A. Right. After we all sat down and recognized
that we think we're okay with the Governor. We
were a little concerned about those two trips but
open question with regard to Joe; what should we
do. So, in the wake of that I do believe -- and
you'd have to get this from them -- they were
talking and conferring closely as to what to do
about Joe's continued requests.

Q. Were they getting any additional information
beyond the flight request form?

A. I can't speak to what they might have been
getting. I just think Marlene might have asked
another question of the people requesting it,
which was usually secretary to secretary.
Q. Were you providing any of the information
you were getting from Mr. Howard to Mr. Baum or
Ms. Turner?
A. I was apprising Rich but not Marlene.
Q. So, you were letting Mr. Baum know you had
gotten additional information regarding the
scheduling?
A. Yes. I would say something like, you know:
Billy says there's another question of use of the
helicopter. And, he said, "Yeah, I know. Marlene
just talked to me about it."
Q. Did you provide him any other information
concerning the ground itinerary, if you will?
A. No. He didn't ask for it, and it was sort
of like we knew we needed to convene again and
discuss it, but he would like ask me, "Well, is
there any like smoking gun in there or anything
like that?" And I was like, "No, as before, we
don't know absent review of the schedules."
Q. And did you discuss the ground
itinerary/smoking gun issue with the Governor at
all at this juncture after you have now received additional information concerning Mr. Bruno?

A. I would have said to him at some point it was beginning to appear that there was some question as to whether Joe was living up to the spirit of the disclaimer. And he would have said, "What does the gang think?" And I would have said, "Absent review of the schedules we just don't know for sure, but it does raise some questions."

Q. I apologize, Mr. Dopp. I think it's just the way you speak and the characterizations of "you would have said." Did these conversations occur?

A. Yes -- yes.

Q. I am going to show you what has been marked as Commission's Exhibit 46. This is an e-mail, and the initial caption is: Lawrence to Richard Baum dated May 27, 2007 at 11:55 a.m. This is a two-page document. About two-thirds of the way down in the e-mail thread -- apparently it's from Lawrence. I understand that's the Governor?

A. Um-hmm.

Q. So, the Governor to you and to Richard Baum
and to Christine Anderson. And he talks Tuesday about the Rupert meeting. The last sentence in that thread: "I also want to discuss a post-session strategy regarding Bruno and travel generally."

A. I am absolutely positive this has nothing to do with aircraft but, instead, speaks to responding in the regions, conducting regional travel. My communications thing is you have got the LCA which you minister to. But the LCA has preconceived notions, sharp attitudes about things. I was constantly urging them to get out, to do regional travel, go to the communities to make our case for our legislative agenda. It wouldn't have been anything to do with Bruno's travel. Instead, it would have been: What are we confronted with at this moment? We've got to get our legislative agenda passed. We are at loggerheads with them. The only thing that gets them to do it is by going into their districts standing up and saying you are against campaign finance. This is my advice and counsel to the Governor, and I was pretty sure he was responding to it. I said, "Boss, you've just got to get out."
You've got to get out of the LCA. You've got to stop talking about fights with Joe Bruno and we've got to talk to the people. Remember, this is our standard practice. We walked into office committed to taking our case to the people on a whole host of the issues.

Q. But at this same time you are discussing the Bruno travel issue?

A. Yes, I am. But I am really confident that this message from Eliot had nothing to do with that.

Q. Why are you so confident of that?

A. That post-session strategy is winning the media for you. This is going to be way too much information for you. But one of the things after the budget was settled, we got just about everything that we were looking for. We lost the communications battle when the Long Island Republicans claimed they were the winners. We necessarily had to stand down for making that aggressive public case because if you do that, they'll balk at voting it. We get an agreement but it doesn't pass in terms of legislation for several days. During the intervening time, they
1 went back to their districts and made the case
2 that they want and we had to stand down until they
3 actually passed it. Then, we needed to get out on
4 the road. Eliot knew that dynamic from the budget
5 dialogue and wanted, once the legislative session
6 was over, not to wait but to run to the regions
7 and claim success in the areas for the things we
8 got done.
9     Q. How was that with Bruno?
10     A. Bruno is he guy saying: I won; he didn't.
11 It's uber politics, but it's the business of what
12 we are really talking about. This other stuff
13 about travel and Joe is like, I mean, given
14 everything that's ready -- and you will raise an
15 eyebrow at this -- we thought the story that would
16 come out would take a whack at all of this. We
17 didn't think what was some massive smear against
18 Bruno. We weren't plotting to damage him about
19 this because I keep coming back to the point that
20 the information was not conclusive.
21             (INTERVIEWEE: Request for recess)
22             May I offer a quick additional point?
23 When Mr. Spitzer and I were arranging the
24 materials in front of him, he would have had no
knowledge of any notion of reconstruction of
documents or any controversy that might have
existed between the State Police over that. He
wouldn't because I didn't. You know, we really
never relayed that there was any kind of
consternation or anything like that. In my
characteristic lingo I said, "Everything's cool,"
and these are public documents, obviously." I
believe that would have been the extent of it.
When Eliot gave me sign-off and when Rich gave me
sign-off it was with the belief that -- similar to
mine -- that, you know, A, it had been vetted and,
B, it was appropriate.
Q. You mentioned that there was a story in the
paper concerning Senator Bruno and Mr. Griesen.
A. Right.
Q. That was in the beginning the June?
A. I think so.
Q. Was there any reaction from the chamber at
that time about the story?
A. I think you'll see from the e-mail of mine
that I said, "Man, I guess this is what Joe's
people were so jumpy about." I said that because
in the week that followed all of my entreaties ort
of come together, and:  Come on, guys.  What's the matter?  They were like -- I want to spare you the language of it all, but it was like screw you!  It was antagonistic in some weird way.  I found out later they are adamantly convinced that we were responsible for Joe Bruno's FBI investigation.

Q. "They" being --
A. The Majority Leader's office.  And when they tell me these kinds of things it's like it's just not true.  Why do you think such things?  And they maintain that.  So, when the Abbruzzese story appears the response that I kind of got was Pope saying at that moment that if the feds are looking at his airline travel, maybe they would like to look at this, and I could provide that information to them if y'all think its appropriate.

Q. Mr. Pope relayed this to you at the time the story was released?
A. Right.

Q. Who was present for this conversation?
A. Just me and Peter; he stopped by my office.

Q. And suggested to you that perhaps you might want to provide --
A. And another option on the flight stuff is I
could provide it to the feds.

Q. And did you discuss that conversation with anyone?

A. Yeah. It was similar to the previous one when I told David and Rich about it and they said, "Is he nuts? It's not a federal case."

Q. And did you discuss the travel issue with Rich Baum or David Nocente at that time in any further detail?

A. No. I just related to them what Peter had said. That was probably the conclusion of the discussion or the discussion of options for referral. Remember, before that was Billy's note that maybe the IRS should be informed. And we had previous conversations about the others that I went through. But the last one on the list was: What about the feds?

Q. And what about the feds?

A. The last one was, "I could give it to the feds who are investigating Joe," Peter said. And it was rejected.

Q. Who did you send that e-mail to?

A. It wasn't an e-mail. It was just Peter stood before me, said it, and then I took it to
Rich and David. And even I agreed with that.

It's like come on. It's like not a federal case.

If anything, you know, you find a problem with Joe
and the aircraft he ought to reimburse because
reimbursement issues were live for us in the
beginning of the year with the Pataki charter
flight. That's what we were seeking from him.

You see some e-mail traffic in there where Dicker
is asking about the flights: Doesn't he owe the
state money? And Howard is negotiating with
Catalfano, Pataki's person on the outside after
the administration has concluded, about having
them reimburse, having their campaign reimburse.

BY MR. TEITELBAUM:

Q. When you say "feds" you mean the United
States Attorney's Office?

A. Forgive me -- Mr. Pope.

Q. The Federal Prosecutor?

A. The Federal prosecutors. I thought the
Southern District was doing the Abbruzzese step.

But I don't recall exactly what he said.

Q. I am talking about your conversation with
Mr. Pope when he suggested that one option was to
present the documents to the federal authorities.
A. They were already investigating.

Q. This is the U.S. Attorney?

A. Southern District.

Q. Wherever, but the United States Attorney?

A. Yes, sir.

MR. KINDLON: I think it's both in the Northern and Southern District, but that's just what I heard on the street.

INTERVIEWEE: My people come out of the Southern District. Michelle Hershman, Peter, and the others that all served there.

MR. TEITELBAUM: I think Peter is in the Eastern District.

INTERVIEWEE: Sorry about that.

BY MS. TOOHER:

Q. I am going to show you what has been marked Commission's 47. This is a June 3, 2007 date. Is the Bruno/Abbruzzese article?

A. This is really just what I described in shorthand. And, "I think the travel story would fit nicely in the next" -- that's when I went to him saying that Peter says in the mix of reviewing air flights they might want to do this. And what ensued was what I just described.
Q. What ensued was a meeting with you and --
A. Here's what happens. Just prior to me sending this, Pope came in and said, "Perhaps we should send it to the feds. Another alternative would be to send it to the feds. I went and said, you know, the following: I think a travel story would fit nicely in the mix. And, then, I went to Rich down the hall to say what that meant. And, what that meant is Peter thinks we could give it to the feds who are already investigating flight issues.
Q. And, you only had this discussion with Rich Baum?
A. No. I later on mentioned it to Nocente as well.
Q. What did you say to Nocente?
A. The same thing; that "Peter suggested we give it to the feds."
Q. And, the response from Nocente?
A. We're all brothers, but siblings sometimes form rivalries and awkwardness. Pope and Nocente are like this. (Indicating)
BY MR. TEITELBAUM:
Q. When you say "like this" you mean in
conflict?

A. Just like they're two sweet but totally different guys who sometimes are at odds and sometimes have arguments.

Q. When you say "like this" just for the record, you are whacking your fists together and that indicates conflict.

A. Yes, sir. It was conflict. They would sometimes become angry at one another but have total respect for each other's intelligence and experience, but rub each other the wrong way in strange ways.

BY MS. TOOHER:

Q. Do you know if either Mr. Nocente or Mr. Baum had a discussion with Mr. Pope about the possibility of the travel story?

A. I don't think they even wanted to do that. They were so dismissive with me over the notion that even if Peter raised it to them I think they would have feigned that they were too busy to talk about it. They just thought it was absurd.

Q. So, they were not interested in pursuing the travel story on Joe Bruno at this time?

A. They weren't interested in sending it to the
feds. But the notion persisted that we should continue to monitor, and I would have used this as another opportunity to say -- They would have said to me, "Any media interest?" And I would have said, "Nah. Everybody has been too busy with legislative affairs, but -- what's the date? Q. June 3rd.
A. I would have said nothing of now -- nothing of late.

Q. You would have said or you did say?
A. I'm sorry. I did say. I told them I haven't had anything recently. Jim hasn't come back to me nor has anybody else. Everybody is pretty much preoccupied at that particular moment with end of the legislative session stuff, the continuing impasse over congestion pricing and campaign finance. We were holding leaders meetings throughout the process. It dominated the interest of the reporters, making airline traffic stuff kind of a second tier issue at best at the moment. Instead, it's the furor of Albany and the big three, the big five trying to come to some agreement to close out the session.

Q. During the same time frame Mr. Baum and Mr.
Nocente are coming back to you and specifically inquiring: Have we heard anything on Bruno?

A. No, not precisely. They were just too otherwise busy. I would have said: Hey, do you remember the old aircraft issue? Peter thinks we should give it to the feds, and that would have elicited chuckles with a little bit of derision mixed in.

Q. And, did they at any time say to you, "Forget about that. It's a dead issue"?

A. Their derisive comments and their chuckles were -- and "That's absurd. Never mind that."

Q. So, at that point was it your understanding that this was a dead issue?

A. Never completely. It would never be dropped because of our ongoing obligation to ensure appropriate use. But those weren't options that anybody wanted to pursue.

Q. So, you are continuing to monitor this on what basis?

A. Coming back to the other notion; we are responsible for appropriate use.

Q. Well, you testified earlier, I think, that Richard Baum is responsible for monitoring this
and Marlene Turner is responsible for monitoring this. Where is your responsibility in this?

A. I protect them. This is something that could come back to bite them in the media. That's my job to protect my principals. I protect them at any and all costs. That's what I do. I think about their exposure and the administration's exposure to issues.

Q. But at this juncture, they have told you there is nothing in these records that show anything illegal. Richard Rifkin has told you if it's an ounce we're in for a pound. And, twice now, at least, the concept of referring this to the I.G. has been rejected as unsound. It doesn't appear that there is anything to monitor.

A. I guess I'm not like conveying -- you never in this business on a matter like this reach a final conclusion. To do so means like you're opening yourself up to like a tremendous problem. Issues had been raised. You have to continue to monitor.

Q. But the issues, from what I have heard, have been resolved.

A. In no way could these simply resolve. We
could hold them in abeyance as we continue to monitor. That's the only logical course with this. You couldn't just say based upon those two little itineraries that we have now found we can conclude we don't have to worry anything about Joe Bruno. What about the future? What about additional trips he might have taken?

Q. What about the past? Did you seek the itineraries for January, February, March, and April?

A. Yes.

Q. What happened in that regard?

A. They said they weren't in. They hadn't been retaining them, and the only things they had were from May on.

Q. Did you give a directive to Bill Howard to make sure this information was preserved or institute a recordkeeping practice or anything like that?

A. Nothing so formal. I just said, "Billy, that's kind of weird; isn't it?" And he goes, "Yes. They were supposed to keep these records to protect themselves."

Q. When did this conversation take place?
A. As a result or the 17th when it was clear that the only records that he can produce would be from the beginning of May on. I would have said, "But he took eleven trips and I thought you said 'the records go way back'". And, yes, they existed but they weren't in the habit of keeping them is what he told me. I'm sorry. They are weren't in the habit of retaining them. They did maintain but didn't retain until the issue came up in early May that we might want to do that because there may be a question of improprieties.

Q. After you had the conversation with him that the records didn't exist did you follow up with Mr. Baum?

A. I don't really recall doing so. I just know in one of our meetings they said, "What about the other trips?" And I would have said they weren't retaining them. They had them for awhile and threw them out.

Q. Was there discussion at that time about instituting a policy with the State police to retain these records or maintain these records?

A. I think it was apparent given the fact that we were not interested in to do so moving forward
and not throw them out. But it wasn't like something Rich or I or anybody else said: You hold onto those records from now on moving forward. Instead, I think it must have been a conversation between Howard and Felton in which Howard said, you know, that: You were supposed to have been retaining these given our problems from the past. And, again, I'm just speculating that that is what occurred.

Q. You don't know, though, that this conversation took place?

A. I don't know that that occurred. I don't know that. I just know that moving forward they were going to retain them as they supposedly were in the part but inexplicably stopped doing so for some reason.

Q. When you say "supposedly" were in the past, that was based on the representation that Howard made to you?

A. Yes, that the records go way back. And I guess I feel somewhat vindicated in my recollection of it, because that's what Odato wrote about and Brendan Lyons wrote about on the weekend that, indeed, the Pataki was keeping those
records and retaining them, maintaining them and retaining them. In the bottom of a Soares report he notes that -- I think that's the catalyst for the newspaper requesting them. They could have provided them, fine, for the Sunday story.

Q. Those records were provided from the State Police, not from the executive chamber?
A. I don't know the answer because I never looked at that. I can't tell you how it worked out.

Q. Were you aware of the records being kept at the time that you were speaking with Mr. Howard?
A. He told me the records exist from all the way back.

Q. But had you ever seen these records?
A. No.

Q. So, you had no personal knowledge?
A. No. Like I say, I'm only as good as what these experts convey to me.

BY MR. TEITELBAUM:
Q. Did you delete e-mails on your personal BlackBerry concerning this matter?
A. Sir, I didn't have a personal BlackBerry.

Q. Personal computer?
A. My personal computer wasn't used for this type of stuff. My wife and two kids. And the only exception that I have to that is, as I told you before, I had some personal rapport with Fred Dicker. He's like a history buff and interested in antique firearms. He would occasionally send me a blog or e-mail or a link to a gun he thought was extraordinary. That was usually corresponding to a weapon used in family's military history.

Q. I'll tell you what's puzzling me, which is why you were involved in monitoring activities as opposed to somebody else in the executive chamber or some other agency given your job. Why were you monitoring?

A. All I can tell you about that, sir, is we were a new administration. I was the guy with more experience in the matters than just about anybody else. We lost Michelle Hershman who is a person I would have turned to to handle such a matter. But, again, I maintain to you that my activities in this regard wouldn't have been like something that I wouldn't have been consulting with others and apprising others of.

I also maintain to you that given the
fact that it was an inquiry from the media, that I had an obligation to sort of follow through and get the answers.

Q. I want to draw a distinction, Mr. Dopp, between your activities to respond to the media and your telling Mr. Howard to monitor. I'm not talking about the monitoring function. I understand why you would be involved in responding to the media. I'm focusing in on monitoring and I'm having a hard time understanding why you as communications person, why you and Howard are monitoring through the State Police the senator's travel.

A. It kind of fell to me by default. I brought the matter to the attention of the senior circle and I said I'm going to do this; is there any objection? And there was none. It's a new administration. There's a thousand things going on. We're doing a lot of different stuff. Was I the appropriate person to do so? I thought so because I had done similar things in the Cuomo administration. But others might take a different view. Others might say Michelle Hershman or someone akin to Hershman's critical First Deputy
role did not yet exist. Rich was otherwise occupied. Mr. Nocente was otherwise occupied. The three of us made the true inner circle with the Governor, so it was a communications issue in my mind. I believe, again, I didn't do anything inappropriate. I turned to the appropriate person, Mr. Howard, for information and then brought the information I received back to the group. Somebody else could have filled that role after me serving as a catalyst for it, but it fell to me and I was doing it. And I believe I was doing it in an appropriate and ethical way. But you are right; if this occurred two years down the road, it might have been Olivia Golden, the First Deputy, but she was brand new at the time. It might have been Michael Balboni, the Second Deputy who was brought in as like the uber security guy. But it was me and Bill Howard, Bill being the individual who worked with these guys for twelve years and knew the most. He was our expert. I trusted the information that was received from him was accurate, appropriately obtained, and suitable for release to the media. That's my mindset at the time. But, you know, like I say, in the
Spitzer Attorney General's Office it would have been handled in a slightly different way. And I presumed that in the future it probably would be handled in a slightly different way. But recognizing who I am, I have sort of diminished myself in some respects but also hold out to you that there's three guys have been with him. And it's an issue that speaks to his integrity and I was apprising everyone along the way. You might conclude it was inappropriate. Neither I nor my colleagues thought it was inappropriate, or at least nobody told me that it was.

BY MR. TEITELBAUM:

Q. Let me put it to you squarely. There is evidence in the record here that you were not authorized to do your monitoring; is that false?

A. I guess I would have to ask what possible evidence that could be.

Q. I'm just asking you whether it is false.

A. Yes, dead wrong. Absolutely dead wrong. I have a responsibility to my principal and to Baum. They are my two principals. I have got a responsibility to ensure we were using that aircraft properly. I did it for Cuomo. I did it
in different respects for Spitzer. I've kicked this around an awful lot. What should I have done or could have done differently. Looking the other way would have been -- forgive me for saying so in a provocative way -- unethical. In washing my hands and saying: Never mind. I'm not going to look into this matter wouldn't have been right. By the same point, not relaying the information to the media after receiving approval to do so, in my mind would have been wrong because the public has a right to know this information. And, so, I am the central person who had the wherewithal, ability and the experience in those matters so I handled it. Nobody during the process ever told me: You're out of bounds; you shouldn't be doing this. They said after the fact say, well, maybe it would have been better handled by somebody else. Why didn't you raise that during the six weeks we were discussing it ad nauseam? And, believe me, as a communications guy, as a team player, should anyone have ever said that to me I would have said I would be only too happy because I am buried with other real work.

Q. Let me be more specific. There is evidence
in the record that you were told that: "This is a
dead issue" on the 17th, okay. Is that false?
A. Yes, completely. How could that possibly be
a dead issue when we have an ongoing obligation to
review? More to the point, I still had divergent
opinions on the second floor telling me to do
otherwise. Again, it's like dead issue in terms
of conducting an internal review based on the
information we had at that particular moment.
Anyone who says: Over and done with and we aren't
going to discuss it further is not being straight.
That would have been illogical and wrong in every
respect and doesn't comport to the facts. We
talked about it again and again, several times.
Q. When is the last time you had conversations
with any of the people you have been talking about
today: Mr. Nocente, when is the last time you had
conversations with Nocente?
A. They cut me off right after I was suspended.
I'm sorry. I have not spoke to Spitzer, Baum, or
anybody else except for Mr. Nocente since that
day.
Q. When did you speak to Nocente?
A. I called him periodically or he called me
periodically checking in as to how we're doing.

We were extremely close. We go back twenty years and we were extremely close. I, during the process said, "What did I do wrong?" He wouldn't engage in that topic. I couldn't talk about it.

I said, "Well, what's going to happen? I have been cleared by Mr. Soares. People who commit crimes are allowed to serve until in their final adjudication. Why are you doing this to me and my family?" I was devastated by it. I was getting hammered in the papers. I would say to him, "David, why aren't we pushing back? Why aren't we saying things, correcting things that are obviously false?" He was always, "I'm sorry, Darren. I can't talk about it." Eventually, I told him, "I am going to depart because I can't stand not working and I can't stand being in limbo forever." And it was at that point he said, "No, wait. You didn't do anything wrong. We want you to return but we can't talk to you about the venues for doing so until we're done here, because we don't want anybody from this body to ask the question: Has there been collusion.

Q. By "this body" you mean the Commission?
A. Yes, you all. I said, "David, it's me you're talking to. What am I supposed to do here?" And, he said, "We'll put you back on the payroll." And it's like: How about our future? What are we going to do? "I can't talk to you because the first question out of those guys at Ethics will be did you talk about the substance of this matter with us? And I don't want that to happen." So, he wouldn't talk to me.

Q. Were you ever told why you were suspended?
A. No.
Q. They just suspended you?
A. You were apprised of it but I read about it.
Q. "You" meaning your lawyer?
A. I'm not trying to trash them or I would never be disloyal to them no matter what like personal conflicting opinions say. But that wasn't right, you know.

BY MS. TOOHER:

Q. At a certain point in time you received Commission's 1, 2, and 3. These are the transportation assignments for Senator Bruno.
A. Yes.
Q. Do you recall the circumstances under which
1 you received these documents?
2 A. Somebody dropped them off. I would have
3 already Commission 5, and he added to it the other
4 ones. It was at that point I related -- I
5 questioned him as to why they look different. It
6 was at that point he told me "Sometimes Bruno
7 called them in and it was a longhand transcription
8 from the secretary. Other times, it was their
9 faxing an itinerary over directly."
10 Q. Had you seen this information prior to the
11 information contained in 1, 2, and 3 prior to
12 receiving these documents?
13 A. No. Just when Bill gave them to me was the
14 first time I saw them. Nobody else had them that
15 I was aware.
16 Q. I want to show you what has been marked as
17 Commission's 23 and ask you if you have ever seen
18 this document before.
19 A. It comports to the information that would be
20 on the travel assignment stuff, but I don't recall
21 seeing it. I mean I might have, but I just -- I
22 recall this because this is what Billy gave me for
23 my purposes which is to release to the media.
24 Q. That's actually the package, 1 through 4.
And you are saying Commission's 1, 2, and 3 were provided to you by Mr. Howard?

A. That's correct.

Q. Commission's 23 wasn't provided to you by Mr. Howard? And 23 is right in front of you.

A. I don't recall seeing this, no. It looks like a compilation of all three. It would have been broken out into all of these, but I am just guessing.

Q. In fact, it is the same information contained in Commission's 1, 2 and 3 that is in Commission's 23.

A. Got it.

Q. But, you were not provided with 23 by Mr. Howard?

A. I don't remember seeing it.

Q. And you did not direct Mr. Howard to break out the information in Commission's 23 into three separate documents?

A. No.

BY MR. TEITELBAUM:

Q. I think when Ms. Tooher asks you about 23, if you took out the handwritten portions of it would you have seen the document absent the
handwritten portions?

A. No. I just don't recognize this.

Q. Any part of it?

A. I recognize the substance of it because it comports with the substance of the transportation assignments. But I don't know why it had been mashed together into one.

Q. Commission's 1, 2, and 3 were provided to you by Mr. Howard?

A. Yes.

Q. And, did you have any conversation with him about the information contained in 1, 2 and 3 before he provided it to you?

A. Not before. But once I received it, it was just as I described: I said why does it look different from what you previously provided to me? And, he gave me that explanation.

Q. When you say "previously provided to me," do you mean Commission's 5?

A. 5, yes.

Q. And, what was the explanation he provided?

A. Sometimes Mr. Bruno's office was in the habit of faxing over an itinerary. Other times he's in the habit of having his secretary call it
over. And that would have resulted in somebody taking it down longhand and then writing it down or typing it in this fashion.

Q. What was your understanding as to what Commission's 1, 2, and 3 were from Mr. Howard?

A. The equivalent of Commission's 5 and the only available information that we would have had about his itinerary.

MR. TEITELBAUM: Just note that Mr. Kindlon is leaving the room. And you're saying it's okay to continue?

MR. KINDLON: Yes, it's okay to keep going. I'll be back in about 30 seconds.

(The previous testimony was read.)

INTERVIEWEE: Yes. It would have comported with what the reporter was asking for. The reporter was asking for anything that spoke to the schedule or itinerary for Joe. In response to that, I asked Bill what do you have that would be like that? And he said, "This is the only thing we have."

Q. So, when he gave these to you it was your understanding that these were documents at the State Police?
A. That was the only conclusion I could draw.

He was working with the State Police to provide information that would be responsive to my anticipated FOIL request.

(Mr. Kindlon entered the room.)

Q. Had he ever relayed to you that he was having difficulties in getting information from the State Police on Senator Bruno's schedules?

A. No. There was no sense of anything problematic or strange about it. I kind of trusted -- he had this longstanding relationship with people at the State Police. I didn't even know it was Preston Felton that he was dealing with. And, I don't think it was always Preston Felton. I just know he was tight with them from way back, and I sort of trusted that -- as I said before, the information was cleared for release, accurately and appropriately maintained, and technically accurate.

Q. And what was that based upon?

A. My belief from Felton and Howard's professionalism.

Q. So, it was your understanding that Mr. Howard was dealing with Preston Felton?
A. I didn't know it until a little bit later on. I just knew he was interacting with appropriate people at the State Police. He didn't explain who or how or what.

Q. Do you recall when you first received those documents?

A. I couldn't pinpoint for you, but obviously it would have had to have been after the last -- the 27th I'm pointing to. That wouldn't have been responsive to -- the 27th wouldn't have been timely for our purposes because it wasn't ready yet. So, that came later. But these three came shortly after the 24th which is our last date here.

Q. If I told you that they were delivered to Mr. Howard on or about June 6th would that be in accord with your recollection?

A. That would have been after the 24th at some point. But June 6th seems a little late for me, because I know I would have received information about the 3rd and the 17th prior to that, shortly thereafter -- maybe the 24th came in later, but I had information about the 3rd and 4th prior to that.
Q. You had information in Commission's 34 and 63 concerning those schedules, the e-mails you had received previously?
A. Right.
Q. Did you have additional information? Had you received Commission's 1 or 2?
A. I can't tell you exactly when I would have received this. Obviously, it would have been in time for inclusion in the packet that was going to be presented to the reporter. But it was vetted by all of my people.
Q. I will show you what has been marked as Exhibit 35, the print screen on an e-mail. It's from Michael Kopy to Preston Felton with three attachments, and the attachments are Commission's 1, 2 and 3. There has been evidence prior in this matter that this was the time in which Preston Felton was provided with Commission's 1 through 3 and this is when he forwarded the same to William Howard.
A. I really can't speak to it. I had no contact, communication, or involvement with anybody at the State Police at any time. I met Felton in a cabinet meeting and shook his hand,
but there was no other communication with him.

Q. I am going to direct your attention to Commission's 2, which is the itinerary, the listed itinerary for May 17th. Were you provided this document from Mr. Howard as well?

A. Yes.

Q. Did you have any discussion concerning Commission's 2?

A. No. Just that we've got the original sent over from Bruno's office.

Q. The original, being Commission's Exhibit 5?

A. 5, yes.

Q. If you could take a moment -- I would like you to just take a moment and compare those two documents.

(The witness complied.)

A. I just realized they are different. They don't speak to the other -- to the Sheraton event or anything else.

Q. But the information contained on the May 17th, Commission's 2, is different from that contained in Exhibit 5?

A. Right.

Q. You seem to have noticed that for the first
1 time?
2 A. Yes, indeed. I really can't explain why
3 since this was sent over -- since I was told it
4 was sent over by Bruno's office and since I had it
5 in my possession earlier. I just like --
6 actually, i never did what you just directed me to
7 do, compare the two. I don't know why they look
8 dramatically different. I can't explain why.
9 Does this mean he didn't meet with C.V. Starr and
10 didn't go to the Sheraton at that point? I can't
11 figure that out.
12               MR. TEITELBAUM: You are pointing to
13 Exhibit 5?
14 INTERVIEWEE: That's right.
15 Q. And, when you provided the documents to your
16 people: Baum, Nocente, the Governor to review,
17 did you provide Commission's 1, 2, 3 and 5?
18 A. No, I did not provide this. I provided
19 this.
20 Q. So you didn't provide Commission's 2?
21 A. No.
22 Q. Did you have Commission's 2?
23 A. I don't really recall seeing it. Maybe I
24 looked at it and said I have already gotten that.
And I probably pulled it out and put the two together. Basically, what I had was 1, the 17th. And I was asking what about the others. And he gave me this, and I said, "I have already got this, and I have got -- I have already got that. And I stuck the two together.

Q. Why would Mr. Howard provide you the information concerning the 24th and the 3rd and 4th when he had already sent you e-mails with that information? Had you requested some sort of formal documentation on those dates?

A. I don't recall saying that. It's just that those internal e-mails wouldn't have been things that I would release to the media. Instead, I would be releasing something that was this, the transportation assignment. I wouldn't have been releasing an e-mail about a transportation assignment. I would have been releasing what I believed to be an official document on transportation assignment.

Q. So, the format that you had received the information in earlier, the e-mail from Mr. Howard, is not something you would release to the media?
A. Not internal on anything like that. I would have said, "What do you have that I can release to the reporter?"

Q. Did you ever say that to Bill Howard?

A. Sure.

Q. An e-mail is not acceptable; what do you have that I can release to a reporter?

A. His act of apprising me along the way, and others, that the travels wasn't the same as okay, when we assemble the package in response to the FOIL request. What should we put in there? You wouldn't put in an internal e-mail with a lot of extraneous information on the top and bottom. Instead, you would deliver this.

Q. Is it your understanding that an internal e-mail is not produceable under FOIL?

A. It may be. But in this particular press you are talking about, you want some type of consistency in the records you are providing and something that is clearly public information. I really wouldn't divulge e-mails from Preston Felton or some of the other people on there that I didn't recognize. That's not a FOILable thing except under certain circumstances. It's work
product. That's something else. But it wouldn't
occur to me to include that. A, it's not official
and, B, it's probably problematic.

BY MR. TEITELBAUM:

Q. What do you mean that the e-mail sent to you
on Senator Bruno's travel was not FOILable?
A. I mean I just don't know who the other
individuals were -- I mean Anthony whoever. I
glanced at that and I wouldn't have concluded that
I would take something so informal as an internal
e-mail to be a FOILable document.

Q. Are you telling us in your mind that the
only FOILable documents are "official" documents?
A. Something given to me with the clear
understanding that I was going to provide them to
a reporter. And when I asked for manifests and
anything speaking to an itinerary or schedule, I
would assume that. I sort of stressed the point
that when I am asking for information that would
be responsive to a FOIL, an e-mail where he writes
"T" and says: Hey, there's another trip -- I want
him to look for documents that I can release to
the media.

Q. You understand that 1, 2, and 3 were created
1 after the fact?
2 A. No one ever told me that.
3 Q. Did you ever learn that?
4 A. In the media.
5 Q. That's how you learned that?
6 A. Right.
7 BY MS. SULLIVAN:
8 Q. Didn't Mr. Howard tell you the records did 
9 exist but were no longer retained?
10 A. That's correct. But, remember, that's in 
11 response to my question: What happened to the 
12 other eleven? He is giving me three. And I'm 
13 saying: What happened to the other eleven? Well, 
14 they existed but weren't retained. Here, when I 
15 asked him the question: Why do they look 
16 different from the first one you gave me, the 
17 answer was: Sometimes they are called it in and 
18 sometimes it's taken down longhand.
19 Q. Did Mr. Howard ever say to you the word 
20 "synopsis"?
21 A. I don't remember that word. Travel 
22 assignment is the word we used. I would have said 
23 "logs" had he said, "No. They never have logs; 
24 they are travel assessment." Forgive me for
pointing it out, but I think I remember testifying that he didn't know about reconstruction; that Felton didn't tell him about it. I just know that had he told me about reconstruction, I would have like flagged it for discussion internally as to whether it was problematic or not. Instead, when he gave me these, in my mind clearly in response to my requests for information to give to the media, that's one level of -- it's a security blanket for me. The fact that Felton was producing it for us is one level. The fact that Bill is looking at it, my review of it is the next level, and I am looking at it saying clearly a public document. And, then, I take it to my people and they look at it and nobody certainly raises a concern.

BY MR. TEITELBAUM:

Q. You were told by Mr. Howard that the ground itinerary information was sometimes in handwritten form on pieces of paper; is that correct?

A. I was told that by him; that the State Police needed to know where to pick up and deliver the Senator and that they sort of -- in getting this request underway from Joe Bruno, he was
calling in directly to the state police barracks. That was a little bit of a breach in protocol which was another thing Bill was miffed about. He was calling in sometimes faxing an itinerary, sometimes saying: I need you to pick me up here and drive me here, here, and here.

Q. In what form was this information contained?
A. Secretary to secretary. The secretary would be calling up the secretary of the State Police or a dispatcher at the State Police saying: I need you to pick up Bruno and take him here, here, and here. That was the raw material for this production.

Q. So, when you say "it was the raw material for this production," was it your understanding that 1, 2 and 3 were created from other documents or other information, interviews? Do you understand that?
A. I didn't put probably enough thought to it. I just asked the question: Why does one look different from the other? And it seemed plausible. It was a little weird or loose in terms in terms of recordkeeping practices in my mind. But I just assumed, A, because Felton gave
it and Howard was giving it to me that it was okay. And, again, I looked at it and it didn't strike me as extraordinary because it was not terribly descriptive.

Q. I want to hone in on the issue of it being a document created after the fact and your notion of what an official document is. You seem to be saying these are official documents and FOILable absent a FOIL from one of the accepted categories in the statute. You will agree with me that you understood that 1, 2, and 3 were created from information contained on other documents?

A. I didn't think of it in that way. I just thought they were recording what happened based either on an itinerary or telephone call.

Q. But after the fact; correct?

A. Is not contemporaneous.

Q. In other words, when you say secretary to secretary, are you telling us that you believe 1, 2, and 3 were created during the communications between the secretary from, I guess, Senator Bruno's office and the secretary from the State Police?

A. Right.
Q. And 1, 2, and 3 were created then and there with respect to those conversations?
A. That was the logical assumptions. I mean it's like you needed to have -- Bill said we needed to have this. They were supposed to be keeping it to protect themselves. So the notion that like they had it, they lost it, it was longhand and they had to reconstruct it, basically that never entered my mind. If I could take you back the that moment, it's like --
Q. You were never told that?
A. No. It's like -- and the notion of it, it's just like it wouldn't have occurred to me. It's like you're talking about the State Police. We're talking about the absolute necessity in sending an investigator -- not a trooper but an investigator -- out on a mission. They have to have something. And when I said, "What have you got" this is what they produced to me. Nobody, with the exception of the quick discussion of why does it look different, that's all I heard from them.
Q. What was answer to why it looks different?
A. Sometimes they faxed it over directly -- that's what Exhibit 5 was -- and sometimes they
1 called it in, Bruno's office.

2 Q. So, you surmised from that piece of
3 information, 1, 2, and 3 were created as the
4 result of a call-in situation?
5 A. Yes. I mean a secretary is on the phone
telling the State Police: This is what we need to
do, and somebody saying okay. Boom, boom, boom.
6 And my logical assumption is that a travel
7 assignment for Joe Bruno was being handed to the
8 trooper and that the trooper was putting this on
9 his clipboard in his suburban and using it to do
10 his job, and when the trooper was done with it he
11 was bringing it back to the office and it was
12 being retained, and this is what they are going to
13 be providing to me.
14 BY MS. TOOHER:
15 Q. And, do you have a direct memory of what
16 happened to 17, Commission's 2?
17 A. I think at the time Bill was in my office
18 and said: You have reproduced 17 and I've got
19 that here. And he says: Oh, yeah. I just didn't
20 look closely to see that they weren't the same.
21 And I just went boom, boom and boom and I put it
22 together and yanked this out (indicating) because
I already had it.

Q. What was your understanding as to 2, if this was the faxed version and this -- Commission's 5 being the faxed version -- and then 2 is now a different version?

A. Forgive me for not putting two and two together, but it didn't occur to me. I wasn't like -- I wasn't looking that closely. Again, this so pales in comparison. And I was like: "Billy this is kind of lame in terms of recordkeeping." And, "That's all they were doing. That was it."

Q. So, you specifically addressed this issue with Mr. Howard?

A. Yes. I talked to him and asked why they looked different. And, then, I said, "Well, I've got this. Why don't we just use this?" So, I did that. But, truthfully, I didn't compare and contrast because this isn't a concern for me now, because, you know, if we are talking the 17th, I mean maybe these things were erroneous, but I don't think so because I know the 17th is the big event that the reporters are all jazzed up about. The 17th at the Sheraton was Joe's big event.
This transportation assignment doesn't appear to show him going to the Sheraton or to C.V. Starr. And I mean at this moment --

Q. This doesn't appear to contain the same information that the actual itinerary in Commission's 5. Commission's 2 does not appear to contain the same type of information as Exhibit 5 has.

A. There's an anomaly between 5 and 2 which I can't explain. I just didn't look at this closely. Remember, what I'm dealing with here is reporters asking about the big Republican fundraiser at the Sheraton on that day. There is extensive media coverage on Joe attending that event. And why that doesn't appear here, I can't explain.

Q. What did you do with these documents when Mr. Howard gave them to you? And we are saying he gave you 1, 3 and 5 at this point?

A. I began to assemble the package that I was going to provide to the reporters. It would have appeared just like this: Travel assignments, another one that would have been flight requests, another one that would have been manifests for
Joe, manifests and schedules for Eliot. I just
would have like -- the ultimate package to the
reporter was in this fashion.

Q. When you started to put these documents
together what did Mr. Howard give you when he gave
you Commission's 1, 3 and 5?
A. He would have given me manifests of
Patterson, Spitzer, and Bruno, and he would have
give me transportation assignments for Bruno.
Marlene Turner would have given me schedules for
Spitzer. And Charles O'Byrne, Chief of Staff for
Patterson would have given me his schedules.

Q. Did you get all of this information at the
same time?
A. No, it was kind of staggered. But all -- I
had had some of it brought together, but I needed
to complete the package after finally reviewing
and talking to Odato as to what he really wanted.

Q. When is this happening?
A. Toward the end of June.

Q. So, you received this information from Mr.
Howard in early June?
A. Yes.

Q. What did you do with it?
A. Again, we are in stand-down mode, so I just put it in my file.

Q. When you received it from Mr. Howard did you discuss it with anyone else?

A. No, not at that particular moment.

Remember, we are in a period with kind of like media inquiries and the mode of nothing really doing right now, so just hold onto it. So, I waited per my instruction until there was a media request. Then, that's when I went back to everybody saying the media request is in. The FOIL is actually coming. I'm assembling the materials and I've got most of them. What do you want to do?

Q. When did you get the media request?

A. You've got to be a little bit more specific. It's like the original media request?

Q. The media request you just spoke of; there we're in stand-down mode and then I tell -- who do you tell?

A. Basically, Odato came back. And you will see an e-mail where I'm in there saying: You have got to be nice to him. We need a favor. I'm asking him to stand down from another FOIL
request. And it's at that point that he actually
raises: What about that other request that I made
of you? And I said, "I've got those materials."
And I said, "What you want me to do?" And he
said, "Well, you said you'll put it on a piece of
paper." That was at the end of June.

(Commission's Exhibit 78 was marked for
identification.)

Q. You have been given what has been marked as
Commission's 78. I believe you were just
referring to an e-mail that you needed to be nice
to him. I am going to ask a big favor of him
soon.

A. Andrew's investigator thought that this was
some kind of like efforts from me to gin up the
other story. Instead, I have been struggling with
Jim over the previous few days -- actually, a few
weeks -- with his request for a pork list
submitted by the Legislature. That list, you
know, as a long time communications person I
regard it as public information. But I was asked
by Nocente in response to this FOIL to see if I
can get him to stand down from it.

Q. Did you receive a specific FOIL request from
1 Mr. Odato in that regard?
2     A. I think Ms. Treisman had. He had already
3 asked me for it repeatedly in the ten days or so
4 that followed.
5     Q. And, you had indicated you didn't want to
6 provide that information?
7     A. Internally, I sort of argued, you know,
8 saying: How can we refuse that request? And it
9 came down to like a funny situation in that Paul
10 Francis, the Budget Director, gave his word of
11 honor that that list wouldn't be released. And my
12 people, Mariah and Nocente, asked me to see if I
13 can convince the reporter not to go forward with
14 that. I did my best to say to him that that was
15 word of honor stuff and, you know, hey, I sort of
16 admitted to him that I thought he was probably
17 entitled to it. But I asked him to reconsider,
18 and he said okay. Subsequently, I found out --
19 and I didn't know that at the time when I was
20 first talking to the D.A. that he didn't really
21 stand down. He said that to me then, but the
22 newspaper really wanted the list and continued the
23 FOIL request and it was ultimately denied. But,
24 that was the favor I was asking of him. I wanted
to protect Paul Francis' honor and relationship with his counterparts, and that was the request I made of him.

Q. When asked about that stepdown, Rex Smith, the editor for the Times Union, denied that that was the favor and denied --

A. I don't think he denied that that was the favor. I think he denied that they stood down. I had represented to the D.A. that he made the request and he agreed. But I'm almost positive -- Rex wasn't saying that that was the favor. I know that Jim said okay, but I interpreted that to mean that he did stand down. Ultimately, I found out he didn't upon reading Rex's notion. If you read Rex's comments: No, we didn't stand down; we were refused. And, again, they were miffed about it.

And myself, I felt they should have got it, but it was out of my hand at that point.

Q. That's the favor to which you are referring?

A. Yes. Look, it's a personal favor to sort of protect the honor of Paul Francis who's a friend and a colleague. I did so both at Francis's request and Nocente's request.

Q. Immediately following the end of session,
Mr. Odato is in touch with you --

A. It's at this meeting, this particular session on the 26th that he says: What about the other stuff, meaning the aircraft stuff.

Q. That's when you indicated to him --

A. I brought some stuff together, but give me a piece of paper like we talked about. And, Odato is like a persistent, veteran persistent excellent reporter who is constantly digging. And he thought there was an interesting story in the pork list and, of course, he was coming back to aircraft matters.

Q. I am going show you what has been marked as Commission's Exhibit 67 and ask if you are familiar with this document.

A. Yes.

Q. Can you tell me what this is?

A. I wrote it. And it would have been a cover note based in response to like Nocente's notion from earlier that we might refer to somebody else. And, so, basically, it was like okay. Build a case that this should be reviewed, and that's how I composed it.

Q. But I thought you said earlier that you
1 decided not to refer this matter to the Inspector
2 General.
3     A. Again, you all -- forgive me to being a
4 little bit -- not antagonistic, but you assume
5 kind of a once and all final decision was made on
6 these matters. That's not the way government
7 works. We drift back and forth as new information
8 comes forward. And, as of last round of e-mails
9 we still had a question as to what was going on,
10 especially on this one date on the 17th. And,
11 absent some type of inquiry I still was of the
12 mind that it should be referred to somebody. And
13 Nocente and others were like maybe, maybe not. It
14 wasn't, as you described, we definitively
15 concluded there is no matter here and you were
16 told to stand down. That wasn't it at all.
17     Q. Let me say, Mr. Dopp, that's not a
18 conclusion we were jumping to. There has been
19 evidence in the record that that was an
20 instruction to you, that there was a conclusion
21 that there was nothing here and that you were told
22 definitively to stand down.
23     A. Again, if --
24     MR. KINDLON: We really can't respond to
Q. Well, he was characterizing how we are asking our questions. And all I am asking you is your understanding that it was not that you were to stand down and not to pursue this matter.

A. To me, that contradicts everything I would have engaged with my people on. It's convenient for somebody to say that, but it just doesn't comport with the facts. The nineteen years in government service, do I suddenly say I am going to do something without regard to what everybody else is telling me? If there was the description that you describe, if there was that directive I wouldn't have done that. More to the point, we're all moving back and forth on what the appropriate course of conduct is. Yes, at that moment on the 17th, we said let's not do that for now. But it couldn't have been -- Logic dictates that it would have be absurd to say we are never going to look further beyond this. I mean we've got an obligation. We've got a responsibility to ensure that there's appropriate use. You don't put blinders on thereafter. More to the point, Rich
and the others are sort of like -- I mean it's
like I bring them knew information as it comes up,
and they are given pause as well.

The final point for you, I went to them
to say I got the reporter's request. Do you want
me to release or not? I do not act unilaterally.

Q. Commission's 67, the computer notes on the
bottom of this document indicate eighteen
revisions on this document.

A. Yes.

Q. Did you discuss this document with anyone
else?

A. When you say 18 revisions on the document --
I'm glad that's there because I would have
compiled it early on when we were thinking about
the possibility of a referral.

Q. Well, page two of the document indicates the
document was created June 25th and it was last
saved on June 27th. So, this is a relatively
short period of time as reflected by the document.

A. I suggest that I had written it out longhand
from notes.

Q. Did you write it out longhand in advance of
this?
A. Yes -- yes. That would have been started at the process where a referral was a real option when we were discussing it.

BY MR. TEITELBAUM:

Q. Let me ask you, Mr. Dopp, it seems unusual to me to engage the communications director in writing up a document in connection with a referral to a law enforcement authority. Can you explain to us why it was that we were engaged to do that as opposed to one of the various lawyers and prosecutors, so-called prosecutors on the second floor.

A. I was the person who the matter was brought to originally, and I was the person sort of leading the dialogue internally on what to do.

Q. Let me ask you this. As regards to referral to a law enforcement authority, correct, why are you telling the law enforcement authority in the last four paragraphs about the Governor and Lieutenant Governor and contrasting them, it appears to me as I read this, the Majority Leader?

A. I have to protect my principal.

Q. So, your concern with the law enforcement authority is in protecting your people?
A. They obviously would have been looking at them. And it would have been the appropriate thing to do is to say that these three were trying to fulfill the spirit of the disclaimer.

Q. And did you share this document with any of the lawyers on the second floor to get their view as to whether it was an appropriate thing to do to include references to the Governor and Lieutenant Governor in the referral cover to a law enforcement authority?

A. I wouldn't have initiated any process any action on my own.

Q. So, Mr. Nocente got this document?

A. Yes. And he would have ripped it apart if he felt if was inappropriate.

Q. But he didn't' is that what you're saying?

A. I don't think he did anything with it. We weren't going to pursue that path. But as a contingency, much in the same way that I wrote the earlier news release announcing an internal review.

Q. So, you are saying Nocente got this document?

A. Yes.
Q. And Nocente did not "rip it apart"? Is that what you're saying?
A. I know that he didn't. I assume that he ultimately used it, or used a version of it, as the cover letter for referring to the D.A. and the A.G. And I think that was the case because when I was with the D.A. they said: Oh, yes. We recognize this.
Q. Let me ask you flat out. It's your testimony that 67 was not done as a document that would go to the press?
A. No, but I would have use this --
Q. I just want to get the answer. If you can answer yes or no for now.
A. Yes. It wouldn't have gone to the press.
Q. It wasn't prepared for that purpose; is that correct?
A. No. But it was ultimately used in part for that purpose.
Q. It was not prepared for that purpose; is that your testimony?
A. That is my testimony.
Q. And, if we were to ask Mr. Nocente whether he received this document and he said yes, and we
asked him: Did Dopp indicate to you that this was a document to be used for referral to a law enforcement authority and not for the press he would say yes? Is that what you are telling us?

MR. KINDLON: I don't --

MR. TEITELBAUM: I'll ask the question in a different way.

Q. Did you communicate to Mr. Nocente that 67 was for the purpose for use in referring these various files to law a enforcement agency? Did you indicate that to Nocente?

A. I handed Nocente this (indicating 67) on top of the FOIL package for the purpose of his determination what the appropriate action would be.

Q. So, what you are telling us now is that 67, the use to which 67 was to be put was to be determined by Nocente?

A. I wouldn't unilaterally engage any law enforcement agency, not like this.

Q. So, is the answer to my question: Correct?

A. Please restate it one more time.

(The pending question was read.)

A. Yes.
Q. And, in your mind -- in your mind when you prepared 67, the use to which it was to be put was as a cover for a referral to a law enforcement authority; is that correct?

A. That's right.

Q. Nobody else helped you prepare this document who was a lawyer before you handed it to Nocente; is that correct?

A. Yes.

Q. Had you ever prepared a document previously which was a cover to a law enforcement authority?

A. I wasn't proposing this as a cover to a law enforcement agency. I was proposing it as something that would help Nocente prepare such a document.

Q. I see.

A. And the answer to your question: Had I ever done anything like this before -- countless is too strong a word, but numerous times.

Q. Then, is it correct to say that 67 was in the nature of a memorandum to Nocente to help him?

A. That's why it says "background," indicating "background only" -- for background.

Q. Sometimes the word "background" is used in
1 the press; correct?
2     A. That's true. But it's for David's
3 background in articulating -- in figuring out what
4 he wanted to do.
5     Q. And how did you give 67 to Nocente? Was
6 there a top of it, a memo form saying from you to
7 him?
8     A. It was the full package of materials along
9 with this (indicating Ex. 67) on the top.
10     Q. Was there a discussion with Nocente prior to
11 the preparation of 67 in which he was requesting
12 that you prepare 67?
13     A. No. He didn't specifically say: Do me a
14 cover note. But he said, "Can you explain -- can
15 you give me the package and explain what's in it."
16     Q. And did Nocente -- what I am inferring from
17 what you are saying is that -- your explanation is
18 that he wanted it in writing; correct?
19     A. That's the way David operates.
20     Q. So, your testimony is that 67 was in
21 response to a request from Nocente?
22     A. Yes. He didn't specifically say: Do me a
23 background memo, but I just prepared it for him
24 based upon his request: What's -- you know, tell
me what this is all about so I can bring myself up
to speed completely right away. I need the
package and whatever else you can give me to
explain things."

Q. And, at least in typewritten form or
computer, the first day you started this was -- it
was last saved on June 27th at 8:13 p.m. It was
created for the first time on June 25, 2007 at
1:42 in the afternoon. So, between those two
times you put this one-page document through 18
drafts in order to tell Mr. Nocente the background
of the documents you were delivering up to him;
correct? Is that your testimony?

A. No, sir. 18 times I have might have opened
it up, you know. But 18 times for revisions, I
don't think that makes a heck of a lot of sense.
Or -- I don't recall exactly how it went down. I
had notes on this and I was using those notes to
interact with the media. And I would have been
transcribing the notes moving in and out of
numerous things. But I mean it was just something
that I probably had on a side screen, and when I
got distracted I would come back to finish
transcribing the notes that I had. I think it was
basically connected -- concocted or developed a
long time earlier.

Q. Where are your notes?
A. I just don't have them. I wish I could
provide them to you. But, remember, the sequence
of events we are talking about something over a
six-week period. And I write stuff and once it's
in the computer I throw away the longhand notes.

Q. So, when you say "the bottom" -- and you
have an asterisk, "the Lieutenant Governor's
information, manifests and schedules will be
provided separately," that is to Nocente? You are
saying you are going to provide it to him
separately?
A. I didn't have them at that particular time.
Q. But, you were indicating to Nocente that you
were going to provide them to him separately?
A. I had a full package of everybody minus
Patterson. Patterson wasn't in the list.
Q. Right. So, you were saying to David Nocente
that you were going to provide this to him
separately?
A. "It's coming up, David."
Q. Okay. And, you told Mr. Nocente that, "The
Governor attended fundraising events during the five-month period but always, underscored, used private aircraft for such purposes. You say that is from you to Nocente, you're saying that Nocente didn't know that before.

A. Remember, Mr. Nocente works and operates -- he's got a thousand things going, and I wanted him to know the salient points.

BY MS. TOOHER:

Q. Mr. Dopp, you indicated that this memo, Commission 67, was on top of the FOIL package when you gave it to Mr. Nocente.

A. Yes.

Q. Is that all you gave to him at that time?

A. I think that's what he was requesting.

Q. The memo itself refers to a number of different files.

A. Sure.


A. Additional materials that have been brought together that I believe I provided to him. And I think we have sort of concluded they did have
those, so I didn't like provide it to him as well.

Q. Who had those?
A. This was conveyed to David as well.

Q. So, you provided him with the invites from
the Sheraton Hotel?
A. The one that was a blog item.

Q. And the Greenberg related contribution?
A. This is a single sheet that C.V. Starr was a
possibly problematic issue.

Q. And the "Bruno comments on Hevesi"?
A. Yes, the news article.

Q. So, you had done a fair amount of background
research on this?
A. Definitely.

Q. Did you say a moment ago that you did
provided this document to Mr. Odato as well?
A. No, that was not provided to Mr. Odato. But
I would have worked from it in explaining what was
available in the package that I was providing him.

Q. And in the package you were providing to Mr.
Odato, did you also provides him with the invites
and the Greenberg-related contributions
information?
A. He had them already. They were blogged
items and other materials that he was aware of.

Q. Had he told you this information existed?
A. Yes.

Q. You were working with this in advance of this memo and he had told you this information existed?
A. He, throughout, had his suspicions of what was going on and was apprising me of some of it. This is new information that comes to me that I then relay to my people as a cause of: Perhaps we should do something different. As new information comes in we are constantly reevaluating what we would do, which comes back to that point of -- it wasn't just stand down and don't ever do anything again. That wouldn't have been logical based on the fact that we were constantly getting new information from Bill, from reporters, from others.

Q. So, you had gone back to Mr. Nocente, Mr. Baum, and the Governor with the invites, for instance, and shown them the invites are for these particular dates and those particular events?
A. I would have done that much earlier. The invite was a blog; it was a published story. And
I could provided that, too, in my package. It's from April.

Q. And with the Greenberg-related contributions you indicate that is concerning C.V. Starr.

A. Yes.

Q. When did you bring that to the attention of the executive chamber?

A. After the 17th when we found out he was meeting at C.V. Starr. It was Eliot or somebody else who said, "Oh, don't you know who C.V. Starr is? That's Hank Greenberg."

Q. And, so, you had researched the contributions?

A. A little bit. You just dial in "Greenberg" on the Board of Elections and see that yeah. Basically, we knew all about Hank Greenberg because we had a case against him in the A.G.'s Office.

Q. And the, "Bruno comments on Hevesi," what was the point of including those in this memo?

A. I would have to take a look at the article, but I think it was just Joe saying it was inappropriate to use state resources for private purposes, private and fundraising purposes.
Q. You indicate, "This situation may be similar to the Hevesi scandal," Commission 67, the fourth paragraph. And then, "(Majority Leader was quick to denounce the former comptroller call on others to do so as well.)" You are including that in the information for Mr. Nocente as well?

A. That's was the news article that I pointed out to you. It would have been based on some offhand discussion with reporters, you know, who -- Remember, in the beginning of our interview I was telling you somebody on the outside was kind of like jazzing up the inquiry with regard to Joe Bruno saying he's using it, and don't forget he's criticizing others for using it. So, again, it's like the overlay of a lot of different things, some of which come from us and some of which don't come from us. And, again, it's a news article that was relevant and it's attached.

Q. I'm a little confused. At this point you are giving Mr. Nocente the FOIL package?

A. Right, and some supporting materials that I have been alerted to through interaction with the media.

Q. What is the purpose in providing all of this
to Nocente?

A. To give him as full a picture as possible to, once again, finally conclude what it is that we would want to do.

Q. You were responding to a FOIL at this point and you are going to provide this information to the media?

A. Right.

Q. Did you indicate to Nocente you were discussing these facts in Mr. Odato as well?

A. Yes. Remember, what I'm doing at the last possible -- I'm just trying to make another pass saying: Are you sure you don't want to do an internal review? Are your sure you don't want to do a referral to an investigatory agency, or do we want to release to the media? What's you pleasure?

Q. Did you discuss this package, now, the FOIL materials, the memo to Mr. Nocente, the attachments to that memo, with anyone else in the chamber?

A. I would have apprised Rich Baum as well.

Q. So, you discussed this with Mr. Baum as well?
A. Yes.

Q. Did you discuss it with the Governor as well?

A. He had one final pass, you know, where I said the FOIL request is in. Do you want to proceed? And I would relay that conversation, and he said, you know, "What's our exposure?"

Q. And, I think you indicated he reviewed the FOIL materials and the itineraries?

A. Right.

Q. Did he review Commission' 67?

A. No, I don't think so. I don't think that was part of the package.

Q. That wasn't part of the package you had given him?

A. No. But one thing that would have been part of the package, I also had the invite that I was alerted to by the reporter which is a blog item showing Joe attending an event and some speculation as to why he departed the leaders meeting earlier.

BY MR. TEITELBAUM:

Q. I'm confused. Was 67 generated in connection with a memo to Mr. Nocente for purposes
of referral to law enforcement authorities, which
I thought you and I were talking about, or was it
generated in connection with the FOIL?
A. It was meant for the purposes of educating
Nocente for possible referral. Of course, you
know, since the information is all relevant to my
dialogue with the reporter, you know, I would have
like in the conversation with the reporter said,
hey, here's what we've got. You've got to make
the decision.

MS. TOOHER: Hold on, please. Off the
record.

(Pause taken)

INTERVIEWEE: I would have said our
people one last time, knowing the FOIL was
imminent: Are you sure you don't want to go the
route of referring it someplace?

Q. What does compliance with a FOIL have to do
with a decision to refer it to an investigative
agency?

A. Again, I'm giving my people options on how
to proceed. If we had referred to another agency
you not have had to rely on the FOIL. And, again,
it's like what do you do when you are a
1 communications director? You try to give your
2 people as many options as possible. What would be
3 the advantage of doing a last-minute referral to
4 an agency? It would get us out of a possible
5 negative story about Eliot's use of the aircraft.
6     Q. I have what you testified in Exhibit 67.
7 That in no way reflects the presentation of
8 options. Where in the document are you presenting
9 options?
10     A. I wouldn't have been presenting options in
11 this document. This is specifically with regard
12 to the referral. I would have verbally said, hey,
13 you can still refer, conduct an internal
14 investigation and get us out of responding to the
15 FOIL.
16     Q. Did you have a conversation with Nocente
17 around 67 --
18     A. Yeah, and Baum.
19     Q. You told him: Listen, you can give this
20 material pursuant to FOIL to Odato, and if you
21 don't want to do that -- this is in substance, not
22 exact words -- we can go with a referral. Is that
23 the substance of it?
24     A. I would have revisited the original options
being: Internal investigation, referral to an outside agency, or complying with the anticipated FOIL request which I know is imminent.

Q. I thought you testified that Nocente requested 67.
A. He didn't specifically.

Q. I don't mean specifically 67. He wanted you to explain to him what was in the package?
A. Exactly.

Q. And the package was a FOIL package?
A. Right.

Q. But you are testifying that 67 was created in connection with submission to a law enforcement authority; correct?
A. Yes.

BY MS. TOOHER:
Q. The response that you are providing to the FOIL request, those are all what you believe to be all public documents; is that correct?
A. Those are all that the State Police, that Bill Howard, that Darren Dopp, and the crew that reviewed them believed to be public documents.

Q. How would referring this to a law enforcement agency eliminate your responsibility
1 to respond to the FOIL request?
2   A. When there is any ongoing investigation you
don't comment to the media and you don't provide
documentation to the media.
3   Q. You don't provide documentation on the
investigation.
4   A. What I would have had the ability to do with
reporters at that point asking to information and
FOILing information, I would say there's an
ongoing inquiry and we cannot respond at this
time. It is being reviewed.
5
6 BY MS. SULLIVAN:
7   Q. But they would still be entitled to the
manifests for the calendar year. That's not an
investigatory document.
8   A. I think you would have to consult with some
others other on that. My interpretation is as
long as there's an ongoing review that you can
stand down. The I.G.'s office and the A.G.'s
office, whenever we have an ongoing review I shut
up. I don't engage. And the reporters invariably
say okay. But I want to know when you can engage.
9
10 BY MR. TEITELBAUM:
11   Q. Did you run that position on FOIL past
anyone else in the executive chamber that once an
investigation is starting you don't have to
provide any documents to a reporter pursuant to
FOIL?

A. Yes. What I would have said to them is: We
can get out of responding to the media if we have
got an ongoing investigation. And they nodded.
Q. They nodded up and down?
A. Yes, they did. And that made sense.

BY MS. SULLIVAN:
Q. Even though in your mind they were clearly
public documents?
A. Oh, yeah. An ongoing investigation in my
world buys time not to comply with FOILS or
anything else. It's a matter of ongoing
investigation, and we can't release it.

BY MS. TOOHER:
Q. But, you had indicated earlier in your
testimony that you were freely providing these
documents.
A. Yes, in the past.
Q. And that, in fact, the flight manifests you
had provided in the past; that correct?
A. Sure. Oh, yes.
Q. So, what are you holding back on at this point in the investigatory phase of this?
A. It's just when you have an ongoing investigation you don't release information that could be relevant to the investigation. It's just classic law enforcement posture that I would have been familiar with from the Attorney General's Office over the last eight years.
Q. But, you have already said that Odato had the invites.
A. Right.
Q. He had the information concerning contributions.
A. He had written those things and done his own research in that regard.
Q. And you provided the manifests in the past freely --
A. Right.
Q. -- and they were easily obtainable, and it's your belief that the schedules at this juncture --
A. Would have been, but they hadn't been provided. They clearly were public documents and could and should be provided as long as there was not an ongoing investigation.
Q. If these are not your documents, if these are State Police documents, then they would have been provided anyway.

A. No, not if there was an ongoing investigation. They would have been informed of it and all parties concerned would have stood down while the investigation proceeded. That's SOP in the office, SOP in the Attorney General's Office.

Q. That if you don't want to respond to a FOIL request you initiate an investigation?

A. You know, an unscrupulous person might do that. But I would maintain there would be grounds for conducting such an investigation, and reporters would understand that and abide by it until such time as we were ready to release the information.

BY MR. TEITELBAUM:

Q. Who was to do this investigation in your mind?

A. Internally, we could have conducted it.

Q. So, in other words, the executive chamber would be the investigating agency at that point?

A. I could say to a reporter at that point to get out of complying with a FOIL request or
providing the information by saying: Look. We're conducting an internal review. You need to come back to us a little bit later. Or, if we turned it over to the I.G. all matters regarding this investigation are under review by the I.G. and, because of that reason, we are not going to be complying at this time.

BY MS. TOOHER:

Q. You indicated that you didn't provide Commission's 67 to Mr. Odato.

A. I think I had it in my possession. And, sort of in my explanation of what it was that I provided I glanced at it a few times because I needed to keep straight. Jim, here's what I've got, just in loose fashion. You've got Eliot doing it 19 times, Patterson on six trips. You don't have anything for DiNapoli, Smith, or Tedisco. And it's at that point he said, "What about Cuomo?" Sorry, oversight. I'll get that for you. And, then, "What are you going to have? Are you going to have the manifests?" You've got what you pointed out to me, which is the blog items. You've got schedules for Eliot. With regard to the other stuff, just take a look
through the package." I don't think I would have alerted him in any way to C.V. Starr or anything like that. I don't think I would have provided to him Bruno's comments on Hevesi which is a little bit extraneous. But I would have said: If you are going to get the file, let's dig out the manifests and schedules.

Q. Did you provide Odato with a memorandum?
A. No. It was just a package that you have received. It's this big. (Indicating)
Q. Is the answer no?
A. Yes, it is.

BY MS. TOOHER:
Q. Was there any kind of cover letter that you provided with that?
A. It gives an information dump. I explained what he was being provided, but there was no cover letter or anything else.

BY MR. TEITELBAUM:
Q. When you say "an information dump" what are you talking about? I don't understand the term.
A. There were six or eight files. You know, in this fashion: Here's your travel assignments. Here's the flight requests. Here's Bruno's
travel. Here's Spitzer's travel. Here's manifests. Here's Patterson's manifests. Here's Spitzer's schedule. Here's Patterson's schedules, and here's the only thing that speaks to a schedule for Bruno, which is these travel assignments.

Q. Were those various things written or are you telling him this?
A. They are on files exactly like this.

Q. You are saying there was no document prepared by you in memo or letter form in connection with what you were giving to him?
A. We talked through exactly what it was that I was giving him. And at the end of receiving materials he was going, I think, through them. And he says, "What do you make of it?" And we had a conversation thereafter. I said to him -- I said to Odato, "Dude, it's up to you. You figure out what it is here. Maybe there's something here, maybe not." I kind of presume that Bruno is going to say to you that he was engaged in the travel, and if you look closely at the travel assignments you will see information for him being able to do that.
BY MS. SULLIVAN:

Q. When you say "they're on here," are you saying Odato was angry with Bruno because he wouldn't provide the schedules?

A. That came just a little bit after delivery of this material. He was constantly coming back to me and I was constantly going to my people, including Nocente and Marlene, based on Jim's review of the material, rigorous questioning which spooked us about what was Eliot doing on this date? What's this private meeting that's crossed out? He went and spoke to the democratic party: What was he saying there? Was that a fundraiser for him? A host of questions in this regard. And he turned to regarding these transportation assignments and he said, "Who said the guy should get ground travel? Why was he being provided that?" Antagonistic -- not belligerently antagonistic, but tough questioning on everything that Eliot was doing. And he came back to me a couple of days later and said, "You'll never believe what the Bruno people are doing. They just blew me off and wouldn't give me any information."
BY MS. SULLIVAN:

Q. Information on --

A. His schedules. They wouldn't substantiate for him that he was doing official business.

Instead they said "Death threats." And you'll see in my correspondence, Jim was expecting us to say something about the use of the aircraft. But I had this e-mail saying, "We're learning things that cause us to be much more cautious." Once death threats were mentioned I quickly went back to Bill and the others saying, "He's saying there's death threats; that he requires ground transportation and helicopter usage. Do you know anything about that?" Remember, you give the material to the reporters and their editors. They scrutinize it and keep coming back to me with questions that I don't know the answers to but for which I turn to Bill, Nocente, and turn to some others: Well, how much is this costing the State of New York? You'll see traffic from Bill that says anywhere from $15,000 to $17,000 a shot.

Q. Let me just make sure I have this right. Odato gets the ground itineraries from you and then he calls the Senator's office to verify the
information contained on the ground itineraries?

A. I presume that's what happened, but I have no independent knowledge of it. I just know what Jim told me thereafter which was -- Remember, I had sort of in the course of walking through the information I had provide to him said: You will see some information regarding transportation assignments that sort of matches up to what you told me before about the blog and events being held on a couple of dates. But absent his schedules, we don't know anything is going on. "Well, why didn't you guys" -- Believe me, we are monitoring the situation, but there's no smoking gun. We don't know. Only you will be able to determine that based on your exchange with him. I presume they're going to say it's legislative state business." And that was the exchange with Jim in November.

BY MS. TOOHER:

Q. You provided the FOIL documents to Mr. Odato prior to these subsequent discussions?

A. Yes. What I'm describing to you right now are his follow-up questions, and there were dozens. That's why you see: Give me a call --
give me a call in the days following his receipt of the material.

Q. But, in Commission's 67 you raise the security threat issue with Mr. Hevesi as a potential issue in this referral.

A. But I was not educated at that point about death threats. It was Bruno's comments on Hevesi. And I will show you this article. You have to see it. He was asked if he ever used State Police drivers in the article and he denies ever doing so.

Q. Now, this document, Commission's 67, was a referral or potential referral to whom?

A. It was whoever Nocente thought appropriate to give, if he thought it was appropriate to give. Again, I am just making one more pass before giving it to the reporter as to whether he wanted to do something internal or whether we wanted to do something internally or whether we wanted to make a referral.

Q. But you note in this document, "His political activity would appear to conflict with restriction with statewide policy with the state aircraft being used only for official business."
That's not a statement of what the policy is, but the ounce for pound policy, I think is how you explained it earlier.

A. But, once again -- and I keep coming back to this point. We go back and forth. It was never completely resolved by the lawyers as to whether the disclaimer policy trumped the original policy, the standing policy.

BY MR. TEITELBAUM:

Q. If that's the case, if it wasn't resolved --

A. It was finally resolved, but we had an issue.

Q. 67, you review tension between the concepts; correct?

A. Again, perhaps upon reflection or perhaps upon -- you're right. I probably could have, you know, maintained that and put that flow in there, but I just didn't. I don't know what to read in it, other than I'm not perfect in drafting a quick memo in response to what I perceived as a need by Mr. Nocente.

Q. You say what you are saying you are saying to Nocente -- The first sentence, it's not accurate, is it, that "This activity would
1 conflict with restriction under state law." What state law are you referring to?
2 A. We had -- Again, one of the e-mails that you will see in the exchange was me asking David if it conflicted. You will see me saying: Could this possibly conflict with any state law? I can't remember his response. He sent me back a passage of law which might, in fact, conflict. And, if I recall it correctly, it's in the e-mail package. It would be: If you make a false statement you might have a jackpot, it might be inappropriate. Because, again, going back and forth right until the very end as to whether the use is appropriate or not -- and again, if you're attesting that you are doing official business, Rifkin and Pope both maintain to the very end that if there is no official business you really have a problem and you might still have an issue. Somebody might raise it as an issue that "official" means official only. But, again -- forgive me.

Q. It looks like an advocacy piece to me.
A. Forgive me for saying that I would have made one final pass for referral.

Q. Did you view it as an advocacy piece, 67?
A. I would have been trying to make the clearest case possible, laying out both sides and trying to defend my principal. The only advocacy that I'm really after is trying to make sure that Eliot is not harmed.

Q. When you say "both sides" --

A. I want to represent clearly that Eliot tried to do the right thing and at least hold open the prospect that Joe really should have -- somebody really should look at it. If I am sending it and encouraging David to send it to a law enforcement agency -- you wouldn't write a note that was entirely dismissive. You would write a note emphasizing the points where you might lean one way or the other.

Q. Might you write a note saying it's unclear whether this violates any states law and that the executive chamber has been in conflict over this?

A. In retrospect that sounds like a great addition to it.

Q. That would have been within bounds; is that correct?

A. That's correct. You're a good editor. And, remember, what I do write I write things quickly
for Nocente, so consider -- I assumed if he was
gothing to do anything with it, he would have added
that.

BY MS. TOOHER:

Q. Showing you what has previously been marked
as Commission's 28, and this is 28B. And this is
the flight request information form for the May
17th trip. And it is the standard certification
form as presented in the manifest packages. And,
there is a certification that the statements are
true and accurate?

A. Yes.

Q. And there is a requirement to indicate the
official state business. But I cannot find in the
form anywhere where it says only official state
business.

A. I think internally we meant this to mean
that it would be only for state business and that
legislative business meetings and political
fundraisers and private business would be
inappropriate.

Q. But, it does not provide that there must
only be State business on the form; does it?

A. I think that question is best directed to
Mr. Nocente. But the spirit internally of this disclaimer was that -- I mean why would we institute it except to ensure that official business is done and only official business is done.

BY MR. TEITELBAUM:

Q. When you say "we" who are you referring to?

A. The administration.

Q. What individuals meant for this form to preclude the use of state aircraft except for state business only?

A. That was what we were trying to do. We wanted to avoid abuses.

Q. Who is "we"?

A. Nocente, Baum, Spitzer, Dopp.

Q. So, all of you would have viewed that the only legitimate use for state aircraft was for state business and nothing else? Is that what you are saying?

A. And that is the policy that we lived up to, with one exception that we were scrupulous about and kept hammering home. I bring to your attention that we refused on numerous occasions Lieutenant Governor Patterson's trips and we made
him modify them because he was mixing.

Q. Was Rifkin consulted about this policy when this form was drafted; do you know?
A. I believe so. He had been like the premier expert in that.

Q. Are you saying Rifkin was of the view that only state business could legitimatize the use of state aircraft?
A. No, I --

MR. KINDLON: I think this is getting absurd. How is he supposed to tell you what's going on in Rifkin's mind?

MR. TEITELBAUM: In his head.

MR. KINDLON: Then why don't you ask him that question?

MR. TEITELBAUM: I'm not asking Mr. Dopp to presume what Rifkin was thinking. I am asking what he said or wrote.

Q. Did he say that his view was that the only use to which state aircraft could be put was state business only?
A. Both Rifkin and Spitzer cited Orenstein. Rifkin cited Orenstein and his previous policy, but he also acknowledged that the whole point of
our trying to set a higher standard would be that it would be official business only and not related to fundraising.

Q. That was at or around the time that this form was developed?
A. I believe then, and in my dialogue subsequently. I mean we are trying to set the highest ethical standard possible. And that is our goal and mission here, setting new standards, doing things different. Everything changes on day one. And, this had been a scandal on previous administrations and it had been abused. And what are you trying to do? You are trying your best to do the right thing.

BY MS. TOOHER:
Q. To your knowledge, was it ever relayed to Senator Bruno that there was a change in the standard?
A. Yes. He was asked to sign these and it was explained to him, or so I was told.

BY MR. TEITELBAUM:
Q. You mean the flight request form?
A. Yes, the new policy.
Q. You mean the new form.
A. The fact that we have to fulfill the new form, and the purpose behind it was to ensure proper use.

BY MS. TOOHER:

Q. You eventually received an actual written FOIL request from Mr. Odato; is that correct?
A. Yes.

Q. And I believe in the D.A.'s report it indicates that Mr. Odato presented this FOIL request to you in response to a request from you that the FOIL be in writing?
A. I said to him much earlier that because you are asking for a lot of stuff you better put it on paper. But was I soliciting it or did I request it outright, I don't believe that was the case. I just said when he came down asking for the info: Put it in writing as to what you really want. I have got most of the materials based on our previous conversations. I'm pretty much ready to provide it to you, but why don't you give me that piece of paper.

Q. I think you testified earlier that that was code for: Give me a FOIL request?
A. Again, why -- if he was asking for a single
trip or single week or even a single month, I 
probably would have not suggested that he FOIL. 
But because it was so comprehensive and because it 
was for everybody that required it, it obviously, 
you know, required some work to bring together 
and, you know, just seemed the right thing to do 
based on the comprehensive nature of the request. 
Q. I am going to show you what has been 
previously marked as Commission's 66. I will ask 
if you can identify this document. 
A. That's what he e-mailed to me on that 
particular day. 
Q. Did you provide this e-mail, this FOIL in 
Commission's 66 to anyone else in the executive 
chamber? 
A. I told him it was here, and I believe I 
forwarded it to him. 
Q. You told who that it was here? 
A. All my people. 
Q. Being -- 
A. Mr. Nocente, Spitzer, Baum, and others. It 
finally came in. Like I predicted, it's now here. 
BY MR. TEITELBAUM: 
Q. Can you identify the people?
A. Some of the people were just like ancillary people. I would have told them the FOIL request was in at a morning staff meeting or afternoon staff meeting. And a lot of people were there when I said, hey, it's finally FOILED. Odato has finally FOILED. The reporter has finally FOILED.

Q. And, did you say, "I suggested to him that he should FOIL"?
A. No, it wasn't relevant.

Q. Well, you're saying: "It came as I predicted." It actually came, as I suggested.
A. No. I mean I didn't want the story because I knew it would whack Eliot. And I knew it was coming and I apprised everybody that it was. And I believe you have testimony from people underscoring my concern about the whole process given the exposure that I have described. Eliot's use and our stewardship, we have to do it the right way on both counts. So, it was no surprise when they told me to stand down -- I keep saying when they told me to. I reached the same conclusion at that moment that it was fine to stand down. I had reservations, but I said at that point he's going to come back. They always
do to periodic requests for this stuff. It's almost like clockwork, every year someone writes an aircraft story. So, again, it's like some people say, oh, you jazzed up -- Odato, when you see the e-mail and when see the article package that I gave to you, he routinely writes on aircraft issues.

Q. But he had never been provided the itineraries for the other articles.

A. That's right. Nor had anybody else because nobody specifically asked that. To be perfectly honest, how did he get to that? I inadvertently turned him onto that. And the reason why in that conversation that I was talking about: What's going to be available? And, I said to him, "Well, you have got manifests."

Q. Which conversation? What time frame are we talking about?

A. Early May. When he said, "What's going to be available?" I said, "You have got manifests and you've got schedules for Eliot. And at least you've got manifests for Bruno and everybody who is using it." "What about itineraries? What about schedules?" I said, "I'll check." That was
the catalyst for me going to Bill saying: What have you got that would be responsive to a FOIL request? I knew it was coming. Going.

Q. And, when you get the FOIL request, Commission's 66, he asks for trips, itineraries, manifests and schedules for Governor Spitzer, and the Lieutenant Governor Patterson. He does not ask for that information for Senator Bruno; is that correct?

A. We have had that conversation together numerous times. I glanced at it, and it was clear to me he was looking for that and everybody else using the aircraft. Some people pointed out it's like -- Sometimes you all expect a kind of precision that's like not exactly matched at all times in the real world.

Herb, you said: You probably should have mentioned in your cover letter something, and I agree with you. You're a good editor. I probably should have done that in my original letter -- I probably should have done a number of things. In this Odato -- I probably should have explained it, but the second he gave it to me, oh, I looked at this and I forgot Cuomo. And it's
like the whole upshot of my interaction with him
was he wanted Bruno and he wanted Spitzer and
anybody else. Why did he want Bruno? When you
see the clippings that I gave to you, you see that
he had written five or six articles on Bruno's
aircraft use. I don't know why he had a bugaboo
about aircraft. And you will see that
subsequently with his writing about Nexium and all
the other entities that have given Joe in-kind
contributions for airline flights. I can't
explain that. Was I jazzing it up and saying do
this, do that? No, because I was a little bit
leery about the whole piece.

And, to speak to your point, is it an
advocacy piece, I've got an obligation to do it.

And, this is like a little tawdry -- the secret of
my business, if I know Mr. Spitzer is going to be
taking a whack, I naturally am going to say:

Look, I want you to consider everybody, you know.
And here's everybody's use of the aircraft.
Believe that I am doing my job for Mr. Spitzer and
believe in public disclosure on that point.

BY MS. TOOHER:

Q. Did you continue to collect Bruno's flight
information?

A. After the FOIL?

Q. After the FOIL.

A. No. Bill forwarded me another one that wasn't ready in a timely way to be included in the package. And you see that from like the 27th or something like that.

Q. Did you request Bruno's flight information from anyone else?

A. The only person I could have would have been Bill. Do you mean like a reporter or somebody else like that?

Q. No. Anybody else in the chamber, anyone else who would have had the information.

A. You will see a traffic with Marlene Turner where I say: Anything else? Is there a latest request? And, basically, that would have been the case. It's like again, we were not going to like stand down from the inquiry but, basically, once I provided the material for the first five months of the year for Odato, he felt as though he had enough at that moment. He subsequently wrote back another FOIL saying, oh, but I want June, too.

And remember June is halfway over or largely over.
What I was told is that it gets collated and provided at the end of the month.

Q. I'm not sure I understand that explanation.
A. What I provided to Odato was the first five months of the year. I'm providing the first five months of the year in the sixth month of the year at a time when the sixth month of the year had not been fully recorded yet.

Q. What is your understanding as to the obligations under a FOIL request as far as document production?
A. It would be as responsive as you can as long as the materials you are providing are in the public interest. And, in this particular case I had pretty extensive familiarity based on years of fulfilling those requests and the ad nauseam discussion internally about what to do.

Q. So, it is your understanding under a FOIL request it's a continuing obligation once you get a FOIL request to keep responding to it?
A. No, not at all. I thought what we provided was sufficient. He thought otherwise and wanted another month.

Q. When did he relay that to you?
A. A couple of days later when he sent me the FOIL. This was one occasion when he didn't call me up and ask me about it. He just sent it to me. (Commission's Exhibit 79 was marked for identification.)

Q. You have in front of you what has been marked as Commission's Exhibit 79 forwarded by Marlene Turner. It's a two-page document, a thread of e-mails between Marlene Turner --

(Pause)

You have Exhibit 79, a two-page document starting with an e-mail from Susan Braga (phonetic) to Marlene Turner and ends with an e-mail from Darren Dopp to Marlene Turner. Can you identify this document?

A. This would have been on the day that I had given Jim the first five months of the year, I believe. I believe this is when the FOIL request came in. And it came in earlier and I gave him the latest. I'm not sure of the timing exactly, but he was also inquiring about what happened during the -- I had the first five months, but I didn't have the sixth month. And what I'm trying to do is make sure I have the ability to bring all
of that together for Jim. But I don't believe I

did. Hence, his later request of for that sixth

month.

Q. So, on the day that you get the FOIL request

you are still looking to collect information on

Senator Bruno's flights?

A. Pursuant to his request. And maybe I should

just turn to the request because I thought he was

asking for the first six months of the year, but I
don't have that in front of me unfortunately.

Q. The FOIL request should be in front of you, Com""m's 66.

A. Yes. "Please provide me for the calendar

year 2007."

Q. It is dated June 27th.

A. Right. And I had the first five months but

I didn't have the sixth month.

Q. So, after you got the request you are asking

for additional records.

A. Just because Jim says: We're at the end of

the sixth month. What about this month? And I

said, "I'll work on it for you."

Q. I thought you said a moment ago this request

came a few days later.
A. In writing. Remember, he sent his follow-up FOIL.

Q. And Marlene Turner is gathering the information for you?

A. That's right. And I think what he is asking for is the full package; itineraries, flight requests, everything that would correspond to what I have given him for the first five months.

Q. There's nothing about Bruno's itineraries in Commission's Exhibit 66.

A. No. I would have asked Bill for that later on. I would have said, "He also wants the six month. What have you got?" And you see that in the e-mail package he eventually gave me that as well. I don't think my memory is correct on this. I don't think we ever got around to providing it to him because of when the scandal broke. Maybe the people that were left behind did it, but I don't think I did.

(Q. You have been given Commission's 80, which appears to be another e-mail thread between you and Marlene Turner and Susan Braga.)
A. All following up on questions from Jim Odato regarding like other activities.

Q. Now, you seem to be requesting the information on other individuals including Lieutenant Governor Patterson.

A. We provided -- we actually had in great detail these others. Like I said, the materials were largely complete, but we provided like in kind of a staggered phase over the 27th and 28th to Jim as they became available.

Q. So, now, you are making formal requests for the other information?

A. Requests had been made before but they just weren't finalized.

Q. Requests in what form?

A. I apprised the Patterson people previously, but when the FOIL actually came in, you'll see the e-mail stuff: Jim's really interested in your travel, too.

Q. You apprised them when?

A. Early on, in terms of like close to the 27th -- prior to the 27. And you will see e-mail traffic with me interacting with his chief of staff saying we really need this because he is
asking for it. I told you before we had internal
discussions and pulled some information on
Patterson but not the full amount Jim was looking
for.

Q. So, the only people you had pulled the full
information for, all of the information for, was
Senator Bruno?

A. Spitzer and Bruno. And, basically, the
reason for that, there wasn't anything on anybody
else. And while we had sort of engaged
Patterson's people -- you's see it's in the e-mail
traffic. "I know you are busy and haven't had a
chance to get to it," that kind of stuff. And I
would have reminded them: We have now received
the official FOIL and we have to respond. Can we
please set aside whatever else you are doing and
do it for me.

We had had internal discussions about
Patterson quite a bit. Basically, it was not
involving Howard but Marlene Turner and Rich Baum
who relayed some concerns about this, about these
travels.

Q. What do you think Mr. Odato was looking at
in terms of the air activities?
A. At that moment I was pretty convinced that it was the traditional story that I had seen many times. Who's using the aircraft and for what purposes? As I've sort of relayed again and again my primary concern is ensuring that Eliot doesn't get a whack and, secondarily, that Rich doesn't get a whack for failing to be a good and diligent steward of proper use of aircraft.

Q. Did you discuss this at all with Bill Howard?

A. At that point I conveyed to him that the actual FOIL is finally here and we are poised to release. I have just got to go to Rich to make sure that's exactly what they want to have happen.

Q. Did you discuss say ramifications of the release in terms of Senator Bruno with Bill Howard?

A. I don't think in any great detail, other than Bill had a constant view of what those ramifications were; that he had a lot of explaining to do. But the rest of us, with the exception of Pope and sometimes Rifkin, thought he would just, of course, say: I have got official business going on those days and that would take
care of it. But, you know, we didn't know that for sure. And there's at least the possibility or potential that he might not have been fulfilling his obligation under the bargain and might have a problem.

Q. Did you discuss the Public Officers Law with Mr. Howard?

A. Yeah. I would have asked at one point, assuming he doesn't have an explanation, do you think there is a legal jackpot there? I would have had the same conversation with Nocente.

Q. You would have had or you did have?

A. I did -- I did. I talked to Bill and I said, "Bill, what legal issues might be raised by this?" And, I said the same thing to Rifkin and Pope who were the experts.

Q. Showing you what has been marked as Commission's Exhibit 68, an e-mail from Bill Howard to you --

A. This was in response to me telling Bill that Nocente and Rifkin said Section 3 might be at issue if there's no business being conducted.

Q. Section 73 might be at issue?

A. Right. Forgive me for not having the full
grasp of what 73 is all about. The upshot is if you are attesting to one thing and doing something else, that might not be appropriate.

Q. And, did you relay to Bill Howard that you had spoken with Richard Rifkin and -- who else, Peter Pope?

A. Nocente. I don't recall specifically doing so. I might have done so. I just at this stage of the game, I'm saying, "Billy, I'm going to need you to stand by because I'm getting peppered with questions from Jim.

Q. And he specifically says, "I have read through 73 several times; am having a hard time finding applicability to the issue." Did you specifically ask him about Section 73?

A. I would have said some of the others think 73 is in play. What do you think?

Q. Is Mr. Howard an attorney?

A. I don't believe so, no.

Q. Why would you be asking him a legal question?

A. He was the standing expert on this the matter who had fielded these types of inquiries for twelve years.
Q. He was the standing expert on the plane.
A. He was the expert on use of the aircraft and relevant administration policy governing it. And, earlier, you would have seen me asking him: How did the guys in the Pataki administration handle it? Remember, he was the acting director of the government for the Pataki administration in the waning days. And we retained him for his expertise in security and public security matters.

Q. Had you ever discussed the Public Officers Law with Mr. Howard?
A. I don't recall in any particular detail. I just would have said in my characteristic fashion: What if Gerald really doesn't come back and says there's no legal business? Remember, Rifkin said to me if he was doing nothing then I think there's a problem. And that's what I would have conveyed to Bill. But when Bill when he looked at 73 I think he had a different opinion. But again, what you see me doing in my characteristic fashion is constantly checking with folks to get their take on where we stand, what we should be doing.

(Commission's Exhibit 81 was marked for identification.)
Q. You have been handed Commission's 81. It's an e-mail from Bill Howard to you dated 6/27/07, the subject is policy. "I put that policy document on your chair."

A. Jim had said --

Q. Jim Odato?

A. Yes. Jim Odato said: What is state aviation policy? And what Bill provided to me was I believe the policy that Rifkin helped the administration formulate. You should have that because it's like the ounce versus pound matter, the underpinning of the ounce versus pound matter.

Q. When you say "the policy of the administration" which administration are we talking about?

A. I think it was actually formed in the Cuomo era but carried through, perhaps with some modification, by Pataki.

Q. Was it carried through to Spitzer?

A. I advance to you that we modified it with our disclaimer policy.

Q. Your disclaimer policy being --

A. Flight requests, the fact that you require somebody to attest to official business, whether
it be legislative meetings or whatever.

Q. This is a written policy, a policy document?
A. Yes. You need to like have it because at
one point I said: Does this have the force of
law? No, it's our internal policy.

Q. Did you commit the certification policy, as
you just referred to it, to a written document?

Did the administration commit the certification
policy to a written document?
A. That is best directed to Mr. Nocente who
would have been responsible for it. I would
assume so.

Q. Did you ever see any written document?
A. I saw the flight request information and it
was fully described to me. And I was pleased when
I heard it because I thought it was due diligence
on our part. No one ever showed me: Here's the
existing policy and here's what we are doing. I
recognized it as an advance, and I was pleased to
hear that we were trying to set higher standards.

Q. Did you ever see a written memorandum or
anything within the chamber that indicated what
the policy was?
A. I had seen the state aviation policy in
1 years past with Governor Cuomo.
2 Q. Did you seen any modification to that policy
3 in the Spitzer administration?
4 A. If I saw it, I wouldn't have appreciated it.
5 Nothing stood out to me that appeared to be the
6 same standing policy.
7 (Commission's Exhibit 82 was marked for
8 identification.)
9 Q. I am giving you what has been marked as
10 Commission's 82. This appears to be an e-mail
11 thread between Charles O'Byrne and yourself. Who
12 is Charles O'Byrne?
13 A. Chief of staff to the Lieutenant Governor.
14 Q. Can you identify this document?
15 A. I can explain it. Charles -- I made a
16 verbal request to him and some e-mail requests to
17 him for appropriate documentation that would match
18 up to what we were providing for Eliot. Charles
19 protested a little bit saying, "Well, should I
20 redact some of this stuff?" And I said, "Don't
21 try to hide anything. We should be an open book
22 in this regard." And he was worried about his
23 Dean meeting, Dean being the head of the National
24 Democratic Party and the appearance of that
particular trip. And I said whether it was good
or bad, we have to disclose it.

Q. Did you give Senator Bruno any heads-up on
providing his schedules or itineraries to Mr.

A. Honestly, in years past it had been my
practice with my friend and longtime colleague
John McArdle to give him a heads-up on such
matters. But they had been such -- there had been
such animosity between the camps and they had even
sort of like ripped off me on occasions
unceremoniously. I didn't take offense to it
because I knew they were jazzed up themselves
being in like a death fight with Eliot. In years
past I may have apprised him. But in this
instance --

Q. Up did not in this case?

A. I didn't give him a heads-up.

BY MR. TEITELBAUM:

Q. Let me ask you a questions about 82. There
is an e-mail at 10:35 from you to O'Byrne. The
second sentence, "Think of Dean in the context of
a full day of government activities. "How does
that square with what you were telling us is the
policy of the chamber?

A. At least there would have been cover. But, you know, what I am endeavoring to do with him is: Please don't do anything weird or squirrely in trying to redact things and screen things. I am personally trying to assure him that, yeah, it's like a little bit of an issue and we'll have to explain it. But the way it was explained to me is they were talking about policies that impact New York State. I knew it was an appearance problem, but when I say to him: Please don't do it because I don't think it's an overall problem, it's me encouraging him not to be cute or try to conceal anything from the media.

Q. Did you say it was a "Dean" meeting? Who is Dean?

A. D-e-a-n, Chairman of the Democratic National Party, former Governor Dean from Vermont.

Q. And, this meeting with Dean you distinguish from other activities. What other activities are you talking about?

A. I am told he is in a government seminar where he is talking about recruiting minorities into public service. It's a forum in Washington
at which time he meets with Dean briefly. So, my particular belief is, well, some people in the media would raise a concern about it. When we explained that instead it was a greeting and that it was not about fundraising or anything else, we would probably be okay. But, again, it was a clearly political meeting. But the cover or rationale there was that he is attending a meeting on government procurement. I think there's a description later on. He is going to a governmental session that involves democratic officials and how democratic officials confront MWBE issues and other matters.

Q. What is MWBE?
A. Getting more minorities involved in the state contracting process.

Q. What does that stand for?
A. Minorities and Women in Business Development Enterprises.

Q. So, that portion of the trip related to state business?
A. The whole --
Q. I'm not disputing with you; I just want to clarify it.
A. The government, he was there for government purpose but he met with a political figure while on that government purpose.

Q. You used the word "cover." What do you mean by that? I don't say you used it here. You used it in your testimony, Mr. Dopp.

A. Again, it's like what am I doing? I'm working with reporters and saying to them, yes, he met with Dean but he was covered by the fact that he was conducting a full day of speeches and other meetings that spoke directly to governmental business in New York, especially and including the role of women in business and minority contracting in New York which has an economic development component.

In my parlance with Mr. O'Byrne it's like we are covered in that regard. Nobody is going to give a sharp criticism for having that brief meet-and-greet with Dean when you are giving speeches and engaged in activities that are purely in the state's interest and the people's interest.

Q. The meeting with Dean is a political meeting, obviously?

A. Yes.
Q. And can we both agree that given your description of what you perceived to be the policy of the chamber on use of the state aircraft that was improper?

A. He is on the board. If wasn't political fundraising which is clearly improper, but it was political. And, unless thoroughly addressed by other governmental functions, it would be more of a problem. But it was described to me as a meet-and-greet between a Governor and a Lieutenant Governor.

Q. Now, just so we understand one another on the record, are you saying the policy on the use of state aircraft prohibited a state official from engaging in political fund-raising but other non-state related business would be okay?

A. I am saying that the goal that we strive for was no politics. I'm saying that there is a marked difference between political fundraising for your own purposes and having a meeting that had a political component, right. And I would endeavor to say it was a grade. I would like to have avoided it entirely, but it existed and I could not at this point do anything other than put
it in its best light.

Q. And what you articulated is the chamber policy?

A. Yes.

Q. Was this policy written down anywhere?

A. It would have been an obligation of Marlene and Rich to make sure we lived up to the spirit of the policy we articulated both in the flight request disclaimer and our public pronouncements. We weren't going to go down the path that others had.

Q. It was not written down anywhere?

A. No, sir.

Q. I take it the Lieutenant Governor did not put down on his flight requisition that he was engaged in a political meeting. Is that fair to say?

A. I'm sure that the Lieutenant Governor would have informed Marlene Turner who is responsible for approving the trip of the exact nature of the trip. I know, as well, Marlene Turner had difficulties with him and Baum had difficulties with him because he was cutting the line too closely in certain cases. And I know that they
had -- reprimand is too strong a word, but arguments to insist that he do a better job in adhering to the spirit of the policy.

Q. In this instance you are telling somebody what they put down on the form. To your knowledge, did he put down on the form that he was engaging in a political meeting in Washington?

A. I don't remember myself about that particular matter. I just know Marlene Turner conveyed to me that she had some difficulties in ensuring that he was following the proper procedure.

Q. And use of state aircraft, for one reason or another, fell within your purview to some extent during the first six months.

A. Four months, really.

Q. Four months. And you would have been familiar with the policy of the executive chamber on the proper use of state aircraft; right?

A. I know the standard we wanted to uphold.

Q. I am not asking you about what you wanted. I'm asking about what the policy was. Were you familiar with the policy?

A. Yes.
Q. I want you to articulate to the reporter, given what you said about the gradations of political fundraising versus political meetings versus state-related business, the policy as you understood it.

A. That we do everything possible, Jim, to avoid political activity when using the state aircraft. In no uncertain terms, that is what I would have said. And, the, I would have further said I believe that, with a couple of exceptions, we have adhered to that in a good faith way, both David and Eliot.

Q. Are you able to say that, given the policy as you just articulated, that the meeting with Dean presented no problem in Exhibit 82?

A. No problem for me to explain and, I believe, convince the reporter that it was not an egregious violation.

Q. I'm talking about the ethical issues. There was an ethics issue -- you put it in your testimony today. There was an ethics issue with regard to the use of state aircraft. Did you say to anybody that the Lieutenant Governor, when he took this trip and met with Dean, that he did
something improper?
A. No. I would have said --
Q. I'm not interested in what you would have said. Forgive me for interrupting. It's a simple question. Repeat the question, please.
MR. KINDLON: Do I get to do Redirect here because these question are -- I object to the form of the question.
MR. TEITELBAUM: This is not a deposition.
(The pending question was read.)
A. When we met and discussed the matter I would have said that that could be problematic. It's not as problematic as conducting fundraising for yourself or for others, but raises questions that I will have to contend with.
Q. That is what you said?
A. Yes.
Q. To whom did you say this?
A. The group: Nocente, Eliot, and Baum. I would have said: I believe I can handle it because it's not the same order of magnitude as raising funds. But I have got a problem there and I have got a problem with Spitzer's Monroe County
Q. What did Mr. Nocente say concerning your remark and the Dean meeting?
A. Wish it didn't happen. And, you know, we should probably be able to take care of it; don't you think? And I said I think so because it's a matter of gradation. It's not the most egregious kind of thing. Are we perfect? Absolutely not.
And, this, again, was being said --
Q. Who said, "Are we perfect?"
A. Me. I said, "Are we perfect in this matter, no. But I think on balance we adhere to the spirit of the agreement. We've got two problematic trips, maybe a third."
Q. What did Mr. Baum say?
A. He agreed with me. He was most concerned about the third trip I mentioned and insisted upon having reimbursement to protect ourselves.
Q. And the Governor was a party to this dialogue?
A. I would have apprised him, and I believe Rich did as well.
Q. At that particular meeting?
A. No, not at that meeting. But I walked in
there afterwards to talk to him about it.

Q. What did he say?

A. He then would have said, "Are we okay?"

Q. Not "would have"; just what was said.

A. He said, "Are we okay?" And I said, "Look, you took 19 trips, had 105 events over those 19 trips. We see two problematic ones for you, one problematic one for Patterson." And, then, he said, "What's problematic? What's problematic?" And I said, "Your Monroe County visit." "Well, I didn't take any money there. I wasn't doing fundraising." "Sir, the county party was doing the fundraiser. You attended the county party fundraiser." And, then, with regard to Patterson, I said "Patterson was meeting with Dean." And he paused for a second and said, "What else were we doing on those days? Weren't we involved in a whole host of activities?" And, then he interrupted me and he said, "Wait a minute. I went to Monroe County to talk about our Democratic Party reform agenda. Does that mean I'm talking about public policy? There was no more important public policy at that particular moment." And I said, "I will make that case. I may not prevail
with a reporter and others who may see it as a purely political venture."

Q. Was that a fundraising event?
A. Yes, for the Monroe County Democratic Party.

Q. Was there reimbursement for the trip?
A. No, sir.

Q. What was the rationale?
A. The rest of the day was covered with other public events that were economic development between community leaders at that meeting and others.

Q. Was there any endeavor to do an apportionment to pay a portion of the costs that related to the fundraiser?
A. We had that dialogue. And I said, "Rather than reimbursing for the California trip, I think the more problematic one is the Monroe County trip because it's clearly a fundraiser." And I said, "I remember in the old days under Cuomo our policy was two-thirds/one-third. If two-thirds of the day was governmental, one-third could be political. But in any dicey situation we reimburse for the leg of the trip." That conversation led to a segue where Rich said, "I'm
not concerned about Rochester; I'm concerned with California. And I think we ought to reimburse for that part of the trip."

Q. How about with respect to the Lieutenant Governor? Did he share your concern about that? Was there a discussion about reimbursement?

A. He didn't share my concern because they thought it could be two governors talking about public policy. And I said, "Forgive me, boss. But I just don't think that's going to wash." And Richard's judgment was, oh, forget about it. We'll be all right.

Q. When you say that, you are talking about the Lieutenant Governor, the two governors' meeting between the Lieutenant Governor and former Governor Dean of Vermont?

A. That's correct. He thought of that as a meeting between two governors, and that's what they sort of like suggested to me as my talking point with reporters if the question came up.

Q. Is that what you would characterize as a "cover"?

A. It's something to say. And whether it would be believed or not I had doubts about.
Q. Is that what you did say?
A. Yes. And he ended up noting it and being critical of the administration for it as a kind of predicament.

Q. Who did?
A. Odato in his article.

Q. But there was no request of the Lieutenant Governor to make reimbursement?
A. No, sir. That is, that I'm aware of.

Something might have happened after I was gone.

BY MS. TOOHER:

Q. When you had this conversation with Mr. Baum and the Governor concerning the Governor's potential activities and the Lieutenant Governor's activities did you discuss Senator Bruno's activities at all?
A. We naturally would have segued to that.

Q. Did it segue to that?
A. Yes. Again, it was a kind of -- in this particular discussion we didn't spend much time on this. If the media was going to focus on it -- and we really didn't know how it was going to turn out. They asked for my best judgment as to how it would turn out. And, at the time, I said: One
for us, maybe two for us, one for Patterson, and
three for Bruno. It could be a wash depending on
what Joe says. Joe's the leader. Joe's the lead
or we're all the lead for mixing politics and
government despite our claim to try to clean up
the process.

Q. That's all prior to the July 1st Times Union
article; correct?
A. Yes. This is during the phase when I have
-- it's actually combined. I go to them and
request the ability to release the materials to
the reporter, seeking clearance for doing that.
In their thought process, in order to give me that
sign-off they are asking me, once again, questions
as to how I think it will come down.

Q. Are you in regular contact in Mr. Odato at
this point?
A. Yes, a host of questions on everything from
the cost of the aircraft to the rationale for
providing ground service, to specific things on
Eliot's schedule that were stated to be private
meetings that I had to explain, go back to Marlene
Turner and say: Look, we're like committed to
being an open book here, but what was this meeting
all about?

Q. And, you are in regular contact with him up until the article is published?

A. Yes. You have to understand, like this is what I do the reporters. I joust, I cajole, I try to convince them that what we're doing is proper, but I'm also an open book. There were a couple of meetings in which individuals requested that it not be disclosed and I said: "Off the record, this is who we met with." I have seemed to be able to satisfy him on all of those counts, but I still at the end was uncertain because he seemed to have a problem with the Monroe County visit and then seemed to also have a problem with us not being more rigorous in our oversight of Mr. Bruno.

(Commission's Exhibit 83 was marked for identification.)

Q. I am going to show you what has been marked as Commission Exhibit 83. And the caption is, "Return Receipt, the Odato document was received."

Can you identify this document?

A. It might have been the state aviation policy, or it might have been something else he asked for. But I don't recall what specifically
it was.

Q. This is a receipt for an actual document that you were e-mailing back and forth?

A. No. It would have been hand-delivered because it didn't have the aviation policy on e-mail. Do you have the aviation policy? I can submit it to you because I have access to it.

MS. TOOHER: You can certainly submit it to us. That would be great.

Q. This type of a receipt is a receipt for some type of a document being provided?

A. I think so. I'm not like -- I guess that is what he is saying. "I've got it, Darren." I might have had one of my people drop it off upstairs. It might also have been the completed Patterson file. I wish I had a calendar in front of me because I think this is the day when he says something extraordinary to me that causes us to sort of be taken aback and reevaluate what we tended to say about the matter when asked for a comment on the story.

Q. What did he say to you?

A. They blew him off. They wouldn't tell him what his schedule was, wouldn't release schedules
and wouldn't confirm official business. Moreover, they said his use of the aircraft and ground transportation was necessitated by death threats.

Q. "They," now, are Senator Bruno's office?

A. This is Mr. Odato conveying to me what Senator Bruno's people were telling to him. Whereupon, I quickly informed the rest of my people what he was saying. And, then, we sort of quickly turned to Bill Howard saying, "Death threats? Is this something that we were aware of and does this necessitate special services that we are somehow unaware?" Rich didn't know a thing about it. Howard didn't know a thing about it. Howard came back after quickly consulting with the State Police and said we are not aware of anything except something that happened like six or eight years ago where some disgruntled person appeared in his Saratoga office, whereupon some smart aleck commented, "What does he need security in New York for if the death threat or the incident occurred in Saratoga?"

Q. I'm just going to back you up a little bit. I know it's getting very late. I just want to be clear here. You were provided informational by
Mr. Odato who indicated that Senator Bruno's office was not being forthcoming with information on schedules and had made the statement concerning potential death threats to the senator. You then relayed that information to whom?

A. To our people internally.

Q. "Our people" being --

A. Mr. Baum for sure. I think Eliot and, for sure, Bill Howard because I quickly needed to turn to him to figure out whether that was true or not.

Because if it was true, everything that we were poised to say would be altered. And I think you see an e-mail responding. Jim had wanted a comment on the use by both ourselves and Joe Bruno's use. We were prepared to issue something bland like our aviation policy, spirit of our aviation policy. I was poised to say based on an interaction with Rich the spirit of our aviation policy is that it is to be used for official business. If there are issues that arise by that, we'll obviously review it and figure out what to do accordingly. After we heard "death threats" we shut up completely because they were spooked by that and believed we should quickly consult the
State Police to see whether that was real and whether there was some kind of security or other matter that would require us to take new and different action.

MS. TOOHER: Just very quickly for the record, we will mark that as 84.

(Commission's Exhibit 84 was marked for identification.)

BY MR. TEITELBAUM:

Q. What does death threats have to do with the proper use of aircraft?

A. You know from being in the law enforcement field and having some familiarity with security matters, if you have a period of high alert with regard to a threat to an individual, then any and all precautions the State police take to protect him, whether it be ferrying him on a helicopter or providing investigators, State Police guard and travel duty would be warranted completely and would trump any concern that we had regarding activities being not consistent with our disclaimer. So, we shut up completely. If that was the case it would be serious for us and we would have to reevaluate.
BY MS. TOOHER:

Q. Commission's 84 is the e-mail you were referring to a moment ago?

A. Yes.

Q. "We are learning things that encourage us to be much more cautious in our response." The "things" you are learning are from Jim Odato; is that correct?

A. It was directly from Jim. And I was given a little bit of pause during that period where I said, "could it be possible that he has death threats and real security concerns? You hadn't conveyed anything like that to me before, Bill."

And I was having second thoughts about providing travel itineraries at that point, even though it was months in the past or weeks in the past. And I said -- he said to me, "I only know about an incident that occurred several years ago in his district office, but I'll get right on it." He quickly came back to me saying it was a disgruntled employee who came in and yelled. And I proceeded to say, "I know from the Hevesi matter who also alerted us to death threats that the prerequisite for providing such coverage would be
a death threat assessment or security assessment.
And then I asked him was any such assessment made.
Q. You asked Bill Howard for this, and this is
all prior to the article being issued?
A. Exactly.
BY MS. SULLIVAN:
Q. Did you or your people with this information
look at the itineraries in terms of any security
concerns?
A. Not in this matter. It was me, and I looked
back and said: Could there been anything
problematic here? But, remember my, my policy and
practice as a communications director for the
Governor, I announce his schedule in advance
telling where he's going, who he's meeting with,
what he's doing. I do that on Friday for the week
following. To me, there can be no security
concern with something that had happened a full
month prior.
Q. There could be if there were death threats.
A. That was a little bit of a wild card. In a
business where we say you could establish pattern
and practice, it could be problematic. But,
again, remember how this stuff came to me. I
asked for what would be responsive to a FOIL.

Felton testifies that his understanding is that there is a FOIL and he is providing information to us through Bill Howard. And, then, I review it and say: This really can't be a security matter, can't be anything other than a public document because it's so old.

Q. My question is: Did you alone review it for that purpose or seek counsel?

A. Always would cycle back saying: Do death threats mean that anything we might have been done would be problematic? But that was before -- I said that contemporaneous with Bill coming back saying we know of no such death threats. So, it kind of torqued us all down a little bit. We were armed at the moment thinking that if there's something serious going on we ought to know about it. But the answer back was he never communicated any death threats, and the only thing we ever knew about is eight years ago in the district office.

So, it was kind of like an alarm at the moment. And I just underscore to you that they quickly dropped that two seconds later when it smacked of what Hevesi had said about the same topic.
BY MS. TOOHER:

Q. Who dropped it?

A. It was no longer something that the Senate Majority Leader was maintaining after one day in which the reporters were questioning him intensely: Please tell us what death threats were involved.

Q. I am going to show you what has been marked as Commission's 36 and ask if you have ever seen this document before.

A. I don't believe I would have seen it. But I know that it was what I just described as what Bill was conveying to me.

Q. Did he convey to you that Preston Felton said, "There were some security issues in the last couple of years that were of concern to us and one in particular was a guy who got into his outer office?"

A. That's why I asked for some elaboration, and he told me that's what it was.

Q. Did you discuss the level of threat assessment?

A. No. I just said: Was there a threat assessment, and Bill volunteered: No, there was
never anything of the kind. And Bill's deal was that it was not particularly relevant to our purposes or problematic. And, subsequently, the Majority Leader's office just stopped talking about it because it didn't appear to have a foundation.

Q. To your knowledge, did the Governor's office request a threat assessment of Senator Bruno?

A. In discussing what we ought to do after the article came out, we all broached that notion that shouldn't we conduct at least a threat assessment based upon his earlier claim. But nothing ever really came of it.

BY MR. TEITELBAUM:

Q. What did people say in connection with that subject?

A. It was kind of like -- you will see an e-mail in a few minutes in which Rich Baum said that stuff about death threats has been thought in classes for years to come as a kind of panicked and untrue reaction as to what was a problem in the media. That's what Rich interpreted Joe Bruno's death threats coming to be which is they had nothing better to say -- I'm projecting here
but it appeared to us that they don't want to tell
us what they're really doing, tell the reporters
what they were really doing, so they are saying,
well, it was death threats.

Q. With respect to Commission's 36, do you have
any knowledge as to why Mr. Howard is telling
Felton that "The defense reminds me of Hevesi"?
A. I don't if you recall that, but that's what
Hevesi suggested as the rationale for providing
his coverage. Hevesi dispatched a driver from his
office to act as a personal companion to his wife
because the rationale is: My family has had death
threats.

Q. I understand. My question is: I am asking
you: Do you have any knowledge as to why Howard
is sharing his perspective on this in the way he
does, "the defense reminds me of Hevesi" with
Preston Felton?
A. I can't speak to it. I just know I always
assumed they had close rapport having worked
together for twelve years and talked regularly
about these matters. But I also had no particular
knowledge. It came to me again and again. I just
didn't interact with the State Police at any time
in any way. I relied on Bill's interaction with
him.

(Commission's Exhibit 85 was marked for
identification.)

Q. I will show you what has been marked as
Commission's Exhibit 85 and ask you if you can
identify this document.

A. This is where we breathe a big sigh of
relief because instead of hammering Eliot -- they
did take some shots at Eliot in the end, but we
now know his focus is on Joe. And, basically, we
are shocked that from one communications guy to
another -- why didn't he just say he had official
business going on. So, number one, relief that
Eliot wasn't getting whacked more than he was.
They both take a little bit of a pop later on.
But, secondly, a kind of profound curiosity as to
why they didn't mount a more aggressive defense to
say, No, we were indeed conducting official
business which would have changed the whole cast
of the article.

Q. So, this is the July 1 Times Union article
by Mr. Odato?

A. I'm sorry. That's what you were asking.
1 Yes, it is.
2 Q. It's an eleven-page document. The first two
3 pages are typewritten and the others are assorted
4 items that, to my understanding, accompanied the
5 article in the Times Union blog. Have you seen
6 these documents before?
7 A. I saw them when they appeared. I opened up
8 to the things -- I obviously recognized the flight
9 request and I recognize the 33rd annual spring
10 reception, because that was a blog item. And I
11 recognized the itinerary coming from Bruno's
12 office. I was surprised by his, you know, ability
13 to go track down a Nassau County Republican
14 fundraiser. I obviously know when the next flight
15 request was and the transportation. And I was
16 surprised again that he had a straight-up invite
17 to the May 23rd event. And the reason I was
18 surprised by that. You actually have to be in
19 Republican circles to receive an invite. So he
20 has somebody as a source who provided it to him.
21 Q. In Exhibit 67, the background piece, your
22 File C says plural, invites.
23 A. Right. It would have been a blog item as
24 opposed to the invite. I never had the invite
I just had a blog item that noted in a similar fashion that Bruno was holding the big event.

Q. So, you had provided to Mr. Odato two invites or three invites?

A. He already had them. But I actually had them in any possession because he had alerted me to them. One came off his web site and another came off the Daily News web site. Remember, the reporter who writes the Daily News web site and Jim used to be office mates up until about a year ago. It's Liz Benjamin.

BY MR. TEITELBAUM:

Q. Mr. Dopp, the materials that you gave to Mr. Odato, according to 67 you provided a file of: "Bruno comments on Hevesi." Why were you providing that to him?

A. I don't believe I actually provided him with that. I believe provided that to Nocente. It was a newspaper article. If you will allow me the forbearance I will give you the newspaper article that would underscore why. I think it spoke to the use of ground transportation and necessity of having State Police as drivers.
Q. Was the file given to Odato?
A. I don't believe so, no.
Q. Was File D given to Odato, the Greenberg-related contributions?
A. I don't believe so either.
Q. The same question for File C. Was that given to Odato? It's an invite to the Sheraton Hotel fundraiser thing.
A. I think I would have held up to Jim the blog you sort of provided to me. I don't think I provided it to him, but he was aware of it. Is came off his own web site.
Q. So, did the files that you put on Nocente's desk, were those the very files that went to Odato, all or some of them?
A. Most of them, absent some of the stuff that either Odato already had or knew about, or which I thought he should discover on his own.
Q. So, did Nocente give these files back to you to give to Odato?
A. Basically, I showed the gang the package that was going to go to him. And there was only one package that I took out of the meeting. And, subsequently, David says: Hey, would you give me
that package?

BY MS. TOOHER:

Q. So, you gave the package to David Nocente?

A. A copy of it.

Q. What did you do with the originals of the files that contained all of this information?

A. I retained them.

Q. Do you still have those files?

A. Yes. And I presume you do as well. It's everything that we provided to Odato and a score of reporters that asked for them afterwards.

Q. I mean the files that you provided with Commission's 67 to Mr. Nocente.

A. You know, Commission's 67 was on top of a file that had manifests, schedules, and itineraries.

MS. TOOHER: I understand that.

BY MR. TEITELBAUM:

Q. But also had other files as well; it had File C, File D, and so forth?

A. Correct.

Q. Do you have those files?

A. I'm sure I can get access to them. They are not in my possession, but you will see each one is
something that could be googled. Each one is a blog item. It's, you know, the description of who C.V. Starr is off their web site.

Q. I know those pieces of information are obtainable elsewhere. I'm asking: Do you have the files or copies of the files that you gave to Mr. Nocente?

A. I can get them for you if you so desire. I don't have them with me now.

Q. But you have them somewhere?

A. I believe so.

MR. KINDLON: I don't think you have them.

MR. TEITELBAUM: Terry, you don't believe he has them?

MR. KINDLON: No. I can get them. They are available on line.

MS. TOOHER: It's not about collecting the information. I'm just not clear here.

BY MS. TOOHER:

Q. I thought you said when you gave Mr. Nocente Commission's 67, was that with the files referenced in 67 and then with the FOIL documents underneath; is that correct?
A. That's right.

Q. And he gave it back to you?

A. No, he kept it.

Q. He kept the whole packet?

A. Along with the cover sheet. That was his. He asked for it. He said, "Okay, you are giving this to me. Can you give me the full package?" And that's what I did. And, along with the full package I put 67 on top of it to help walk him through, just to remind him what was there.

Q. And, then, you provided the FOIL information to Mr. Odato, not Commission's 67 and the files with that?

A. No. Some of 67's cited documents went to him, but not all. And I couldn't specify which ones.

BY MR. TEITELBAUM:

Q. I think you have specified.

A. The reason was not to be weird or anything like that. It's just that he already had it. He was like -- the blogs came off his blog. The C.V. Starr thing, you just punch in C.V. Starr and you get their web site and just print out "C.V. Starr is in industrial conglomerate that does" -- blank.
The others were off the blogs, not his but others.
All public information. Nothing that involved anything other than a quick google search.

BY MS. TOOHER:

Q. After the article, Commission's 85 was published was there a reaction in the chamber?
A. It was, as I described, a kind of relief that, you know, we weren't hammered harder and a kind of incredulity as to what Joe was saying, Joe's people were saying, you know. You will see in your e-mail traffic: So now what do we do? If it is indeed the case that they're not saying there's any public business, then some people are saying: Darren, you're right about this. You may be right about this. If they had government business why wouldn't they say so? And I'm like how would we have known? I didn't want to be like an I-told-you-so kind of guy, but basically at that point you'll see Rich saying, "Damn. Let's get this referred right away. Let's not wash our hands of this. Somebody ought to be taking a look at it." You will see e-mail traffic in that regard.

Q. Showing you Commission's 49 and 50. They
are somewhat parallel threads in e-mails between
you and Richard Baum?
A. Yes.
Q. They start from you to Richard Baum and
Lawrence?
A. That's Eliot.
Q. "When asked about the EnRon revelations
Uncle Charles, a leading authority on accounting
ethics, said, 'Well, it's not good.'"
A. Forgive me for being like a wise ass, but I
sometimes brought levity to a bunch of lawyers who
were so serious as to need some levity on
occasion. What I was saying there is Rich Baum's
uncle is indeed an expert on accounting. He's an
accounting expert. And Rich told me the story the
day before -- It was neither here nor there. It
had nothing to do with this. He told me a story
about one time he was asking Uncle Charles what he
thought of the EnRon matter. And this was a just
a classic understatement of, "Well, it's not
good." And I was just -- they had called me and
left a message of, "So, what's in the paper?"
And, I was just being a little flip saying,
"Remember Uncle Charles? Well, it's not good."
The reference was: You've got to see this. You've got to look at it because it's unlike anything we anticipated.

Q. Now, we go up the threat on Commission's 49. Rich Baum is saying to you, "Well, he's got a problem. What do you think? Put out statement."

And we continue up and he again asks you, "And tomorrow ground him and refer to the I.G.?"

A. Basically, we are revisiting the dialogue we had a month previous as to whether we should do those kinds of things now. Rich is saying we should. He didn't say we should have done it earlier but we most assuredly should do that now.

Q. Did you have any discussion about that concept at this time on what would be the basis for referring him to the I.G.?

A. Instead of saying: I was conducting government businesses, he said the opposite. "None of your business." And it really raised questions in ways that we were surprised by sort of saying that this might be improper. We are the custodians. We are the stewards. We have got to ensure proper use. At this point, it looks like it's the only logical thing to do is have someone
look at it to figure out exactly what was going
down.

Q. But Rich Baum is now asking you to report to
him, and you are not an attorney, as to whether
this matter should be referred to the I.G. is that
correct?

A. Remember, before, I had this contradictory
message to you. I'm the press guy akin to Walter
Ayers. But I'm also somebody who has been with
him for a trillion years. It's a press matter; he
asks me for advice. Does he then say: Darren
says this, so we've got to do this? No. But he
is asking my opinion. That's the way the trio
operated from time immemorial, thus checking each
other's wisdom and judgment. And the group was
always better than -- we were better than the sum
of our parts.

Q. Commission's 50, a similar thread of e-mail
finishes with, "The only twist is the S.P. thing."
The "S.P. thing" being --

A. Death threats.

Q. And noting that there has never been a
threat assessment?

A. Right.
Q. But you were aware that there had been some issues concerning security and Senator Bruno?

A. Only after hearing from Odato two days prior to its release that he was claiming that death threats necessitated it.

Q. Did you have any discussion with the Governor at this time concerning this article?

A. This breaks during the Fourth of July weekend. And the only discussion we had was the e-mail traffic which was it's just Eliot. We are all on vacation at this point and we are all just communicating: This is weird. What do we do?

Q. Did you make any decision among yourselves?

A. Basically, this was it, you know. Let's discontinue use and engage with the I.G. But we awaited final consultation with Nocente to determine what he wanted to do.

Q. Were you in communication with Mr. Dicker at this time?

A. Not -- you will see the e-mail exchange that comes to both my government account and my personal account. He would have quickly called saying: What's the deal? And, you know, I was a little bit taken aback with his immediate siding
with Joe given his intense desire to review similar issues with Pataki.

Q. At this point, July 1st, you feel that Dicker is siding with Senator Bruno?

A. No, subsequently. And I think you'll see that in the e-mail exchange, him pressing and saying: Is it always the case this? Is it always the case that? I had lost Dicker as a reporter who was -- "sympathetic" is too strong -- a reporter with whom we had rapport and were working with closely at that point. He soured on Eliot early, probably around the budget time where he thought Eliot wasn't tough enough in controlling spending. And he was really in an antagonistic mode. As you can see from common dialogue with Fred, he had a hard on for us and was challenging every move we made. And my job is like to field those inquiries. I did my best with him but, again, he saw it as like some outrageous thing. He kind of like bought in early and aggressively to the notion that we are spying, misuse of the state police, and other activities that were inappropriate.

Q. When you say he "bought into the notion,"
where did he come up with that theory; do you
know?

A. After they dropped death threats as a
rationale they quickly turned to: You were spying
on us and you were misusing state police, and you
were doing all kinds of other things.

Q. It was your understanding that that was
coming from Senator Bruno's office?

A. Oh, yeah. That's what he was standing up
and saying. He launched a broadside from the
communications standpoint. When confronted with a
problem one response is to stand up and explain
everything that you did. Another response is to
take the offensive. And they took the offensive.

(Commission's Exhibit 86 was marked for
identification.)

Q. I am going to show you what has been marked
as Commission's 86, an e-mail from you to FUD31.

Do you know why that is?

A. Dicker.

Q. Can you identify this document?

A. Fred -- the prior thing says: "What
evidence is there that he might have crossed the
line?" I'm saying, "Look, Fred, you're right.
Your recollection of the history of how the aircraft is used is correct. But the question is whether he crossed the line or not." And when I say this, it's like Jim felt pretty strongly about what he was doing and why. And I assumed that Jim knew something more, because what Jim related to me -- after the story broke he called me and said, "So, what do you think?" And I said, Wow! This is an amazing piece." And he said, "There's more to come." And I knew "more to come" didn't relate to me because I had given him the info dump and I really had no more to provide. So, I relayed that to Fred. I said -- and there's a little breach of protocol but, Fred -- I was still trying to relate to him in a way -- usually, you don't tell one reporter what another reporter might have. I broke that because I was trying to convey: You guys duped him. And I said no, these guys do their own work, and you know Odato. He's a nut for aviation stuff.

Q. Aren't you Odato's inside source up until this point?

A. No. Because what I'm saying to you here is "more to come." What I have -- I mean what I have
from Odato after the story is written, he says, "And I've got a follow." And I knew what I talked to him about, which is the information I provided to him. No, it wouldn't have been referring to me. See, that's not the way you talk to reporters. You know, you don't like say -- there is a clear indication that he has somebody that he is talking to. I never knew who it was. I had a few hunches but I just never knew.

Q. You are not providing any information to Odato at this point?
A. I was responding to his questions. But, basically, he was coming back with additional inquiries that went way beyond -- he did a hell of a job investigating things. I think the Senate Majority had the ability to respond from a communications standpoint. But he does his own work. If I can convey this to you. Really, Odato, the Times Union, Dicker, there's some notion that -- I was good at what I did. I took Eliot from some obscure guy to one of the nation's foremost law enforcement officials. I know my job pretty well. But y'all have to understand. It just isn't the case that I would go to someone
1 like Odato and say, hey, write this story for me.
2 Let me tell you what to do. You can't even broach
3 that kind of stuff. These guys value their own
4 integrity and are not to be used in that fashion.
5 It's not nonstart. It's outrageous to think that
6 kind of thing. And some people said, oh, Odato is
7 a hack. He's a damn good reporter that I have
8 known for 25 years. He's got a code of conduct
9 and a dogged reporter. And the proof of that is,
10 I have been gone for two months in seclusion and
11 he has broken three additional stories on aircraft
12 use. More to the point, he has broken stories
13 about Eliot Spitzer's aircraft use.
14 Q. But, Commission's 85 and Commission's 67, I
15 believe, are very similar in content concerning
16 the information on Senator Bruno's flights.
17 A. All of that stuff was out. He did his own
18 work. Again, the notion that I write a story for
19 a reporter, it just doesn't work that way. I
20 would have engaged him. I would have said to him:
21 Here's what I think the deal is on something like
22 this. But, again, I would have been totally
23 forthright and said, "Dude, you've got to figure
24 out what you want to do, you and Rex, down the
pike." And I am a former LCAer. My stock and trade is my reputation and relationship with these guys. I can't tell them what to do.

Q. But you have a longstanding relationship with Jim Odato?

A. Oh, yeah. And they would trust in what I would say would have relevance and that I would be honest and forthright. But do I write their stories? It's absurd to think so.

Q. You knew Jim Odato before you came to Albany as well?

A. Long before.

BY MS. SULLIVAN:

Q. Have you spoken to Mr. Odato since July 1st?

A. I haven't spoken to any reporter. I haven't spoken to anybody on the second floor.

BY MS. TOOHER:

Q. Since July 1st?

A. He had some follow-up questions thereafter, but as soon as the issue turned to me and I was set aside, I have not had any communications with him thereafter.

Q. So, when the Attorney General commenced their investigation -- you are saying July 1st.
A. Once the matter was referred to other investigatory agencies you will see it says, "Nocente says we should not comment." So, I didn't comment after that.

(Commission's Exhibit 87 was marked for identification.)

Q. Showing you what has been marked as Commission's 87, this document is dated July 1, 2007 from Darren Dopp to Christine Anderson and Paul Larabee. Can you identify this document?

A. I'm giving guidance to my people on a rash of media calls that they are receiving.

Q. You are instructing them as to what they can say both on and off the record?

A. Giving them guidance based on my conversations with Eliot and Rich as to what we should say. Remember, on matters like this and virtually all other matters I would have engaged to say, okay, where are we and what should we be saying at this point.

Q. Did you discuss with Richard Baum and David Nocente the contents of this e-mail?

A. I would have went down and said to them both saying, hey, what do you think? What should we be
saying at this moment? I would have advised some
guidance in this. And they would have turned to
me and said: What do you think we should say?
And we would have tweaked it and that would have
been the result. I don't think I would have
handed it to them in person, but I would have
taken notes based on our conversations.

Q. Did you discuss the contents of this e-mail
with the Governor?

A. Not the contents of the e-mail, but the
response we were making. I would have sort of
informed them: Look, this is what we're going to
say right now, given guidance to my people as to
how they should respond based on my communication
with Rich, Eliot, and Nocente on what a proper
response would be.

Q. I want to ask you a couple of questions
about 87. And, obviously, there is off-the-record
and on-the-record. Off-the-record is some
comments that you are making to the media; is that
correct?

A. Yes. It's sort of like background
explanation.

Q. You indicate that there is a potential here
that you are referring this to the appropriate
authorities: I.G., A.G., D.A. Is that correct?
A. That was the upshot of Rich's notion that
Eliot and David shared that we should at this
point refer.
Q. Again, in the next paragraph is that they
misrepresented themselves in the flight requests;
right?
A. Yes.
Q. What is that statements based on?
A. They didn't say they were doing legislative
business. Instead, they said, "None of your
business."
Q. That's not in the flight requests, though;
that's in the article?
A. Remember, flight requests said: We're going
to conduct legislative business on those days.
What they failed to do when asked what they were
doing on those days is confirm what they said and
attested to.
Q. But they have no obligation to do that to
the press; is that correct?
A. They do if they want to avoid getting
hammered.
Q. That's a PR issue, if you will. It's not a legal issue from your perspective? They have not misrepresented to you in the flight requests.

A. We always had that concern as to whether they were or they wouldn't. Our suspicions were raised to level orange when they didn't do that here. All's they had to say is: Of course, we're doing official business. And, A, we would not have run that story and, B, we wouldn't be considering referring to any other outside agency.

Q. So, you are making these determinations now based on Odato's articles?

A. Not me; the group.

Q. And the group is --

A. Nocente, Baum, Spitzer, me.

Q. And, that determination both that they have misrepresented themselves --

A. They may have misrepresented themselves.

Q. -- and that they may have misrepresented themselves and that this will be referred is based on the press, the July 1st article?

A. We read this and concluded that the only alternative is to do the things that I describe here.
Q. Can you relate the conversation? What does Rich Baum say?

A. Pretty much it follows that e-mail you pointed out earlier. Rich was -- why the hell didn't they just say they were doing legislative business, because -- I relayed to you before Rich's constant believe that you've just got to say so. Whether it's true or not, they've just got to say they're conducting official business at the Sheraton or some of these other venues, whether they were or weren't. Rich was skeptical. Nocente had the same kind of view; that of course they're just going to say that. But when they didn't, it's: Why wouldn't they? It doesn't make any sense. So, the natural conclusion that we all had was they must have something to hide and we'd better quickly refer.

Q. Did Rich Baum at this time indicate he had had earlier discussions with Senate counsel who indicated they were not revealing that?

A. I'm sorry. When I said I never heard that, I said then, now, any other time, until you just described it.

Q. And following the July 1st article,
Commission 85, does William Howard provide you
with any additional information?

A. He comes down and kind of like expresses his
own shock that they had not handled the matter
better. But, you know, remember what happens in
the days that follow. A host of questions come up
from a range of reporters, and what do we do in
that regard, I turned to Bill for the answers to
those questions.

One of the questions soon to be on your
list is: Is Dicker antagonistic and says: Well,
why are we looking into this matter if you never
had any complaints about it? And I then say, "No,
not us, but the previous administration.

Q. What were those complaints?

A. When I asked Bill had we ever had complaints
about it, he sort of thought for a moment and he
said. There was the weirdest one in which Mike
Long called Cahill who was the secretary to the
Governor to complain about Joe bringing state
troopers to his fund-raising event and how they,
in his words, scarfed up all the food. I thought
it was kind of hilarious. It was neither here nor
there because it happened on the previous watch.
And Fred asked me: Were there ever any
complaints? And I pointed to a series of e-mails
and I also said to him verbally the anecdote I
heard. You've got to check it out. Whether it's
ture or not, I don't know.

Q. I am going to show you Commission's 53. And
this is the Fred Dicker article of July 5th. And
in the second column Mr. Dicker quotes you. It
starts in the first column, "Spitzer spokesman
Darren Dopp told the Post that the records on
Bruno began to be assembled because there was an
incident late last year in which Mike Long called
to complain about Joe Bruno bringing armed
troopers to fundraising events. Long thought it
was highly inappropriate, and it probably was.
Recalling that incident, the state police made
some changes. And, yes, keeping basic records,
i.e., logs."

A. I hope you don't like take offense to it,
but what Fred Dicker writes he fabricates,
embellishes, and writes in a way that suits his
purposes. He had turned on us long ago, and his
characterizations here are discreet are and in a
range of areas. Remember, before, in the e-mails
I learned that the records were being kept from way back, so that contradicts this notion that they just began to be tracking. I told him that, but he ignored it, though.

Q. But I think you testified earlier that you since had not been provided with those records.

A. Yes. They were maintained, but not retained. That was clear.

Q. I am going to show you what was previously has been marked as Commission's 54. This is an e-mail from you, Darren Dopp, to FUD31 dated July 3, 2007. In the third paragraph, "I am told that the logs were kept, in part, to protect the S.P. who were driving him. There was an incident late last year in which Mike Long called to complain about Joe Bruno bringing armed trooper into this fundraising event. Recalling that incident, the S.P. made some changes keeping our people in the background and, yes, keeping basic records; i.e., logs.

A. Again, this is what I was by Bill at the time. It doesn't in my mind contradict what I was told by Billy with regard to records going way back. But, again, remember this notion of they
had them, they had to have them in order fulfill
their mission of sending somebody out.

Q. But I think Mr. Dicker is virtually quoting
your e-mail in his July 5th article.

A. Right. But the cast and spin on what I am
saying is lost, and he's pretending as though, you
know, appropriate recordkeeping was never done.
Appropriate recordkeeping was always done, I was
told. And the Times Union sort of verified that
this weekend. But there was an inexplicable
period at some point when they stopped retaining
them.

Q. But you didn't know about the Times Union
records of last weekend; you hadn't seen those at
the time you wrote this e-mail to Mr. Dicker.

A. That's correct. All's I know it what Bill
was representing to me early on; that records were
kept. Records exist going way back.

Q. But you had never seen those records. And
when he told you he was going to provide them you
had not?

A. No, I never saw them. When the time came
for me to ask him for them he said: Weird
situation. They weren't retaining them. And that
sort of comports with what I'm saying here. I believed at some point they started retaining them. Whether it was me or Rich making the call, I don't really know for sure. But at some point they did begin to retain the records.

Q. And, the second paragraph of your e-mail: "You need to know the following: Joe's request for S.P. coverage was quite out of the ordinary. It went directly to local barracks." What is that based upon?

A. Only as good as what I am being told by my people, and that's what Bill Howard suggested to me. He said this was not coming through the brass as normal requests were. Joe was calling up directly somebody he knew in the City barracks obtaining coverage."

Q. Did you follow up on that at all with the State Police?

A. Again, I never had any interaction with the State police whatsoever. My only interaction was with Bill. I understood -- but I can't verify when I learned it -- that someone came to Richard saying: We have always had this problem with Joe. How do you want us to handle it? Rich relayed
that information to me and said, "I just told him
follow your standard procedure, whatever that is."

Q. Someone relayed to Rich Baum. Do you know
who that was?

A. It would either have been Bill Howard or
someone at the State Police.

Q. And when they say "we have always had this
problem with Bruno" what did your understand that
to mean?

A. The issues Bill described to me about Bruno
from the past, calling directly into the
administration to arrange without going through
the state brass, requesting investigators rather
than troopers, requesting suburbs with lights
and asking that those lights be used, and all of
that. I understood Rich to say -- he told me at
one point that they came to him saying: Do you
want to continue to provide the ground travel to
him? It was neither here nor there for my
purposes, but I understood Rich to say: Do
whatever you think is appropriate.

Q. When you say you "understood Rich to say,"
did he relate to you that he had had these
conversations?
A. Yes. He said, "I just told them to follow their normal procedure. Did I do something wrong?" Rich asked me.

BY MS. SULLIVAN:

Q. When you say "follow the normal procedure," are you talking about requests for ground transportation or are you talking about keeping the records?

A. What I think we were talking about is, we were a brand new administration. Both Rich and I are not guys that tell anybody: Do this, do that. Instead, we would say: Do whatever you think is appropriate. And, so, that's what Rich was conveying to me. But Rich was having second doubts due to his position, his powerful position as Secretary to the Governor. "Should I have done more?" I really couldn't help him with that answer because I was a little bit leery here that we might not have provided proper due diligence on this part of it. And there's two parts, use of the aircraft and --

Q. Talking about the driver?

A. The driver.

BY MS. TOOHER:
Q. When did you have the conversation with Rich Baum?
A. I can't peg it, but it was sometime in May.
Q. Was it prior to the May 17th discussion?
A. Forgive me for not knowing whether it was before or directly afterwards.
Q. So, now, you have got some level of information that there may be inappropriate use of ground itineraries. Does that come up in your discussion about what to do in this matter?
A. Definitely in terms of the internal dynamics. We talked about that type of stuff. And, again, Rich was nervous: Was I doing all that I should, he said, in terms are policing this.
Q. In terms of policing use of the state aircraft?
A. And the ground transportation issue.
Q. So, he brought that issue to the table with you?
A. Yes. He mentioned it.
Q. Did he mention it in front of David Nocente?
A. I think so, but I'm not positive.
Q. Did he mention it in front of the Governor?
A. I'm pretty sure he did, because I remember the Governor asking a question about that. And I remember Rich saying to the Governor it's really important to him. And we all kind of -- because we were in the phase of trying to close down the legislative session, we just didn't want to do anything that would disrupt the ultimate goal of getting a good legislative resolution.

Q. On Commission's 54, the last paragraph on the first page, "It came to me that Lovell and McArdle are calling around to lobbyists urging them to say that they met with Bruno at the Sheraton on May 17th." You are now providing information to Mr. Dicker?

A. Remember, my relationship with Fred is like, you know, we were like engaging. And I said, "Oh, come on, Fred. This wasn't surveillance." And, more to the point, Joe had begun at this point to finally come off of death threats, come off of spying a little bit and tampering, and say we really were conducting legislative business. And understand what that would have been. Understand the cover that they were trying to establish: I met with a lobbyist in a hotel at the event where
we're holding a fundraiser. And I was trying to
suggest to Mr. Dicker, come on. Is that really
government business? You are holding your annual
fundraiser, and you consider it governmental
business talking to a lobbyist who is giving you
money at a fundraiser to be governmental business?
Q. Had you referred the matter yet to the I.G.
or the D.A.?
A. That wouldn't have been my thing. I'm sure
Nocente at this point is either contemplating or
has engaged, you know, the appropriate authority.
Again, I wouldn't have called up Soares or
Christine Hammond saying: You really auto look
into that.
Q. Did you relay that same information to David
Nocente?
A. To Rich.
Q. To Richard Baum?
A. Actually, it came from Rich.
Q. Mr. Baum told you?
A. That this is what the scuttlebutt was.
Q. Do you know where he had gotten that
information?
A. We were aware of two lobbyists who were
friendly to us who told us they were going to do it and didn't want us to be mad at them for doing so. That was the comment I heard.

Q. Did Bill Howard provide you with additional information following the July 1st article on Senator Bruno's schedules?

A. I think he said it on the 27th when it finally became available.

Q. I am going to show you what has been marked as Commission's 71. Can you identify this document?

A. Commission's 71 describes the trip that was finally available from the sixth month as opposed to the fifth month.

Q. And I will show you Commission's Exhibit 4.

A. Yes. That would correspond to that.

Q. When you say "that," Commission's 71?

Commission's 71 corresponds to Commission's 4?

A. Right.

Q. Does Bill Howard provide both of these to you?

A. Yes. He would have forwarded them to me.

Q. He forwarded Commission's 4 to you?

A. Yes. It's an e-mail to me. And, then,
1 Exhibit 4 he would have sent to me as well.
2 Q. And, did you ask him why he is continuing to
3 send you information?
4 A. Because Odato submitted a subsequent FOIL or
5 announced that he was submitting -- or announced a
6 subsequent FOIL for the sixth month.
7 Q. Again, you are receiving this information in
8 an e-mail, Commission's Exhibit 71 and then
9 Commission's 4?
10 A. Yes.
11 Q. Did you ask Bill Howard about why he is
12 providing this to you in both forms?
13 A. No. It was in direct response to Odato's
14 request for the sixth month.
15 (Commission's Exhibit 88 was marked for
16 identification.)
17 Q. Providing you with a document which as been
18 marked as Commission's 88 --
19 A. Yes.
20 Q. -- can you identify this document?
21 A. Yes. This is -- Jim would have said, "What
22 about the sixth month?" And, then, he would have
23 submitted this seeking the sixth month.
24 Q. This is now July 10th?
A. Yes, a couple of weeks after the story had been provided. It's basically -- he wanted more. He was sticking with the story and thought it was interesting and worthwhile. (Commission's Exhibit 89 was marked for identification.)

Q. Let me show you what has been marked as Commission's exhibit 89, an e-mail from you to J. Odato. Can you identify this document?

A. Yes. I am actual writing for the very thing he is seeking. I just want to look at the timing on it. Yes, 1:02 and he immediately follows up with 1:11. And it would have been at the specific request of Nocente and the others. I would have informed them if he looking for --

Q. You would have informed them or you did?

A. I did. I informed them that he is looking for the sixth month and, okay, where is the FOIL for that.

Q. So, now we are requiring a FOIL for everything?

A. In this matter, yeah, especially since we are contemplating quickly turning it over to an investigative body.
Q. So, you asked for the FOIL?
A. I don't actually remember doing this exactly. But he is badgering me for: What about the sixth month? What about the sixth month?
Q. And you said: Would you submit a FOIL request for the flight records for the month of June?
A. Right.

(Question from the Commission's Exhibit 90 was marked for identification.)

Q. Showing you what has been marked as Commission's 90, can you identify this document?
A. Yes. That would be the rationale for my request of it.

Q. That would be, "The reason is the lawyers believe there is some question as to the original request covers June"?
A. Yes.
Q. Who are the lawyers?
A. Probably David.
Q. Do you know it's David?
A. David.
Q. Did you discuss this with anyone else?
A. I don't think so.
1   Q. Well, plural, the lawyers.
2   A. It's just my reference to the guys on the
3   inside.
4   Q. Did you discuss this with Richard Baum?
5   A. I don't think so. I just sort of informed
6   him that he's looking for the sixth month as well.
7   Q. Did you discuss this with the Governor?
8   A. No.
9   Q. So, at this juncture you are asking Mr.
10  Odato to submit an additional FOIL request?
11  A. At the direct request of the lawyers.
12  Q. At the direct request of David Nocente?
13  A. Correct.
14  BY MS. SULLIVAN:
15   Q. Didn't the original request cover it?
16   A. I thought so, however it was worded. But,
17   remember, I only had the first five months. And
18   when I went back to him saying: He's asking for
19   the sixth, "Well, tell him to FOIL for it again."
20   Q. Even when your earlier position had been no
21   FOIL was necessary?
22   A. I do what that my people ask, and I don't
23   deviate from it.
24   Q. Was there any other response to Mr. Odato's
FOIL request?
A. In terms of from whom?
Q. From you, when he gave you the second FOIL request, the July 10th FOIL request.
A. "I will get to work on it. I think it's here. Stand by, and I will see what I can do. But something intervened. We referred it, and I think we stood down from honoring it at this point. I'm not positive. At that point I'm kind of segueing out of Nocente's request and not responding to further inquiries.
Q. You stepped down from the July 10th FOIL request?
A. I don't think we honored it. I can't be sure, but I just don't think we honored it because at that point this was being in the process of being referred. And what I was telling you about ongoing investigations are a reason for you not to follow through on FOIL requests and other normal requests for information that you might provide.
Q. Did you relay that to Mr. Odato?
A. I believe so, but I may not have because we were clamming up at that point. We were just
simply saying: It's under review and we're not
go ing to engage any further.

Q. When you say "we are clamming up at that
point" who are you referring to?
A. The press officer, the administration is not
engaging further on the topic.

Q. And, that's on instruction?
A. Yes.

Q. And, who was giving you that instruction?
A. David. And you will see subsequent e-mails
when people are calling and asking questions that
I send to him via e-mail. And he said, "Since
it's been referred, you ought not to engage
further on this topic. Since it's under review by
authorities you should not engage on the topic any
further."

Q. At that time had you retained Mr. Kindlon?
A. It was before that. And, basically, I
pushed back a little bit saying the story is going
to sort of go out of control. It was stupid from
a communication standpoint because this is when we
began to give them the ability to issue charge
after charge against us without aggressively
responding.
Q. So, once you received the July 10th FOIL request you are no longer responding to Mr. Odato's inquiries?

A. No. I'm pretty sure that's -- I know that I never responded to that FOIL request. And I did so because David told me we should really stand down.

Q. Did you discuss that with Mr. Baum at all?

A. Yes. I said that the story is going to spin out of control, but I'm doing what y'all want me to do.

Q. What was Mr. Baum's response?

A. "I know. I know. But this is what they want to do." This is the Secretary to the Governor sort of saying that the lawyers were intervening and even he didn't have much ability to sort of interact at that point.

Q. When you say "The lawyers" at this juncture who you are referring to?

A. Mr. Nocente, Mr. Pope, and Mr. Maloney have sort of emerged at that point to sort of be the ones that were commencing the internal review to see what might have happened and to control the process moving forward.
Q. Did you discuss with the Governor at all this standing down with the press?
A. I think I would have conveyed to him --
Q. Did you convey to him?
A. Yes. I said to him, "It's a jackpot moving forward because if you have got one side leveling charge after charge and you are not refuting those things, there's a tendency for things to spin out of control. And charges, no matter how outrageous they are, they get repeated and reported on without an aggressive defense on our part tend to become currency. And it's not a good thing."

(Question: I am showing you what has been marked as Commission's Exhibit 91, it's an August 14, 2007 letter to James Odato from Mariah Treisman. Have you ever seen this document?)
A. I have not, but it comports to what I have just be describing where they wanted to stand down.

Q. So, when you say "comports" to standing down, could you please explain that?
A. If we had referred the matter or in the
process of referring of the matter to a law enforcement agency who is conducting an investigation that is, as I described before, the rationale in the region for saying to the reporter: While this investigation is underway you are going to have to hold in abeyance your FOIL request and any other information on this while it's being investigated.

Herb expressed some incredulity about that, but I would submit to you that this is verification of my point in that regard. They are saying no, we are not going to provide that to you.

Q. I think what they are saying is, in the second paragraph, "After a thorough review of our files I have located 34 pages of documents or portions of documents that are responsive to your request for records for the month of June."

A. Forgive me for being awfully tired, but --

Q. We are all awfully tired.

A. I'm just now reading this. And that, to me, strikes me as bizarre and an indication of what happened after this scandal broke where they suddenly, based upon what Peter Pope and others
were saying did an about face and, oh, be better
not release this stuff. I am at this process on
the 14th. You know, I have sort of like been
pushed aside. And, I mean, this is their view in
that regard. I disagree with it because these
matters are clearly public documents. I am
learning now what and why, you know, things
happened with regard to me that I didn't have any
cue about. But I submit to you it's bizarre
given the fact that we all talked about it.

Q. What is bizarre, Mr. Dopp?
A. That they would say that you're not entitled
to something that we just provided and all just
discussed as being okay to provide.

Q. I don't know that they are saying you are
not entitled. I think what they're saying is: I
have located 34 pages of documents or portions of
documents that are responsive to your request."
A. Oh, I see. Again, I'm sort of coming to the
point where I'm kind of like not thinking clearly.

Q. I understand. And take your time, please.
I know it's late. We would all like to end this.
A. I can't give you a response to it because I
don't know what the documents there are that they
consider exempt. And I don't know the documents there are that they can provide. I assume it's the manifests. I assume it's the itineraries. I assume it's the schedule. And I assume it's the other stuff that was provided by Eliot.

(Commission's Exhibit 92 was marked for identification.)

Q. I am going to show you 34 pages of Exhibit 92. Take a moment and look through them.

A. Yes. These are manifests and schedules for the period. It appears that they are not providing the flight requests and the ground transportation assignments that we talked about before. It just appears to be schedule and manifest. So, I guess the decision --

MR. KINDLON: 148,000 miles.

A. I guess the decision they made was they apparently found problematic the release of the flight request documents and travel itineraries.

Q. If you look at Bates 364 there is a flight request from Senator Bruno at 364 for the 6/27 flight.

A. So, they conclude that that's okay, but I guess they conclude the remaining itinerary from
Q. And if you go to Bates 365, the Governor's schedule --
A. It appears to be more heavily redacted.
Q. More heavily than what?
A. Than what I would have provided previously.
Q. So, these documents do have redactions in the schedule as provided for the governor; is that right?
A. It looks like they are whacking telephone numbers and contact information.
Q. And, apparently, some events as well?
A. Yes. Again, I just -- that is not consistent with our commitment from Mr. Spitzer and myself to be more open in that regard. The State Broadcasters Association wants to get rid of Joe Riley's telephone number. That is a state secret.

See, this takes us back to a kind of thing that I always was trying to push back against. Every time you do this it raises suspicions among the reporters that you are not being forthright. And, all I can say to you is --
Q. But, these are the documents Mariah Treisman provided as a response to the July 10th FOIL request to from Mr. Odato?

A. Obviously, they got more cautious with regard to the information they were disclosing and were redacting more heavily.

Q. And, you didn't receive instructions regarding your responses to Mr. Odato concerning redactions and not providing the flights requests?

A. Remember, I am no longer communicating because I am closed down.

Q. When you were responding to Mr. Odato requests.

A. Everybody looked at the materials. Nobody said to me: You should have redacted this or that. And I showed it to just about everybody.

Q. When you say you showed it to just about everybody, would you identify for the record who that was?

A. Baum, nocente, Pope, Rifkin, and Spitzer.

Q. Did you ever discuss the full implications of providing the documents and whether or not there should be redactions?

A. Again, I keep coming back to that same point
of stuff was provided to me with the specific request: What would be responsive to a FOIL. I trusted the information I received was accurate, properly obtained, and ready for release to the media.

As an offhand comment here, what I would say is like the changes that they made are de minimus with the exception of not including the ground transportation. I don't understand why you would feel there's a security -- or need to redact.

David Patterson is attending the Puerto Rican Day Parade and contact into for the parade is blank, blank, and blank. They got cautious. They pulled way back and were doing things totally by the book at this stage. I guess that is understandable given the furor that had just arisen. I guess they didn't want to go down a path where someone was saying that you were doing something improperly again. But, all's I can tell you is that matters were discussed ad nauseam internally and went repeatedly to everyone to point out what I would be providing. And I sought clearance for providing it.
Q. You are no longer with the executive chamber; we established that earlier, Mr. Dopp?
A. Right.
Q. Were you ever advised as to the basis for your suspension?
A. No, although I kept asking for the rationale. And the only thing they told me is that --
Q. Who were you asking?
A. Nocente and, at the moment, Baum -- I take it back. Nocente is the only one I could ever engage once it occurred. I read about it. I wasn't informed the way that I should have been. And I said, "David, why? Why? Why?" And he said, "Darren, we had an appearance problem. And you remember what Andrew was saying. He was insisting on disciplinary action." Andrew was calling me throughout the period and saying, "I mentioned you three times in the damned report, Darren. I never expected they would discipline you."
Q. Did he indicate who he thought they would discipline?
A. Howard and Felton.
Q. The Governor made remarks on July 23, 2007 in which he indicates, "Unfortunately, serious errors in judgment on behalf of two members of the executive chamber occurred in this circumstance." Do you know what errors in judgment he is referring to?

A. I always tried to gain that information. And I believe it was a product of Peter Pope and Sean Maloney going to him saying that, or leaving the impression that I was involved in reconstruction of documents and that reaching out to the State Police was somehow inappropriate. This, despite of the fact that I told him I never talked to anybody in the State Police.

Q. Told who?

A. Pope and Maloney -- that I never talked to anybody at the State Police, nor did I ever contemplate doing so. Moreover, didn't know anything about reconstruction of documents. If I did, that would have been a red flag that I would have brought to everybody's attention.

Q. Did you ever discuss that with the Governor?

A. I have had no communication with the Governor. The only thing I can tell you is
through some intermediaries subsequent to that
they have sort of let it be known that the
information they were working with at the time was
flawed. They know I didn't do anything wrong.
They really want to bring me back and have
something, but they can't engage on the topic
until later on.

Q. Who are "they"?
A. It's just mutual friends that Eliot knows
that I would be talking to, close friends of mine
that he has relationships with as well. And
subsequently, I believe he stood to say a number
of things regarding, you know, "there's no
ethical, legal, or other error that he made." And
he said that at the state fair.

Q. He also made statements that this was an
instance of politicizing the State Police. Do you
believe that occurred here?
A. No. And, remember, Mr. Spitzer, Mr. Pope,
and Mr. Maloney are brand new to state government
at that level. There was no alternative but to
engage the state police on the matter. There is
no other source of information.

Furthermore, if you saw Glen Valle's
testimony and heard his testimony before the Senate Committee he said nothing inappropriate occurred: We, of course, maintain these records and, of course, respond when people ask for that information. It is perfectly within the right of the executive chamber to request such information because they are ultimately on the hook for doing so.

Q. If Mr. Howard was aware that these documents were reconstructed and knew you were releasing them to the press and were doing so in an effort to smear Senator Bruno, would that be a mischaracterization of the State Police in your opinion?

A. There is an awful lot of "ifs" there. And I still don't know what transpired between Felton and the rest of the State Police and Billy. I just know he never conveyed to me, nor did I convey to anybody else, any notion of reconstruction and any notion that there was a debate internally at the State Police about this was appropriate or not. But, truthfully, if it is as you describe, that could raise an issue and I could see how I would like at least to ask those
types of questions and try to get into the mindset of the people. But in that man's defense, I never picked up animus toward Bruno on the topic.

What I did pick up on and shared was taxpayers have the right to know this information because of the factors that I described at the beginning. It costs $20,000 a pop. And every time a pol is using it, it can't be used for emergency service.

And then lastly, the thing that I'm mostly concerned is we get criticized if we -- if the possibility of misuse is brought to our attention we would be criticized in the media for not doing something about it, for not reviewing it intensely. More to the point, Mr. Pope just told me I had a personal criminal jackpot for not doing something about it. So, if someone is telling me that I pushed, if someone is telling me that I seemed eager to have something done on the topic, it was the result of my firm belief that it's all public and my second belief that Pope spooked the hell out of me saying that I was on the hook personally.

Q. If Mr. Howard knew these were not public
documents and was providing them to you knowing
that you were releasing them to the media, would
that be a politicization of the State Police in
your opinion?
A. It could be. It could be because -- I guess
I would go back to the notion of: Was it
accurate? Was somebody being pressured to do
this? Did they volunteer it, you know? Was it as
he described to me? Remember, he said to me --
Q. As Mr. Howard described to you?
A. Mr. Howard described to me -- he said,
again, it's like, well, this is faxed directly
over; that was called in and that's why it's in
that form. I accepted that. And I didn't like --
I wasn't like -- I thought it was weird, but I
said, "But it's cool; right?" It's like everybody
is cool with it? And he's like "yes." But,
again, I didn't stop there. I then took it to the
others to say: Look at this. This is what was
 supplied by the State Police.
Q. When you took it to the others, did you show
them Commission's 2 as well as Commission's 5?
A. Pretty much it was Commission's 2, 5 and 3.
Q. 1, 3 and 5?
A. 1, 3 and 5, yes. Sorry. And everybody looked at it. And, again, it was such a yawn with regard to what we were providing from the Governor that nobody thought it's a big deal.

MS. TOOHER: Mr. Dopp, I think we are done here. You indicated earlier that you would like to put something on the record. And I will certainly give you the opportunity to do that.

INTERVIEWEE: I'm kind of pooped, but I had walked in thinking that I wanted to elaborate on the draft statement. And Herb demanded that we do that, and I'm glad we did that.

I wanted to underscore the level of internal discussion and just in two seconds. I need you to understand. We conducted an internal review; that's is May 17th. Consider referrals: I.G., A.G., D.A., Ethics, Legislative Ethics, feds, two versions of the feds. Each entity was rejected for a specific reason. We talked about the reasons why.

Thorough internal discussion of the matter that would go beyond anything that I was ever familiar with in regard to FOIL, okay.

So, on the first point, I just want to
underscore to you is like Darren is no rote.

Darren brought options to people. The thing that came up today that alarms me is that: Someone said you were told to stand down and never engage in that matter again. Not true. Never true.

Outrageous for anybody to suggest that. Why? We were constantly getting new information. We had the absolutely serious obligation to ensure the proper things were being done. If Rich or Eliot are telling me that -- I don't believe that would ever been the case. Rich and Eliot and I were constantly worried about this issue, leading right up until the moment when the story appeared. We didn't want to get whacked and we didn't want to get whacked for Bruno's possible misuse.

Lastly, the last two points, in summary:

I hope it doesn't sound like a speech or something, but -- three or four points.

I believed then and now we had a serious obligation to review the situation with the aircraft for the reasons I have stated. We control it. It costs the taxpayers tens of thousands of dollars. When politicians use it that means it's not available for everybody else.
1 Not to look into it when there is possible
2 concerns about it would have been wrong. I don't
3 want to insult you by saying unethical, but it
4 really would have been wrong to ignore, to look
5 the other way. Not an option for me, and I tried
6 to underscore that with my people.
7 Second, then and now the public most
8 assuredly has a right to know who is using the
9 aircraft. This wasn't a plot smear Joe Bruno
10 because everybody who was using the aircraft had
11 the available information provided to the reporter
12 from fair decisions made.
13 I can't -- and this is my business for
14 twenty years. You can't tell a reporter what to
15 write. You provide information to him that he
16 requests and you ask him to consider some things.
17 But it's his decision, him and his editor's
18 decision.
19 Again, I came back to the same point I
20 made. I never act without consultation, referral,
21 and approval from my colleagues in the matter.
22 Eliot, Rich, Nocente, Baum. Now, were they
23 focused entirely on this matter? Yes and no
24 because we're in such a dramatic period. Eliot's
main concern wasn't Bruno. It was whether he was
going to get whacked or Silver was going to get
whacked for their use of aircraft.

Rich's main concern was: Should I have
done more to police the use of the aircraft?
Should I have denied Bruno use at some point?
Again, we all came back to the notion of: We
really don't know absent a review of the
schedules.

The last thing: Alternatives to the
conduct that I have described. What would they
have done? Ignore it? Wrong. Have the State
police handle it? Again, it is our
responsibility. We are making the decisions. It
would have been weird at best to say: You talk
about this matter even though we're the ones
deciding what to do. You know, I say that to my
people and I say: A request is coming to me. The
documents have been assembled. We have all looked
at the documents. Is it okay to release at this
moment? They said go ahead. And that's how we
come to this moment.

Herb has insightful, intelligent things:

Might you not have added this to your statement?
1 Might you not have added this to the cover letter?
2 I agree. Those were valid things. I move
3 quickly. I do the best I can. Is it artwork?
4 No. Why was I the guy involved in the end? Three
5 people are running the show pretty much. They ran
6 it for the Attorney General and they are running
7 it for the Governor until such time as we are
8 fully staffed. We weren't fully staffed in the
9 fourth month of the year. The first year we were
10 doing our best. It fill to me. Then and now I
11 believe I did the right thing throughout.
12 I guess that's it. Sorry for blabbing a
13 bit and belaboring my points. But i have some
14 things I'll follow up on that Herb and you
15 requested. And I will provide those as soon as I
16 can.
17 MS. TOOHER: Terry, is this anything
18 else you want to put on the record?
19 MR. KINDLON: No, thank you.
20 MS. TOOHER: Thank you.
21 Thank you for coming in, Mr. Dopp.
22 INTERVIEWEE: Thanks.
STATE OF NEW YORK )
   ) SS:
COUNTY OF ALBANY )

I, BETH S. GOLDMAN, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the County of Albany and the State of New York, hereby certify that the proceedings recorded hereinabove were recorded stenographically by me and reduced to computer-generated transcription.

I FURTHER CERTIFY that the foregoing transcript of said proceedings is a true and correct transcript stenographically recorded at the time and place specified hereinbefore.

I FURTHER CERTIFY that I am not a relative or employee, attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of October, 2007.

BETH S. GOLDMAN
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public