

1 STATE OF NEW YORK
2 COMMISSION ON PUBLIC INTEGRITY

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4 IN THE MATTER OF AN INVESTIGATION

5

6 INTO THE ALLEGED MISUSE OF RESOURCES

7

8 OF THE DIVISION OF STATE POLICE

9 -----

10 VOLUME I

11 STENOGRAPHIC MINUTES OF SWORN TESTIMONY
12 conducted of DAVID NOCENTI on the 7th day of
13 February, 2008, at the offices of the Commission
14 on Public Integrity, 540 Broadway, Albany, New
15 York, commencing at 11:52 a.m.; before SADIE L.
16 HERBERT, a Shorthand Reporter and Notary Public
17 within and for the State of New York.

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1 APPEARANCES:

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ON BEHALF OF COMMISSION:

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5 NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

6 540 Broadway

7 Albany, New York 12207

8 BY: MEAVE M. TOOHER, ESQ.
Investigative Counsel

9

10 BY: HERBERT TEITELBAUM, Executive Director

11 JOAN P. SULLIVAN, Associate Counsel

12 ROBERT J. SHEA, Associate Confidential
Investigatory

13 BARRY GINSBERG

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15

16 ON BEHALF OF WITNESS:

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19 26 Century Hill Drive

20 Suite 206

21 Latham, New York 12110

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

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

2 (The following proceedings occurred in the
3 presence of Mr. Richard Rifkin via telephone:)

4 MR. TEITELBAUM: Can each of us note our
5 appearance beginning with Richard Rifkin who is a
6 special counsel to the Governor who is on the
7 telephone speaking on behalf of the Executive
8 Chamber on the speakerphone.

9 MR. GINSBERG: Barry Ginsberg.

10 MS. TOOHER: Meave Tooher, Commission on
11 Public Integrity.

12 MR. MOSCHETTI: Pete Moschetti, counsel for
13 Mr. Nocenti.

14 THE WITNESS: David Nocenti, Counsel to the
15 Governor.

16 MR. TEITELBAUM: Herbert Teitelbaum,
17 Executive Director to the Commission.

18 Mr. Rifkin, the Commission and the Executive
19 Chamber have entered into stipulations contained
20 in correspondence between yourself and me
21 relating to documents furnished to the Commission
22 by the Executive Chamber in which the Executive
23 Chamber has taken the position that certain of
24 those documents are covered by the

1 attorney-client privilege and has asserted that
2 with respect to the documents being furnished to
3 us, which fall within that category, that there
4 is a limited waiver that's applicable. The
5 Commission has taken the position that it is not
6 conceding that any of the documents are covered
7 by the attorney-client privilege.

8 We're about to take the testimony of David
9 Nocenti, and we're prepared to stipulate that the
10 agreements that are contained in the
11 correspondence between us on this subject matter
12 that relate to documents will also relate to
13 Mr. Nocenti's testimony.

14 MR. RIFKIN: So that as I understand it, all
15 of the terms and conditions set forth in those
16 letter agreements between us will be applicable
17 to your questioning of Mr. Nocenti with regard to
18 documents encompassed by those agreements; is
19 that correct?

20 MR. TEITELBAUM: Correct.

21 MR. RIFKIN: And under those circumstances,
22 the Executive Chamber is prepared to agree and
23 does agree that the Commission may question
24 Mr. Nocenti with respect to those documents under

1 the terms and conditions set forth in the limited
2 waiver agreements that we have signed.

3 MR. TEITELBAUM: So agreed.

4 (A discussion was held off the record.)

5 MR. TEITELBAUM: Mr. Rifkin, on behalf of
6 the Executive Chamber and the Commission have
7 also agreed that testimony that might be given by
8 Mr. Nocenti separate and apart from any documents
9 that are covered by the stipulations that we have
10 agreed upon in our correspondence would also be
11 made subject to those stipulations.

12 MR. RIFKIN: And again, assuming they're
13 covered by all of the terms and conditions
14 contained in those letter agreements, the
15 Executive Chamber would agree to allow you to go
16 forward, ask the questions and have Mr. Nocenti
17 answer them.

18 MR. TEITELBAUM: Thank you very much.

19 (The proceedings with Mr. Richard Rifkin via
20 telephone concluded.)

21 DAVID NOCENTI,

22 (First duly sworn by the Notary Public, was
23 examined and testified as follows:)

24

1 EXAMINATION

2 BY MS. TOOHER:

3 Q. Would you state your full name for the record, please.

4 A. David Nocenti.

5 Q. And Mr. Nocenti, where are you employed?

6 A. State of New York, Governor's Office.

7 Q. What is your position?

8 A. I am the Counsel to the Governor.

9 Q. And briefly, what are your responsibilities in that
10 position?

11 A. I can either do it very briefly or the long -- I'm
12 basically responsible for, you know, oversight of all
13 legal matters that come before the Governor's Office.
14 It involves legal issues, litigation oversight,
15 legislative issues, you know, there's no real way to
16 cap what can fall into the bucket.

17 Q. And in terms of the organization of the Executive
18 Chamber, where do you fall in that organization?

19 A. I'm a counsel to the Governor, it's a statutory
20 position. I report to the Governor.

21 Q. So your direct report is to the Governor?

22 A. Yes.

23 Q. Who reports to you?

24 A. I have a staff that includes a first assistant counsel

- 1 and 11 assistant counsels.
- 2 Q. So the Counsel's Office reports to you?
- 3 A. Yes. Plus support staff.
- 4 Q. And does anyone else report directly to you?
- 5 A. Depending on how you define support staff. The
- 6 Counsel's Office has secretaries, librarian, there's a
- 7 legislative secretary's office, that's the primary
- 8 liaison with the legislature on pure bill matters and
- 9 someone who is the executive director of judicial
- 10 screen committees as well.
- 11 Q. Do you know Richard Baum?
- 12 A. I do.
- 13 Q. And who is Mr. Baum?
- 14 A. He's the Secretary to the Governor.
- 15 Q. Does Mr. Baum report to you?
- 16 A. He does not.
- 17 Q. Where does Mr. Baum fall on the organization as far as
- 18 the Governor's Office?
- 19 A. He's -- I mean, I don't know what you mean. I think
- 20 that's also a statutory position. He's like, you
- 21 know, essentially, the head of the Executive Chamber,
- 22 would be the best way to describe it, other than the
- 23 Governor and the Lieutenant Governor as well.
- 24 Q. And his official position?

- 1 A. Secretary to the Governor.
- 2 Q. To your knowledge, does he report directly to the
3 governor?
- 4 A. Yes.
- 5 Q. Do you discuss issues on a regular basis with
6 Mr. Baum?
- 7 A. I do.
- 8 Q. And is Mr. Baum on par with you in terms of his
9 reporting relationship to the Governor?
- 10 A. I guess it depends on the matter. For many issues, I
11 would take issues to Rich Baum; for other issues, I
12 would take them directly to the Governor. So for some
13 matters, I report directly to the Governor, for some I
14 would normally report through Rich.
- 15 Q. Can you give me an example of the types of issues that
16 you would discuss with --
- 17 A. Sure. If it's a pure legal litigation issue that I
18 felt the Governor needed to be aware of, I would
19 discuss it directly with the Governor. Whereas, if
20 it's policy matters -- it's not really a, you know,
21 direct flowchart. I mean, we have a much more
22 collaborative working relationship. It's like,
23 whoever needs to be involved in discussions is
24 involved in discussions. But for many matters, Rich

1 is the person that I talk to.

2 Q. Do you know Darren Dopp?

3 A. I do.

4 Q. How do you know Mr. Dopp?

5 A. He was an assistant press secretary to Mario Cuomo
6 when I was an assistant counsel to Governor Cuomo.

7 Q. And did you know Mr. Dopp in his capacity with the
8 Executive Chamber?

9 A. I did.

10 Q. What was his position?

11 A. I believe he was the Director of Communications.

12 Q. Do you know to whom Mr. Dopp reported as Director of
13 Communications?

14 A. Again, I don't know that I've ever seen an
15 organizational chart, so I couldn't tell you whether,
16 technically, he reported directly to the Governor, but
17 on many issues, just like me or Rich or the Director
18 of State Operations, you take things directly to the
19 Governor or you take them to somebody else.

20 Q. Did Mr. Dopp discuss issues with you in his capacity
21 as Director of Communications?

22 A. Sure. Yes.

23 Q. And what type of issues would he discuss with you?

24 A. No real -- I mean, all sorts of issues. Obviously,

1 press issues, if there were things I knew that were
2 going to be newsworthy, I would tell him about it, or
3 if he was aware of things that have legal issues or
4 even sometimes policies, he would let me know.
5 Sometimes there would be staff meetings where
6 everybody would be talking to different people, so
7 just again, he would talk to people on an as needed
8 basis based upon who you thought would be the people
9 that needed to know.

10 Q. Did Mr. Dopp ever discuss Freedom of Information Law
11 issues with you?

12 A. Sure.

13 Q. Did you have a role in terms of Freedom of Information
14 Law requests with the Chamber?

15 A. I don't have a formal role. The Chamber has a Freedom
16 of Information Law Officer, referred to as a FOIL
17 Officer. And then if someone makes a FOIL request and
18 it is declined, they have a right to appeal. It would
19 go to the Appeals Officer under the FOIL Law. So I
20 was not technically involved, but people would consult
21 with me if legal issues arose relating to anything,
22 and FOIL would be something that there might be a
23 legal issue that arises, or they could check with the
24 FOIL Officer or the Appeals Officer.

- 1 Q. The FOIL officer in the Executive Chamber, who is
2 that?
- 3 A. Mariya Treisman, M-A-R-I-Y-A, T-R-E-I-S-M-A-N.
- 4 Q. And is Ms. Treisman in Counsel's Office?
- 5 A. She is.
- 6 Q. And does she report directly to you?
- 7 A. She does.
- 8 Q. And does she discuss FOIL issues with you?
- 9 A. On occasion.
- 10 Q. What type of FOIL issues would she bring to your
11 attention?
- 12 A. I think just if there was a matter that she wasn't
13 sure how to handle, she would bring it to my
14 attention, or she might bring it to the Appeals
15 Officer's attention.
- 16 Q. Who is the Appeals Officer?
- 17 A. It's Terryl, T-E-R-R-Y-L, Brown Clemons,
18 C-L-E-M-O-N-S.
- 19 Q. I want to come back to the FOIL in just a bit, but
20 going back to Mr. Dopp, is he currently employed at
21 the Executive Chamber?
- 22 A. He is not.
- 23 Q. Do you know when he left employment with the Executive
24 Chamber?

- 1 A. I don't recall a specific date. It was in the
2 September, October time frame.
- 3 Q. And that's September, October of 2007?
- 4 A. Correct.
- 5 Q. And do you know why he left the Executive Chamber?
- 6 A. I believe he was offered a position outside of the
7 Executive Chamber and accepted it.
- 8 Q. And at the time that he accepted the other position,
9 what was Mr. Dopp's status with the Executive Chamber?
- 10 A. He was the Director of Communications.
- 11 Q. What was his employment status?
- 12 A. I believe -- I don't know. He was on -- suspended
13 without pay for a time period, and then he went back
14 to paid status. So I believe he was, at that point,
15 the Director of Communications.
- 16 Q. Do you know the basis for his suspension?
- 17 A. Yes. It was a suspension arising out of the
18 circumstances surrounding the report that the Attorney
19 General issued.
- 20 Q. And do you know why Mr. Dopp was placed on suspension
21 as a consequence of that report?
- 22 A. The Governor decided that, based upon the findings in
23 the AG's report, that there were lapses in judgment
24 and that some disciplinary action should be taken, and

1 two individuals were disciplined; Mr. Dopp and William
2 Howard. And his suspension was a result of the lapses
3 in judgment.

4 Q. What is your understanding as to what those lapses in
5 judgment were?

6 A. Are you asking me what my understanding of those
7 lapses in judgment were or what lapses actually led to
8 the suspension?

9 Q. We can do both.

10 A. I mean, it was the Governor's decision to suspend him,
11 so I can't say -- I can't itemize what factors he
12 weighed and how he weighed them.

13 Q. What is your understanding as to what the lapses in
14 judgment were?

15 A. Well, for example, we received a FOIL request from a
16 newspaper reporter and that request was not processed
17 through the FOIL Officer. The FOIL request related to
18 documents, documentation of the apparent misuse of
19 State aircraft and personnel by the Senate Majority
20 Leader, who was generally viewed as a political
21 opponent of the Governor's, and so the manner in which
22 that was handled, you know, essentially could have
23 been handled differently, for example, documents from
24 the State Police were obtained direct- -- through us,

1 through the Governor's Office rather than directly
2 from the State Police. You know, we obviously could
3 choose to handle it one way or the other, but
4 certainly, could have referred the reporter to the
5 State Police for those documents.

6 Q. Now, I think you just said it could have been handled
7 one way or the other?

8 A. Yes.

9 Q. What do you mean by that?

10 A. There's no law on this. If you get a FOIL request,
11 you know, there's no prohibition against asking
12 another agency to provide you with documents. And so
13 if, for example, we were to get a FOIL request for
14 500 pages of materials and we knew that the Department
15 of Health had the 501st, we could contact the
16 Department of Health and ask for it and send it with
17 the rest of the documents.

18 You know, as a general rule, we try to be
19 accommodating to reporters who are seeking
20 information, didn't require them to make a FOIL
21 request every time they sought information, so you
22 could instead choose to say to the reporter, here's
23 500 pages, if you want anything else, go FOIL the
24 Department of Health.

1 Q. So what was Mr. Dopp's error in judgment in obtaining
2 the documents from the State Police?

3 A. Well, I think in retrospect, we could have had those
4 documents -- we could have asked the reporter to ask
5 the State Police for any documents in the possession
6 of the State Police.

7 Q. I understand that you could have done that.

8 A. Mm-hmm.

9 Q. But I believe you just testified that it could be
10 handled one way or the other?

11 A. Right.

12 Q. And I believe you testified that Mr. Dopp demonstrated
13 an error in judgment --

14 A. Yeah.

15 Q. -- in obtaining these documents directly. What was
16 that error in judgment?

17 A. I guess I don't really understand the question.

18 In retrospect, there was a lot of public concern
19 raised about the fact that we were obtaining documents
20 from the State Police as opposed to sending the
21 reporter to the State Police to get those documents.
22 So in order to avoid that issue, he could have asked
23 the State -- he could have asked the reporter, here
24 are the documents that we have, if you want any other

1 documents from the State Police, you should ask them
2 for them.

3 Q. I understand in terms of what you are saying he could
4 have done as an option.

5 A. Right.

6 Q. And I'm trying just to be clear, he was suspended from
7 his position with the Executive Chamber based on an
8 error in judgment, and it seems that that's a fairly
9 serious disciplinary action.

10 A. Mm-hmm.

11 Q. What would be the error that would require that level
12 of discipline?

13 A. Well, to the extent that asking the State Police to
14 gather information about the Senate Majority Leader
15 who was widely viewed as a political opponent, in
16 order to avoid that appearance issue, arguably, you
17 would avoid it, and I think you would avoid it, if you
18 told the reporter, go ask the State Police. So --

19 Q. So for Mr. Dopp to ask the State Police for
20 information about Senator Bruno creates an appearance
21 of impropriety?

22 A. You know, that seems to ask for a legal conclusion. I
23 would instead say that there's no law that says that
24 you can't ask another agency for documents. There

1 obviously has been a lot of press about this case in
2 which people have questioned, quote, "the use of the
3 State Police to gather these documents", and so had he
4 simply asked the State Police -- asked the reporter to
5 go to the State Police, that would have avoided that,
6 any appearance at all.

7 I don't want to draw a legal conclusion as to
8 whether there actually is an appearance of impropriety
9 or not.

10 Q. What would be the appearance issue?

11 A. I guess -- I'll say the same thing I said before.
12 There was a lot of press about using the State Police
13 to gather documents, so apparently in the press, there
14 was a view that that's something that should not have
15 been done. So the appearance is, the Governor's
16 Office gathering the documents as opposed to asking
17 the reporter to go and gather the documents from the
18 State Police.

19 Q. I'm just trying to be clear on this. The appearance
20 issue here is after the fact?

21 A. If you want to avoid the appearance that you are
22 asking the State Police or utilizing the State Police
23 with respect -- in an inappropriate manner with
24 respect to the -- a political opponent, had he asked

1 the reporter to talk to the State Police, that would
2 have avoided any such appearance. So obviously, it's
3 an action you take before the fact, not after the
4 fact.

5 Q. So --

6 A. But in order to avoid any appearance during the fact.
7 I don't know.

8 Q. So is the appearance using the State Police to gather
9 information on a political opponent?

10 A. There's -- the manner in which this was handled
11 certainly raised the appearance that the Governor's
12 Office was using the State Police to gather
13 information about a political opponent. That
14 appearance could have been avoided had we not asked
15 the State Police to gather any documents at all and
16 instead had referred the matter to the State --
17 referred the reporter to the State Police.

18 MR. TEITELBAUM: Mr. Nocenti, there's been
19 testimony in the record in this investigation
20 that it was the practice and protocol of this
21 administration that if a request for documents
22 was made to the Executive Chamber and the
23 Executive Chamber did not possess the documents
24 but they were possessed by another agency that

1 the Executive Chamber would refer the person
2 requesting the documents to the other agency; is
3 that accurate?

4 THE WITNESS: I don't think we had a formal
5 policy on it. As a general rule, if somebody
6 asked us for bridge inspection documents, we
7 would probably refer them to the Department of
8 Transportation who would have those documents.
9 But again, if somebody was asking for documents
10 where we had some documents and somebody else had
11 some documents, I don't think we had formal
12 policy. If you are trying to be accommodating to
13 reporters and, you know, sure, you always say --
14 okay, you are asking for documents from five
15 different agencies, you have to file five
16 different FOIL requests, if it's a simple request
17 and it can easily be gathered, there certainly
18 was no policy prohibition against asking another
19 agency to get you the documents.

20 MR. TEITELBAUM: In the normal course, if a
21 request were made as I described it, would the
22 person making the request, in the normal course,
23 in this administration, be sent to the agency
24 that possessed the documents?

1 THE WITNESS: I guess it depends on what the
2 request is. Again, if you are asked for
3 something and you have 500 pages and the other
4 has the 501st, I think we would not turn over the
5 500 and say, you know, anything else, you need to
6 go to somebody else. If there was a request
7 where it essentially requested documents from
8 another agency, we would probably refer them to
9 another agency.

10 You have to distinguish between FOIL
11 requests and requests. I mean, if a reporter is
12 just picking up the phone and saying, you know, I
13 hear DOT issued a press release, can you get me a
14 copy, I'm sure they would just get the copy and
15 forward it, as opposed to just saying, go call
16 DOT.

17 MR. TEITELBAUM: In the instance in which we
18 are concerned involving Mr. Dopp and the
19 documents that he had collected from the State
20 Police, under the circumstances there, in the
21 normal course, how would these -- what was the
22 protocol in the Executive Chamber as to how that
23 volume of documentation and the nature of the
24 documentation be handled?

1 THE WITNESS: I don't think there was a
2 normal course. We had only been in office for
3 five months. You don't necessarily know what the
4 volume of documents is going to be when you first
5 get the request, so I don't think there was a
6 normal course, normal practice at that time. The
7 Governor generally has a view that, you know, you
8 should not make every -- we could have a policy
9 that anybody wants anything, you have to make a
10 FOIL request, it goes to the FOIL Officer, they
11 get a five day letter, you gather the documents,
12 you charge them 25 cents a page and you turn it
13 over; that clearly was not our policy. The
14 policy was to be much more open than the prior
15 administration was, to not make people jump
16 through all of those hoops, so we did not have a
17 formal policy on how that would be handled.
18 Everything was done on a case-by-case basis.

19 MR. TEITELBAUM: You seem to have drawn a
20 distinction between requests that were made
21 pursuant to the Freedom of Information Law and
22 other kinds of requests --

23 THE WITNESS: Mm-hmm.

24 MR. TEITELBAUM: -- and how it would be

1 handled. Can you tell us about that.

2 THE WITNESS: If someone makes a FOIL
3 request pursuant to the Freedom of Information
4 Law it should go to the FOIL Officer, the FOIL
5 Officer should handle it.

6 MR. TEITELBAUM: And if the documentation
7 that was requested in the FOIL request were not
8 in the possession of the Executive Chamber, was
9 there a protocol applicable?

10 THE WITNESS: Again, we did not establish
11 protocols on all those -- on any of these issues,
12 but my expectation would be that we would be
13 responding on behalf of the Executive Chamber to
14 a formal FOIL request, pursuant to the Public
15 Office of Law, we are only turning over the
16 documents in the possession of the Executive
17 Chamber.

18 MR. TEITELBAUM: Under the circumstances
19 where a FOIL request were made and the Executive
20 Chamber did not have those documents, given what
21 you just testified to, but the Executive Chamber
22 knew that the documents were in another agency,
23 what would typically happen?

24 THE WITNESS: Again, I don't think there was

1 any typically. Again, we're only five months
2 into the administration at that time, and I think
3 it also depends if you get -- you know, I think
4 it really depends if a reporter FOILed documents
5 and we knew that the Department of Health had
6 most of the documents, my guess is that the Press
7 Office would tell the reporter, you know, by the
8 way, the Department of Health has a bunch of
9 documents. But if you just get a request from
10 somebody, as a general rule, you just respond to
11 the request.

12 MR. TEITELBAUM: We are now talking about a
13 request pursuant to FOIL.

14 THE WITNESS: You are not talking about a
15 FOIL request?

16 MR. TEITELBAUM: As I understand what you
17 are saying is that if a FOIL request comes to the
18 Executive Chamber, it's supposed to go to the
19 FOIL Officer?

20 THE WITNESS: Correct.

21 MR. TEITELBAUM: If the Executive Chamber
22 does not have the documents, but the documents
23 were at another agency, what does the FOIL
24 Officer do?

1 THE WITNESS: As a general rule, the FOIL
2 Officer would just respond indicating we don't
3 have any documents.

4 MR. TEITELBAUM: Would the FOIL Officer
5 indicate that the documents are in the possession
6 of another agency?

7 THE WITNESS: Again, it depends on who makes
8 the request. If it's a reporter that is, you
9 know -- you know, there's reporters that the
10 Press Office deals with all the time. If we get
11 a FOIL request from a reporter, there is
12 sometimes communication with the Press Office
13 saying, you know, I got this request, by the way,
14 we don't have any documents, DOT has them, you
15 may want to let the reporter know that DOT has
16 them. Really, again, it's a case-by-case basis
17 and it depends on who is making the request and
18 the nature of the request.

19 BY MS. TOOHER:

20 Q. In terms of FOIL requests or document requests in that
21 regard, you indicated earlier that if someone were to
22 call in -- or I'm sorry -- to write in looking for
23 documents that were in the possession of, I think you
24 used the example of the Department of Health that

1 there could be circumstances where you would get those
2 documents and provide them to the individual
3 requesting the documents?

4 A. If it's a formal FOIL request, as a general rule, we
5 would just respond with the documents that we have.
6 If it was somebody, you know, that we didn't want to
7 mislead because -- just by sending them documents
8 knowing that there were documents somewhere else,
9 there would likely be a communication from the Press
10 Officer to the reporter saying, you know, we're
11 getting you what we have, but you may want to check
12 with the Department of Health.

13 Q. And where would you be getting "what we have", when
14 you say --

15 A. As a general rule, when a FOIL request comes in, the
16 FOIL Officer figures out who is most likely to have
17 those documents, then we send out an e-mail saying,
18 please collect any documents that you might have.
19 Those documents are collected and processed and
20 reviewed for responsiveness and exemptions and then
21 are produced.

22 Q. That's in the instance of a FOIL request?

23 A. Right.

24 Q. If someone makes an oral request, just happens to call

1 someone in the Press Office and say, I'd like these
2 documents and they happen to know where the documents
3 are --

4 A. Mm-hmm. Again, we did not have a formal policy on
5 that. It could vary from Press Officer to Press
6 Officer. Some Press Officers might say, we don't have
7 them; some Press Officers might say, check with the
8 Department of Health. If it's an easily obtainable
9 document, they might just obtain it and get it. I
10 mean, there's -- my understanding is there's a lot of
11 communication between Press Officers and reporters on
12 a daily basis.

13 Q. But there wasn't a policy in place that prohibited a
14 Press Officer from getting documents from another
15 agency?

16 A. Correct.

17 Q. Is that correct?

18 A. Correct.

19 Q. So what is the impropriety or the appearance of
20 impropriety in obtaining documents from the State
21 Police that you know to exist?

22 A. I think that's the same question I've answered before,
23 I'll give you the same answer. This was a unique
24 situation because the individual involved was the

1 Senate Majority Leader who the public generally views
2 to be a political opponent of the governor. So as we
3 all know from the aftermath of the report, there have
4 been a lot of accusations that the State Police was
5 somehow politicized, and that it was wrong to use the
6 State Police to gather these documents, as opposed to
7 sending the reporter to the State Police to get the
8 documents. So had Darren told the reporter, go talk
9 to the State Police, I'm not going to help you out,
10 then that appearance issue would have been avoided.

11 Q. So is the appearance created because Mr. Dopp should
12 have known that because this involved Mr. Bruno he
13 should be careful to cross the T's, dot the I's, send
14 the individual directly to the State Police?

15 A. I don't want to say what he should have known or
16 shouldn't have known, and you can't always predict
17 what the public is going to view or what people are
18 going to view to be an appearance or not, but
19 certainly, in retrospect, sending the reporter to
20 talk -- to get the documents from the State Police
21 would have avoided any assertion that we were asking
22 the State Police to gather documents with respect to
23 Mr. Bruno.

24 MR. TEITELBAUM: Mr. Nocenti, getting back

1 to the general procedure in the context of the
2 FOIL request and sending the requesting party to
3 another agency, if the Executive Chamber doesn't
4 have it, you characterized it as the general
5 practice that that would happen; is that fair to
6 say?

7 THE WITNESS: I would say no with respect to
8 a FOIL request as a general rule, because the
9 FOIL Officer will respond only with respect to
10 the documents we have. It really is a
11 case-by-case basis as to whether you would take
12 the next step and say, by the way, you should
13 probably check with DOT as well, or you might
14 say, did you also FOIL DOT, because reporters are
15 smart, they would frequently send multiple FOIL
16 requests out to figure out who might have
17 documents.

18 MR. TEITELBAUM: In the instance of a FOIL
19 request, the FOIL request goes to the FOIL
20 Officer, the Executive Chamber does not have the
21 documents; do you know of an instance in which
22 the FOIL Officer went to another agency to secure
23 the documents in satisfaction of the FOIL
24 request?

1 THE WITNESS: I do not.

2 BY MS. TOOHER:

3 Q. The incident that we focused upon, the investigation,
4 the whole travel and use of the helicopter issue.

5 A. Mm-hmm.

6 Q. When did that issues, the use of the helicopter come
7 up for the first time in the Executive Chamber, to
8 your knowledge?

9 A. To my knowledge, it would have been sometime in
10 January or February.

11 Q. And how did it come up in that context?

12 A. There were discussions about the fact that in every
13 administration there are questions about use of the
14 helicopter for nongovernmental purposes, and so, among
15 the ten thousand things that we were dealing with in
16 the first two months of the administration, one of
17 them was, how are we going to handle this situation,
18 you know, how should we deal with it, if the Governor
19 is using the aircraft or if somebody else wants to use
20 the aircraft.

21 Q. And who was privy to those conversations?

22 A. Again, there's ten thousand things going on, so I
23 can't say for sure, but I know that I had
24 conversations with Bill Howard about it, with Marlene

1 Turner, with Rich Baum and with Darren Dopp.

2 Q. And how do you know you had conversations with those
3 individuals? Was there a particular conversation that
4 you recall?

5 A. No. I mean, I can just give you the sum and
6 substance. I mean, Bill Howard worked for the prior
7 administration, he was involved in handling plane
8 requests, so I know that we got information from him
9 with respect to how it was handled in the prior
10 administration. Marlene Turner is the Chief of Staff
11 and is also primarily responsible for the schedule of
12 the Governor, so the use of the aircraft is something
13 that she needs to be aware of, she's like the liaison
14 with the State Police when the Governor is going to be
15 traveling. Because it was a press issue, I know that
16 Darren was involved and Rich was involved as well.

17 Q. And why would Rich Baum have been involved?

18 A. Because it's a use -- it's Governor's travel, it's
19 other people's travel, it's a press issue, you know,
20 we knew the public would be focusing on it. It's, you
21 know -- a high profile issue like that, Rich would be
22 involved.

23 Q. Was Rich involved, Rich Baum involved in the approval
24 process for use of the helicopter?

- 1 A. Not to my knowledge.
- 2 Q. And do you know what the approval process is for use
3 of the helicopter?
- 4 A. Well, for Governor's travel, I mean, if the Governor
5 is traveling and he needs to use the helicopter, he
6 just uses the helicopter.
- 7 Q. What about for Senator Bruno?
- 8 A. It's my understanding that if other people want to use
9 the helicopter, they make a request, which goes
10 through Marlene Turner.
- 11 Q. And how do they make that request?
- 12 A. We have a form that is -- well, the Governor and
13 Lieutenant Governor are different, as opposed to
14 outside parties like the Senator. We have a form that
15 someone would fill out explaining when they need it
16 and the general purpose of the travel.
- 17 Q. And were there any changes made to this form when you
18 came into the administration?
- 19 A. Yes, there were.
- 20 Q. Do you know what those changes were?
- 21 A. I believe that we asked for a little more
22 specification, what the purpose of the travel was and
23 we added a certification line that the person was
24 certifying -- I would have to see the form to tell you

1 exactly what the certification is.

2 Q. What was your understanding as to what those changes
3 were intended to do?

4 A. Intended to make sure that the plane was being used
5 for governmental purposes, predominantly governmental
6 purposes.

7 Q. And when you say "predominantly governmental
8 purposes", what do you mean?

9 A. Well, I mean, if you take the helicopter down and you
10 have government meetings and then you have lunch with
11 friends and then you take the helicopter back after
12 governmental meetings, we would certainly allow that.
13 If you were taking it down for, you know,
14 predominantly nongovernmental purposes, we probably
15 would have had a discussion as to whether we would
16 authorize the use of the helicopter for that purpose,
17 but I don't think that issue ever arose.

18 (Commission's Exhibit 121 was marked for
19 identification.)

20 Q. Mr. Nocenti, I'm showing you what's been marked as
21 Commission's Exhibit 121.

22 A. Mm-mm.

23 Q. And ask if you can identify this document.

24 A. This appears to be a draft of the Aircraft Flight

1 Request Form.

2 Q. And when you say "a draft", why do you say that?

3 A. Because there's -- I believe that the official form
4 has, maybe, a seal or something, and this has
5 handwriting on it, which looks to be a markup of the
6 form.

7 Q. Do you know whose handwriting that is?

8 A. I think it's mine.

9 Q. Were you involved in changing the form?

10 A. I was.

11 Q. And is this the final form that the Chamber arrived at
12 in terms of requests for use of the helicopter?

13 A. I'd have to see the form that's used now. I mean,
14 obviously, this has handwriting on it, so I'm sure
15 this is not the final form.

16 Q. I'm going to show you what's been previously marked as
17 Commission's Exhibit 28b and ask you if you can
18 identify this document.

19 A. I can tell you that it appears to be a Flight Request
20 Information Form in which Senator Bruno requested to
21 use the helicopter on May 17th and May 18th.

22 Q. And I'll just draw your attention to the distinctions
23 that I note in -- between Commission's 121 and 28b,
24 and that is that the purpose of the flight requested

1 asks that the individual certify the document and if
2 it's a true and accurate please indicate --

3 A. Which document are you looking at right now?

4 Q. I'm sorry. I'm looking at 28b.

5 "Please indicate the official State business
6 reflected on your schedule between the hours of
7 landing and departing from the arrival city and advise
8 the Chief of Staff of any changes."

9 A. Mm-hmm.

10 Q. And below that is a certification?

11 A. Mm-hmm.

12 Q. And the draft at 121 seems to be a little more
13 expansive in terms of what you are requesting from the
14 individual certifying the form?

15 A. Mm-hmm.

16 Q. Do you know how the original form, the determination
17 on the original form was -- I'm sorry. 28b was made,
18 the language on 28b was arrived at from the version in
19 121?

20 A. Actually, I don't think 121 is the original form.

21 Q. 121 is a draft, I think you indicated?

22 A. Yes. But I know -- I believe that there was a form
23 from the prior administration that we started with,
24 and then I can't tell you the -- I'm presuming that

1 this is what I would describe as an interim draft.

2 Q. 121?

3 A. 121, yes. Sorry.

4 Q. And Page 2 of 121, the attachment to the flight
5 request form, "Please indicate the hours and nature of
6 nonofficial State business activities during the hours
7 of landing and departure."

8 A. Mm-hmm.

9 Q. And requests reimbursement for those portions?

10 A. Mm-hmm.

11 Q. 28b does not have a Page 2 of that nature. Are you
12 aware of that requirement being in the travel request
13 forms?

14 A. I don't believe it was ever in the travel request form
15 I know there were discussions and I just have a vague
16 recollection as to whether -- you know, how much
17 detail we should request and, you know, I have no
18 specific recollection of any -- you know, what
19 exactly -- who said what, but I know at some point
20 that there was a decision simply to ask them to
21 indicate the official business. So I actually don't
22 know if this is a form that someone gave to me, so...

23 Q. Are you aware of any objection being raised to
24 requiring additional information in making the flight

1 requests?

2 A. Well, for example, Page 2 says, "You will be
3 personally responsible for reimbursement based on
4 current aircraft charter costs in New York State of
5 that portion of the trip related to non-State business
6 activities." I have a very vague recollection that
7 there was a discussion as to whether it was
8 appropriate to seek reimbursement for that, and I
9 think the decision was it would not be. And to some
10 extent -- yeah, so I think, because of that, there
11 seemed to be a less of a need to gather more detailed
12 information. I know that there was some discussion at
13 some point, do we have an hour-by-hour recitation, and
14 I know that decision was made not to do that. But it
15 was a long time ago.

16 Q. Was it ever related to you that the Senate and,
17 specifically, Senator Bruno's Office objected to
18 providing more information in their itineraries in
19 requesting use of the helicopter?

20 A. I don't recall. I mean, I don't know whether we had
21 one form and then it turned into this form. I just --
22 I don't know. I certainly didn't have any
23 conversations with anybody in Senate on that.

24 Q. Did you have any conversations with anybody in the

1 Executive Chamber?

2 A. Not that I recall.

3 MR. TEITELBAUM: Mr. Nocenti, apart from the
4 second page of 121 asking for -- or notifying
5 people that they may have to reimburse --

6 THE WITNESS: Mm-hmm.

7 MR. TEITELBAUM: -- it also asks, as you
8 pointed out, the nature of nonofficial State
9 business and how much time was spent. You
10 testified earlier that the Executive Chamber
11 might not approve somebody's use of the
12 helicopter if the allocation between State and
13 non-State business tipped substantially in favor
14 of the non-State business; do I have that right?

15 THE WITNESS: Well, I mean, again, it never
16 came up, but I'm sure if someone said, I'd like
17 to use the helicopter, I'm going to be going to
18 the -- you know, to the beach with my family, and
19 I'll spend ten minutes, you know, talking about
20 legislative issues, we probably would have said
21 no. In fact, I'm sure we would have said no.

22 MR. TEITELBAUM: And why would you have said
23 no?

24 THE WITNESS: Because I don't think we would

1 have felt that it would be appropriate to take
2 the aircraft on what was essentially a beach
3 vacation.

4 MR. TEITELBAUM: And that would have been a
5 hundred percent use of the State aircraft for
6 non-State business?

7 THE WITNESS: No. As I mentioned, there was
8 a ten minute discussion. There would be some
9 State -- even if there were some small State
10 business involved.

11 MR. TEITELBAUM: Was there a standard that
12 was being applied in -- that you had in mind in
13 regard to this potential issue?

14 THE WITNESS: No. Again, it didn't come up.
15 To my knowledge, there was never a time when we
16 knew ahead of time that someone was using a State
17 aircraft predominantly for non-State business.

18 MR. TEITELBAUM: Did there come a time when
19 Richard Rifkin began to participate in the
20 discussions concerning the proper use of State
21 aircraft?

22 THE WITNESS: He could have easily been
23 involved. I don't have any specific
24 recollection. He was the former Executive

1 Director of the Ethics Commission, he would have
2 been an appropriate person to consult with. I
3 just don't recall.

4 MR. TEITELBAUM: You don't recall consulting
5 with him?

6 THE WITNESS: I consult with Richard Rifkin
7 on --

8 MR. TEITELBAUM: On this particular subject?

9 THE WITNESS: At this time, at the time of
10 developing this form, I just don't remember.

11 MR. TEITELBAUM: But did there come a time
12 when you did consult with Richard Rifkin on the
13 subject?

14 THE WITNESS: Yeah, much later, when there
15 was discussion as to what's appropriate, what's
16 not appropriate, when the Commission on Public
17 Integrity or, I guess, the Ethics Commission was
18 issuing its opinion on use of State aircraft.
19 Again, I would expect that I would have talked to
20 Richard Rifkin about it, I just don't remember.
21 Again, there's ten thousand things going on.

22 MR. TEITELBAUM: Are you able to place the
23 conversation that you had with Mr. Rifkin
24 concerning this subject prior to the point in

1 time when the Ethics Commission was issuing or
2 working on an opinion concerning the proper use
3 of State aircraft?

4 THE WITNESS: I'm sure I would have had a
5 conversation with him about the time when the
6 story came out, which I believe was in advance of
7 the Ethics Commission working on it.

8 MR. TEITELBAUM: This is July 1st?

9 THE WITNESS: Yeah.

10 MR. TEITELBAUM: But you don't have a
11 recollection of having a conversation with him on
12 the subject matter before July 1st?

13 THE WITNESS: No. But again, he's a go-to
14 person on ethics issue. It wouldn't surprise me
15 if I talked to him about the issue at this time,
16 I just don't remember.

17 MR. TEITELBAUM: Do you have a recollection
18 of a representative of Senator Bruno's office
19 raising the subject of the separation of powers
20 as an obstacle to the Executive Chamber requiring
21 the kind of information from Senators or Senate
22 personnel that you sought in the second page of
23 121?

24 THE WITNESS: I do not recall having any

1 conversations with anybody in the Senate about
2 this form. It doesn't mean it didn't happen; I
3 just don't recall.

4 MR. TEITELBAUM: I'm not talking about the
5 form in particular. I mean, the subject of the
6 Senators providing information as to their
7 activities on the ground in connection with when
8 they use State aircraft.

9 THE WITNESS: Look, I talk to people who
10 work at the Senate all the time, there's
11 obviously been a lot of press about this issue,
12 it's -- I just -- I don't have a specif- -- I
13 just don't remember. I mean, it's possible I had
14 a conversation with somebody about it, but I just
15 don't recall.

16 MR. TEITELBAUM: Do you know of anybody else
17 in the Executive Chamber who had -- might have
18 had a conversation with somebody in Senator
19 Bruno's Office on the subject?

20 THE WITNESS: I don't know if you are asking
21 me to guess who might have --

22 MR. TEITELBAUM: No, I don't want you to
23 guess.

24 THE WITNESS: I don't remember having any

1 conversation with the Senate, and I don't
2 remember anybody telling me that they had a
3 conversation with the Senate. I mean, obviously,
4 you know, I don't see these forms. I don't send
5 them to the Senate, they don't send them back to
6 me. So it's obviously possible that that was an
7 issue that was raised, I just don't know.

8 MR. TEITELBAUM: Just to get more specific
9 to see if it might prompt your memory.

10 Do you have any information concerning a
11 conversation with either yourself or somebody
12 else in the Executive Chamber with Counsel to
13 Senator Bruno by the name of Ken Riddett, in or
14 around the early part of 2007 concerning this
15 subject?

16 THE WITNESS: I don't think I had any
17 conversation with Ken Riddett about it, and I
18 don't think -- to my knowledge, nobody had any
19 conversation with Ken Riddett about it.

20 I'll just note that I don't think Ken
21 Riddett was the counsel to the majority leader at
22 the time.

23 MR. TEITELBAUM: I may have had his title
24 wrong. What was he?

1 THE WITNESS: I think he was a lobbyist. I
2 think he left at the end of -- the counsel to the
3 majority leader is Mike Avella, he's my primary
4 contact with Senator Bruno's Office. He's been
5 in that position since very early in this
6 administration. I know Ken, I've spoken with him
7 many times when he was the counsel to the
8 majority leader. I don't know the exact date of
9 his departure, you know, whether it was
10 December 31st or shortly thereafter. I don't
11 know, but I don't recall having a conversation
12 with him about it. It seems I would have talked
13 to Mike Avella about it, but again, I just -- you
14 know, a million things going on. I had lots of
15 phone conversations. I just don't recall.

16 BY MS. TOOHER:

17 Q. Do you have any recollection of the separation of
18 powers issue being discussed in terms of the form?

19 A. I don't.

20 Q. You indicated that you spoke with Bill Howard about
21 the issue of the helicopter and transportation issue.
22 Did Mr. Howard provide you any information or
23 documentation concerning transportation?

24 A. Relating to this form, yeah. He actually, I think,

1 was the person who sent me the initial -- sent me the
2 aircraft procedures that was used by the prior
3 administration, and I believe there was a form
4 attached to those aircraft procedures.

5 Q. And did he give you anything else in regards to that?

6 MR. TEITELBAUM: Let me just go off the
7 record for a second.

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

10 QUESTION: "You indicated that you spoke with
11 Bill Howard about the issue of the helicopter and
12 transportation issue. Did Mr. Howard provide you
13 any information or documentation concerning
14 transportation?"

15 ANSWER: "Relating to this form, yeah. He
16 actually, I think, was the person who sent me the
17 initial --sent me the aircraft procedures that
18 was used by the prior administration, and I
19 believe there was a form attached to those
20 aircraft procedures."

21 QUESTION: "And did he give you anything else
22 in regards to that?")

23 THE WITNESS: I'm sorry. I wasn't paying
24 attention.

1

2 BY MS. TOOHER:

3 Q. And did he give you anything else in regards to that?

4 A. I know that he sent me a note and attached the
5 procedures and the form. I don't recall getting
6 anything else from him.

7 Q. And did you have any discussions with Mr. Howard
8 concerning the appropriate use of the aircraft?

9 A. I believe that he explained to me what his general
10 rule was, and I think -- it was a long time ago --
11 that he basically said it that, you know, it had to be
12 being used for predominantly governmental purposes for
13 him to approve it.

14 Q. And was that the rule that you were looking to adopt
15 for the new administration?

16 A. Essentially, yes.

17 Q. That if the aircraft was being used for
18 predominantly --

19 A. They needed to use it for governmental purposes. As
20 you can see from the form, we don't ask what other
21 purposes they're using it for. You know, the use of
22 the aircraft is, sort of, a time based issue. If the
23 Senator absolutely, positively has to go to a meeting
24 and if the only way he's going to get there is with

1 the helicopter and then he's going to have a lunch
2 with friends, we would not, you know -- we didn't do
3 an hour-by-hour allocation of it.

4 Q. Were you looking to make any change to the policy in
5 using the aircraft?

6 A. It was my understanding that the aircraft had to be
7 used -- obviously, there had to be a governmental
8 purpose for the trip, and it was my understanding that
9 with the prior administration, that if they had known
10 that an aircraft was being used 99 percent for
11 nongovernmental and 1 percent for governmental, they
12 would have turned it down, so I don't know that we
13 were trying to change that aspect of it all. It's my
14 understanding that the prior administration, they
15 would refuse to grant the use of the aircraft, even if
16 it was being used a hundred percent for governmental
17 purposes, so we were looking to change that as well.

18 Q. You were looking to change what?

19 A. It's my understanding that the prior administration
20 would refuse Senator Bruno on occasion the ability to
21 use the aircraft, I don't want to say for no reason,
22 but if things weren't going well between the
23 administration and the Senate, and we didn't want to
24 tie use of the aircraft to relationships.

- 1 Q. Were you looking to tie use of the aircraft to
2 anything in particular?
- 3 A. It had to be used for a governmental purpose.
- 4 Q. But you were not looking to tighten up on that policy
5 or require greater documentation on that policy?
- 6 A. We certainly had discussion about that and we
7 changed -- and we did change the documentation.
8 Again, neither of these is the original form, so I
9 can't say --
- 10 Q. And you mean the original form from the prior
11 administration?
- 12 A. Neither of these are the prior administration. I
13 would have to compare the two to see what the
14 differences are. I don't believe the prior form had a
15 certification requirement. In our view, we wanted to
16 make sure that they were using the aircraft for
17 official State business, but we chose not to ask for
18 an hour-by-hour allocation of time.
- 19 Q. And do you know how that decision came about, the
20 decision not to ask for an hour-by-hour?
- 21 A. I know that there were discussions, you know, I can't
22 say for sure. I, you know -- I don't know, I don't
23 know.
- 24 Q. And those discussions concerning the hour-by-hour and

1 whether or not to have it, when was that?

2 A. I would say, January, February, time frame.

3 Q. So that was early in the administration?

4 A. Yes, yes.

5 Q. And the certification, what was your understanding as
6 to what the certification of the form gave you?

7 A. It was just a check to make sure that people knew that
8 they should be using the aircraft for -- you know,
9 that there had to be governmental purposes for the use
10 of the aircraft and that it would diminish the
11 likelihood that someone would be taking the aircraft
12 for predominantly political purposes.

13 Q. And how would it diminish that?

14 A. I think our assumption was that if someone actually
15 signed saying that their certifying that their purpose
16 is governmental that they would be using it for
17 governmental purposes.

18 Q. And what was your understanding as to what the
19 certification -- I mean, you seem to place some weight
20 on the certification aspect; what does the
21 certification, in your mind, do?

22 A. It requires them to certify that the representations
23 that they're making are accurate.

24 Q. So, in effect, they're making an oath or taking some

1 sort of formal statement?

2 A. It's a certification. If I can read it, it says, "I
3 hereby certify that the statements above and in the
4 attachment are true and accurate."

5 MR. TEITELBAUM: What does the meaning of
6 certify mean to you?

7 THE WITNESS: That's a legal question.

8 MR. TEITELBAUM: I'm not asking a legal
9 question, just your understanding of it.

10 THE WITNESS: Certifying that it's true,
11 that they're saying that it's true, that they're
12 stating that it's true, it's -- you know, it's
13 one step above an unsigned form.

14 BY MS. TOOHER:

15 Q. And the issue of travel early in the administration
16 and the use of the helicopter, was that considered a
17 hot-button issue, a political issue?

18 A. It was an issue that we knew from prior
19 administrations always comes up, and it was one,
20 again, of ten thousand issues that we were dealing
21 with at the time.

22 Q. And was it an issue that the press pursued on a fairly
23 regular basis?

24 A. I know that there have been numerous stories over the

- 1 years about use of aircraft, going back to prior
2 administrations. It depends on what you mean by
3 "regular". Every administration has questions about
4 the use of the aircraft.
- 5 Q. In your administration, in the Spitzer administration,
6 did this issue come up early in the administration?
- 7 A. I don't recall. No one would have called me. I mean,
8 there were certainly -- when you say came up, I mean,
9 we had internal discussions about it, we talked about
10 the form, we talked about whether we should change the
11 form, what the policy should be, so yes, it certainly
12 came up.
- 13 Q. In terms of the press, when was the first time the
14 issue of use of the aircraft came up in the press in
15 the Spitzer administration?
- 16 A. I -- you know, the press generally doesn't call me, so
17 I can't answer that question.
- 18 Q. But you are certainly aware of what's going on in the
19 press --
- 20 A. Sure.
- 21 Q. -- that concerns the administration.
- 22 Were you aware of any incidents that were in the
23 press concerning the use of the airplane?
- 24 A. Well, look, I -- it's my understanding that Darren was

1 asked about use of the aircraft. But are you asking
2 for my personal knowledge, I didn't have any
3 conversations with reporters, and I actually don't
4 recall whether there were, you know, issues with
5 respect to our use of the aircraft. I know there were
6 articles of Governor Pataki's use of the aircraft in
7 2007, including articles about reimbursements. I know
8 there were e-mails on that issue that I've seen, so I
9 know that that came up. But as far as press calls, no
10 press called me. And as far as press articles, off
11 the top of my head, you know, I don't recall a press
12 article about this governor's use of the aircraft
13 during this time frame.

14 Q. Were you aware of articles concerning the Governor's
15 use of the aircraft to fly to California fairly early
16 in the administration?

17 A. I guess it depends what you mean by early in the
18 administration. It wasn't in this January, February
19 time frame. I think that that came a little bit
20 later.

21 Q. When was that?

22 A. Again, I would guess March, April, but I just don't
23 know off the top of my head.

24 Q. Were you ever aware of FOIL requests concerning the

1 use of the aircraft and the Governor's flights to
2 California?

3 A. Sitting here now, I, you know -- I believe that there
4 was a FOIL request about it, I just cannot say.

5 Q. And if a FOIL request had come in about the Governor's
6 use of the aircraft, where would they -- would the
7 Chamber have those records?

8 A. A FOIL request would go to the FOIL Officer. Again, I
9 can't say for sure whether there was a FOIL request
10 done for that usage or not.

11 Q. Was it ever brought to your attention that there was a
12 FOIL request of the State Police concerning the
13 Governor's use of the aircraft?

14 A. Let me answer it this way: I've seen a lot of FOIL
15 requests, I've reviewed tens of thousands of pages of
16 documents in this case, so, you know, I know at some
17 point I gave a whole -- I mean, there was a collection
18 of FOIL requests. I think somebody had asked, what
19 are the FOIL requests, so I just, you know, can't,
20 sitting here, distinguish among the FOIL requests.

21 Q. When you say there were a collection of FOIL requests,
22 were you responsible for gathering those FOIL
23 requests?

24 A. I believe at one point the Inspector General asked me

1 for any FOIL requests that might have come in, and I
2 believe that I gathered whichever ones -- I believe
3 that I collected them and then forwarded them to him.

4 Q. And those would include the FOIL requests that came in
5 that resulted in the July 1 article?

6 A. I don't think I -- yeah, it would have included that
7 one, yes.

8 Q. Do you have -- were there any other earlier FOIL
9 requests than the --

10 A. I'm sure I did not keep a copy -- I don't think I kept
11 a copy of the documents that I -- you know, the
12 Inspector General's Office asked for FOIL requests,
13 and we provided the ones that had come in at that
14 time. And my guess is, probably since that time,
15 there's been more FOIL requests.

16 Q. I'm going to show you what's been marked previously as
17 Commission's Exhibit 6. This is an e-mail, copy of an
18 e-mail from Glenn Miner to Paul Larrabee. I'll give
19 you a moment to review that.

20 A. (Pause.)

21 Okay.

22 Q. Who is Paul Larrabee?

23 A. He is a press secretary of the Governor's Office, or
24 was at that time.

- 1 Q. And as I read this e-mail, it seems to be from
2 Mr. Miner to Mr. Larrabee advising him that they've
3 received a request for aviation records and they've
4 required a FOIL request to get those documents?
- 5 A. Mm-hmm.
- 6 Q. And there's been prior testimony that indicates that
7 these documents were provided to Mr. Dicker from the
8 Executive Chamber, as opposed to requiring a FOIL
9 request; do you have any knowledge of that?
- 10 A. I don't have any personal knowledge of it.
- 11 Q. Do you have any other knowledge?
- 12 A. Well, I mean, I've seen this e-mail before. I know
13 that the documents were provided. As I indicated
14 before, our general rule was to try to be
15 accommodating to reporters and not to take the
16 position of the prior administration, which my
17 understanding was, every request for any documents, no
18 matter how easily provided, required a FOIL request.
19 So you know -- but this was happening, to my
20 knowledge, unbeknownst to me at the time.
- 21 Q. Was Mr. Larrabee disciplined for providing these
22 documents to Mr. Dicker?
- 23 A. No.
- 24 Q. Was any policy put in place after Mr. Larrabee's

1 actions or after the Attorney General report at the
2 Executive Chamber for provision of documents under
3 FOIL?

4 A. We did not adopt -- we did not adopt a new FOIL
5 policy -- I take that back. I believe that we have
6 regulations on FOIL that needed to be updated, and I
7 actually don't know where those stand, whether they
8 were completed or not.

9 Q. So the Executive Chamber is currently updating
10 regulations on FOIL?

11 A. I know that there was a discussion after the report
12 came out as to whether we had regulations on FOIL and
13 whether we should update them, and I thought that
14 there was a discussion that they were out of date for
15 some reason. But again, I just don't know where
16 things stand on that.

17 Q. Were you ever advised of any other media inquiries
18 concerning the aviation records?

19 A. Yes. As I've indicated, we were -- you know,
20 certainly, after the report came out or after the
21 article came out, there were a lot of FOIL requests
22 for aviation records, so there were multiple ones.

23 Q. Before the report came out and before the article came
24 out, were you ever advised of other media inquiries

1 concerning use of the helicopter?

2 A. I know that there was an issue with respect to the
3 trip the Governor took to California. I know that
4 there were issues with respect to the prior Governor's
5 trips, I believe there was one to Virginia. I know
6 there was media inquiries relating to both of those.
7 Guesstimate, this is, again, March, April time frame.
8 I know that. So certainly, there was, you know, at
9 least those.

10 Q. Were you ever advised of any inquiries, media
11 inquiries that surrounded the use of the helicopter by
12 Senator Bruno?

13 A. I certainly knew that Jim Odatto from the Times Union
14 had inquired -- I take that back. I know that Darren
15 told me that he had media inquiries regarding Senator
16 Bruno's use of the State aircraft.

17 Q. And what did Darren tell you?

18 A. My first recollection of this was Darren had a draft
19 press release in May relating to Senator Bruno's use
20 of the aircraft, and I believe that I became aware at
21 that time that the media had asked for information
22 about Senator Bruno's use of the aircraft.

23 Q. And that press release, the May press release -- I'm
24 going to show you what's been marked as Commission's

1 Exhibit 30 and ask you if that's the document you are
2 referring to.

3 A. Appears to be, it appears to be the document.

4 Q. And is it your testimony that when you saw this
5 document is the first time you learned of media
6 inquiries concerning Senator Bruno and use of the
7 helicopter?

8 A. To the best of my recollection, yes.

9 Q. And what was the context in which you first saw this
10 document?

11 A. I recall being in a meeting in Rich Baum's Office with
12 Darren in which we discussed whether this press
13 release should be issued or not.

14 Q. And who was at that meeting?

15 A. I believe it was me, Rich and Darren.

16 Q. Was Marlene Turner present?

17 A. Not to my recollection.

18 Q. Was the Governor present?

19 A. No.

20 Q. And what was the purpose of that meeting?

21 A. I don't know if we had like a -- when you say purpose
22 of the meeting, it wasn't a meeting that was called.
23 I just remember being in his office. I don't know
24 what the circumstances were. But I know that Darren,

1 Rich and I discussed whether this press release should
2 be issued or not. And I actually think that we -- at
3 some point I believe that we spoke with the Governor
4 by telephone.

5 Q. And what was that conversation?

6 A. As the press release indicates, Senator Bruno had
7 asked for -- to use the State helicopter for
8 legislative meetings. Apparently, there was a
9 fundraising event that he was going to, so the
10 question was, should we issue this release pointing
11 out that, although he said he was going for
12 legislative meetings, he apparently was using the
13 State aircraft for political purposes.

14 Q. And who said what in that meeting?

15 A. I don't recall. I mean -- I don't recall any, Joe
16 said this and then Tom said this. I can give you the
17 sum and substance of it, but I just can't quote
18 people's words or whatever.

19 Q. Did Darren bring the release to the meeting?

20 A. I know that I had the release. I mean, I'm assuming
21 that Darren brought it, so I don't know if I got there
22 first or he got there first, so I don't -- I mean,
23 bring the release -- but I know that this release was
24 at the meeting, at the discussion and, you know, I can

1 tell you my view is that we shouldn't issue it and we
2 basically -- a decision was made at the meeting not to
3 issue the release.

4 Q. And why did you think it shouldn't be issued?

5 A. My assumption was that, even though he might have been
6 having meetings for political purposes, he was
7 probably having meetings the same day for governmental
8 purposes so, you know, aircraft had been used in the
9 past for mixed purposes, so there didn't seem to be
10 any real point to issuing this release in the middle
11 of a legislative session. It obviously -- you know,
12 the Senator would have had an adverse reaction to us
13 putting this release out. It just didn't seem
14 advisable.

15 Q. Now, the first line, "Our office has received
16 inquiries regarding Senate Majority Leader Joe Bruno's
17 use of State aircraft."

18 A. Mm-hmm.

19 Q. Were you ever advised as to what those inquiries were?

20 A. I believe that that refers to media inquiries.

21 Q. And do you know who those inquiries were coming from?

22 A. I now know that it was Jim Odatto at the Times Union.
23 It is possible that Darren said at that meeting that
24 it was Jim Odatto at the Times Union. I don't recall

1 any specifics. I now know that there were media
2 inquiries.

3 Q. How do you know that it was Jim Odatto?

4 A. Because he's the person that Darren provided the
5 documents to and who wrote the article.

6 Q. But those documents were in response to a later FOIL
7 request?

8 A. Correct.

9 Q. Or a FOIL request dated sometime thereafter?

10 A. Correct.

11 Q. So how do you know this refers to --

12 A. That's a good point. I stand corrected. I can't say,
13 since I don't remember who said what at that meeting,
14 I can't say for certain which inquiries that refers
15 to.

16 Q. Was it ever identified at that meeting that there were
17 specific inquiries?

18 A. Again, I don't recall the specifics of what anybody
19 said. I can give you the sum and substance of the
20 conversation, what the decision was that was made. I
21 can't say.

22 Q. And I think you said a little earlier that there were
23 questions as to whether there were fundraising
24 activities going on on this date, on the May 17th

1 date?

2 A. Mm-hmm.

3 Q. Where did you get that information from?

4 A. I presume that either Darren or Rich would have
5 indicated that there was a, you know, Republican event
6 of some sort at the Sheraton and, you know...

7 Q. Was that relayed to you at the time you were shown
8 this statement?

9 A. My recollection of the meeting, again, I can't give
10 you specifics, was that we knew that there was a
11 political event, that this was referring to political
12 events as opposed to legislative events.

13 Q. But it doesn't state that in the release?

14 A. Correct.

15 Q. And so I'm trying to garner where you received that
16 information from.

17 A. Either from Rich or from Darren.

18 Q. Did they show you any documentation in addition to the
19 statement?

20 A. Not to my recollection, at that time. I know that
21 later I saw a -- I mean, obviously, fundraisers are
22 not secret; you have to invite people and invite them
23 to pay. I recall seeing a -- some sort of a
24 fundraising thing, at some point, I actually don't

1 recall whether it was the 17th or a subsequent one,
2 but I do know that when I was in that meeting at that
3 time, I was told that this related to political
4 activities.

5 Q. And were you shown any other documents at that time
6 when you were shown the statement?

7 A. I don't recall.

8 Q. I'm going to show you what's previously been marked as
9 Commission's Exhibit 5.

10 A. Okay.

11 Q. And ask you if you were provided this document at the
12 time you were provided the statement by Darren Dopp.

13 A. No.

14 Q. You were not provided this document when you were
15 provided the statement by Darren Dopp?

16 A. No.

17 Q. And I believe you testified that a determination was
18 made not to release this press release?

19 A. Mm-hmm.

20 Q. Was there any other discussion concerning Senator
21 Bruno's activities at that time?

22 A. Again, I know I was in a meeting, I know that Rich was
23 there and Darren was there, I know a decision was made
24 not to go forward with this. There could well have

- 1 been discussions, I just -- you know, I don't recall
2 the specifics of anything, other than a decision not
3 to release this.
- 4 Q. Did you discuss anything further in terms of
5 Mr. Dopp's actions and Senator Bruno's use of the
6 helicopter?
- 7 A. Not that I remember.
- 8 Q. Did you discuss how Mr. Dopp would respond to the
9 media inquiries that were apparently coming in
10 concerning Senator Bruno's use of the helicopter?
- 11 A. Again, I have been in so many meetings, I just don't
12 recall the specifics of this meeting. I can tell you
13 in sum and substance what happened, but I don't recall
14 discussions as to how we should proceed from there.
- 15 Q. Did Mr. Dopp indicate during that meeting that he
16 would continue to monitor Senator Bruno's activities
17 concerning use of the aircraft?
- 18 A. I don't recall him saying that.
- 19 Q. Did anyone instruct Mr. Dopp at that time that he
20 should not continue to monitor Senator Bruno's use of
21 the aircraft?
- 22 A. I don't know that he was monitoring Senator Bruno's
23 use of the aircraft, so I don't -- I don't recall
24 that.

1 Q. Do you recall anyone advising Mr. Dopp to do anything
2 following this meeting?

3 A. The only thing I recall is a decision was made that
4 this was not something we wanted to put out, and
5 that's it.

6 Q. And was there any discussion as to what would happen
7 with the inquiries that were coming in?

8 A. There could well have been, I just don't have a
9 recollection of this meeting, other than the fact that
10 there was a proposed press release and there was a
11 decision not to put it out.

12 Q. Were you advised during this meeting by Mr. Dopp that
13 there was a FOIL request concerning Senator Bruno's
14 use of the helicopter?

15 A. No.

16 MR. TEITELBAUM: Mr. Nocenti, in the second
17 paragraph of 30, does that second paragraph
18 comport with your understanding of the Executive
19 Chamber's policy regarding use of the aircraft?

20 THE WITNESS: There's two ways to read that
21 second paragraph. One is --

22 MR. TEITELBAUM: How did you read it at the
23 time?

24 THE WITNESS: I don't recall how I read it

1 at the time.

2 MR. TEITELBAUM: Give me the two ways that
3 you are reading it now.

4 THE WITNESS: One is that the State aircraft
5 can be used only, meaning exclusively, for State
6 business.

7 And the other is the State aircraft can be
8 used only for official State business, meaning
9 that there has to be official State business to
10 use the State aircraft.

11 Our policy at the time was that it may be
12 used -- that you can't use the State aircraft
13 unless you are going on official State business.

14 MR. TEITELBAUM: But you could have a mixed
15 purpose trip; is that correct?

16 THE WITNESS: You could have a mixed purpose
17 trip, that's correct.

18 MR. TEITELBAUM: Did anybody -- did Mr. Dopp
19 indicate to you where he was getting his
20 information from concerning how he learned that
21 Senator Bruno's, quote, "Legislative meetings",
22 quote, would be held at C.V. Starr?

23 THE WITNESS: I can only assume that he got
24 the information from the State Police. But

1 because I don't have a specific recollection of
2 what people said at that time, I, you know -- I
3 don't recall him saying that, but they're the
4 entity that I presume -- let me take that back.

5 Again, fundraisers are not secret, and,
6 again, I know, at some point later, I saw a
7 fundraiser relating to a political event that
8 occurred on a day when the Senator was using the
9 aircraft. I don't recall if this was the event
10 or not. So it is possible that he had
11 information from that, again.

12 MR. TEITELBAUM: Did it occur to you at the
13 meeting that we're now discussing that Mr. Dopp
14 was getting his information from the State
15 Police?

16 THE WITNESS: I don't remember what I was
17 thinking in the meeting at the time. I obviously
18 now know that there was communications where
19 information was being provided by the State
20 Police, but it's difficult at this time to
21 separate what I know from having reviewed
22 documents from what I knew at the time.

23 MR. TEITELBAUM: On May 17th, did either
24 yourself or Mr. Baum -- you said the Governor was

1 called as well, did any of the three of you
2 authorize Dopp on a going-forward basis to track
3 the Senate Majority Leader's use of the State
4 aircraft and his ground itinerary?

5 THE WITNESS: No.

6 MR. TEITELBAUM: Did the subject of tracking
7 or monitoring, or whatever word you want to use
8 as a synonym, come up during that meeting?

9 THE WITNESS: Again, I don't recall what
10 came up during the meeting. Obviously, if the
11 Senator were using the aircraft for exclusively
12 or predominantly State purposes, that would be --
13 certainly, exclusively would be illegal to the
14 extent that --

15 MS. TOOHER: Can I correct you, you said
16 predominantly for State purposes?

17 THE WITNESS: Sorry. If it was being used,
18 certainly, exclusively for non-State purposes, in
19 my view, that would be illegal. To the extent
20 it's being used -- you know, nearly exclusively
21 for it, if the Governor took the aircraft to
22 Hawaii and had a two week vacation with his
23 family and spent two minutes on the phone on
24 official business and came back, then that I

1 would not consider an appropriate use of the
2 aircraft. So I don't know -- I don't recall if
3 we had a discussion about whether an apparent
4 misuse was a continuing issue or not. I just --
5 you know, obviously, the fact that one is using
6 the aircraft for political purposes, and, again,
7 I don't know what other meetings the Senator had,
8 raises that issue, so there could have been a
9 discussion on that. I just do not recall the
10 specific words that people said at that meeting.

11 MR. TEITELBAUM: I'm not asking you for
12 recollection of specific words.

13 THE WITNESS: I don't recall the back and
14 forth. I just remember the sum and substance.

15 MR. TEITELBAUM: I understand that.

16 I'm really trying to hone in on the subject
17 matter and whether the subject matter of
18 Mr. Dopp's role on a going-forward basis in
19 monitoring or tracking or looking at or receiving
20 information in connection with Senator Bruno's
21 use of the State aircraft and his ground
22 itinerary, did that subject matter come up at
23 that meeting?

24 THE WITNESS: I just don't recall. It's

1 possible that someone said, well, look, we'll see
2 if this is a pattern or see if this is continuing
3 or not. I just -- I have no recollection -- if
4 you are asking me do I have any recollection of
5 someone saying, Darren, let's track him, let's
6 follow him, let's get his itineraries and, you
7 know, keep track of him, no. I can say that that
8 did not occur, you know, because -- that did not
9 occur.

10 MR. TEITELBAUM: Does the Communication
11 Director in Governor Spitzer's administration --
12 withdrawn.

13 Did the Communication Director, Mr. Dopp,
14 have a role in monitoring, tracking, receiving
15 information in connection with Senator Bruno's
16 use of the State aircraft or his ground itinerary
17 from an investigative perspective?

18 THE WITNESS: No. I mean, if you are asking
19 me, did it fall within his official duties to
20 have an investigation of monitoring Senator
21 Bruno's travels, my view is no.

22 MR. TEITELBAUM: Did you eventually find out
23 that Darren Dopp was monitoring Senator Bruno's
24 movements in connection with the State aircraft,

1 subsequent to May 17th?

2 THE WITNESS: I mean, depending how you mean
3 the word "monitoring", but I certainly became
4 aware from subsequent e-mails that there were
5 communications back and forth as to when the
6 Senator was using the State aircraft. I actually
7 think that they were primarily e-mails that I saw
8 between the State Police and Bill Howard,
9 actually -- and correct me if I'm wrong -- I
10 don't recall e-mails between Darren and the State
11 Police, but the e-mails certainly indicate that
12 Bill Howard received some subsequent information
13 relating to Senator Bruno's travels and passed
14 that along to Darren Dopp.

15 MR. TEITELBAUM: Would you call that
16 monitoring?

17 THE WITNESS: I don't know the circumstances
18 that caused that to happen. If, again, if Darren
19 had a reporter who is asking, I want any document
20 relating to Senator Bruno's travels and he was
21 responding to the FOIL request -- I'm sorry --
22 responding to a document request, then that would
23 be responding to a document request. So not
24 knowing which reporter Darren spoke to and when

1 or what the specific requests were or any of
2 that, I can't answer that question.

3 MR. TEITELBAUM: Did you ever learn that
4 Darren Dopp through Bill Howard was receiving
5 information from the State Police telephonically?

6 THE WITNESS: I only know what I read in the
7 documents. I don't think the documents referred
8 to any phone call from the State Police to
9 Darren, and so I'm not aware of any telephonic
10 communications between Darren and the State
11 Police.

12 MR. TEITELBAUM: Maybe I asked the wrong
13 question. I thought I was trying to ask,
14 telephonic communications with Mr. Howard
15 concerning -- and the State Police concerning
16 movements of Senator Bruno; you learned that
17 there were those kinds of telephonic
18 communications?

19 THE WITNESS: I've seen e-mails between Bill
20 Howard and the State Police. I assume that they
21 had -- that there were phone conversations, but I
22 don't -- I mean, I only know what I read in the
23 e-mails, so I -- you know...

24 MR. TEITELBAUM: Did anybody tell you that

1 there were such conversations?

2 THE WITNESS: After this incident broke, I
3 had conversations both with Darren and with Bill.
4 It's possible that one or the other would -- it's
5 possible Bill would have told me that he also had
6 telephone conversations, but I just don't recall.

7 BY MS. TOOHER:

8 Q. You indicated that the use of the helicopter would be
9 acceptable if there was -- I'm going to use the term a
10 mixed-use, that it was official business, that there
11 were some other uses?

12 A. Yeah, depending on how mixed. Our general rule with
13 respect to the Governor was, it had to be
14 predominantly for State purpose. If he wanted to use
15 the aircraft to go to the beach for the day and take
16 ten minutes and have a phone call, I would advise him
17 not to use the aircraft for those purposes. That
18 issue never came up. But in our view, yes, it's
19 appropriate to have mixed-use of the aircraft.

20 MR. MOSCHETTI: Can we take a break.

21 MS. TOOHER: Why don't we all step out and
22 have lunch quickly.

23 (A lunch break was taken from 1:35 p.m. to
24 1:57 p.m.)

1 (Thereupon, the following excerpt of the
2 proceedings was read back by the Court Reporter

3 QUESTION: "You indicated that the use of
4 the helicopter would be acceptable if there
5 was -- I'm going to use the term a mixed-use,
6 that it was official business, that there were
7 some other uses?"

8 ANSWER: "Yeah, depending on how mixed. Our
9 general rule with respect to the Governor was, it
10 had to be predominantly for State purpose. If he
11 wanted to use the aircraft to go to the beach for
12 the day and take ten minutes and have a phone
13 call, I would advise him not to use the aircraft
14 for those purposes. That issue never came up.
15 But in our view, yes, it's appropriate to have
16 mixed-use of the aircraft.")

17 BY MS. TOOHER:

18 Q. Concerning mixed-use, was there any middle ground
19 where you would draw that line? I mean, there's the
20 obvious -- beach holiday is a problem, and then the
21 lunch while on official business --

22 A. Our line was predominantly governmental purposes. We
23 would not let the Governor use the aircraft unless it
24 was predominantly a governmental purpose.

1 Q. And what about Senator Bruno?

2 A. Again, I don't -- you know, I didn't see the requests,
3 we didn't ask for the hour-by-hour stuff. I think
4 that, you know, we didn't really have a line.

5 Q. So I believe your testimony was that following the
6 May 17th, 2007 press release or the statement or
7 whatever this is (indicating) that you had all
8 reviewed --

9 A. Mm-hmm.

10 Q. -- that it was your understanding that Senator Bruno
11 was engaged in some type of fundraising activity while
12 on this trip; is that correct?

13 A. Yes.

14 Q. And was there a determination that he actually was
15 engaged in some sort of legislative business?

16 A. Exhibit 28b is a form where he said on the 17th he
17 would be doing it for legislative business meetings.
18 My assumption is that even if he's going to a
19 fundraiser, that he would also have legislative
20 meetings at about the same time.

21 And again, I don't recall the exact words that
22 people said at the meeting, but, you know, I probably
23 articulated that we don't know what else he's doing.
24 So I -- my assumption is that -- put it this way: My

1 assumption is that the Senator would not take the
2 plane for purely political purposes.

3 Q. What is that assumption based on?

4 A. The fact that he has a counsel, that he's a
5 governmental official, that the Hevesi case occurred
6 several months earlier relating to misuse of
7 government officials for the travel of the
8 Comptroller's spouse. I think it's a reasonable
9 assumption that a government official, such as Senator
10 Bruno, traveling with his counsel would not be taking
11 a State aircraft for purely political purposes.

12 Q. But it's not based on any information that you
13 received?

14 A. I do not know what Senator Bruno did on May 17th,
15 2007. I don't even know who went to the Sheraton. I
16 have seen documents. I have no personal knowledge of
17 what he was doing.

18 Q. But at this juncture --

19 A. It was my --

20 Q. -- Darren Dopp seems to be presenting to --

21 A. Yes.

22 Q. -- members of the Executive Chamber --

23 A. Correct.

24 Q. -- that Senator Bruno is engaging in predominantly

1 other use of the aircraft; is that an accurate read of
2 this?

3 A. I don't recall what the discussions were, so I don't
4 know what else the Senator was doing, so I can't make
5 an assessment as to whether this is purely political,
6 half and half, predominantly governmental. I mean,
7 certainly, he's using the aircraft for political
8 purposes. I was told at the time -- for example, I
9 don't recall the Starr thing, but I recall being told
10 that the Sheraton meeting was a fundraiser. Again,
11 fundraisers are not secret, so it could have been
12 easily well known that he was attending a fundraiser.
13 So what else he was doing between 12:30 and 3:30,
14 before 12:30, after 3:30, I don't know. It could have
15 been discussed at that meeting, I just do not -- and I
16 apologize, but I do not recall what people said to
17 each other at the meeting. I know the sum and
18 substance of the conversation.

19 Q. Did you discuss the issue of mixed-use at the meeting?

20 A. I know that one of the reasons that I thought that
21 this should not be put out was my assumption that he
22 would be doing governmental business on the same day.
23 I presume that I articulated that. I can't say, I
24 said, 'X', but, you know...

- 1 Q. In the penultimate paragraph of the release, the last
2 sentence, "We have asked the Senator to verify that
3 these meetings involve official State business." Was
4 that ever done, was there ever any attempt to verify
5 that his meetings were official State business?
- 6 A. Not to my knowledge.
- 7 Q. Was it discussed at the meeting whether or not you
8 should verify whether these involved official State
9 business?
- 10 A. The only thing that I recall was the decision that
11 this was not a press release that we thought should be
12 issued or pursued. It's -- you know, it's quite
13 possible that there was a discussion of that, but I
14 just don't recall. I only recall the sum and
15 substance of the conversation, which was, should this
16 go out. No, I can tell you why. I think it shouldn't
17 have been issued, which included my presumption that
18 the Senator was also having legislative meetings. I
19 see from, you know, document 5 that the Senator's
20 counsel was at the meeting. He certainly knows what
21 the rules are, he's aware of the Hevesi case.
- 22 Q. But I believe you testified you didn't have
23 Commission's 5 --
- 24 A. No.

- 1 Q. -- when you were given Commission's 30?
- 2 A. No, I see now -- yes. My assumption at the time was
3 that he would not use the aircraft for purely
4 political purposes, exclusively political purposes.
5 That was my assumption at the time.
- 6 Q. And if the Senator were using the aircraft for purely
7 political purposes, that would be a problem; is that
8 correct?
- 9 A. In my view, absolutely.
- 10 Q. And if he had been taking this trip solely for the
11 purposes of political -- going to a political
12 fundraiser, that would have been a problem; is that
13 correct?
- 14 A. Absolutely, yes.
- 15 Q. And was Darren Dopp given any instruction in that
16 meeting as to following up on any of those issues?
- 17 A. No. Because my assumption is that there's no way that
18 the Senator was using the aircraft for only political
19 purposes, so I'm not -- again, the rules with respect
20 to the State aircraft, the legal rules, what's legal
21 and what's illegal, you know, were never fully
22 defined. You can certainly make a strong argument
23 that it is legal to use the aircraft even for
24 predominantly nongovernmental purposes, if the

1 Governor absolutely, positively has to go to
2 Chautauqua County and get there quickly for a one hour
3 meeting, and then while he's there, he decides he's
4 going to do other nongovernmental stuff, but he has to
5 use the aircraft for that governmental purpose, I
6 think you can make a very strong argument that that's
7 perfectly appropriate because that's the only way
8 he -- he's the Governor, he has to be there. Let's
9 say there was a natural disaster or something, he has
10 to use it for governmental purpose. But there were no
11 clear-cut rules, which thankfully the Commission has
12 now given guidance on, as to what is legal versus what
13 is not legal. I just -- you know, at the time, I
14 didn't think there was any way he was using the plane,
15 only, exclusively for political purposes. That's the
16 only circumstance which, in my view, clearly would
17 have been illegal.

18 Q. But there were also reimbursement requirements in
19 terms of a mixed-use; isn't that correct?

20 A. Not that I'm aware.

21 Q. Hadn't the Governor reimbursed for the California
22 flight?

23 A. Sure, that was -- I take that back. I know that he
24 reimbursed at least one flight. I don't think that

1 was legally required.

2 Q. I think in Commission's 121, the issue of
3 reimbursement for personal use is raised?

4 A. It is.

5 Q. So it appears you were aware of the issue of
6 reimbursement for partial use?

7 A. It is an issue. I don't think it's legally required.

8 Again, if the Governor goes to Buffalo and does
9 business for six hours and takes two hours off and
10 meets his college roommate, there's no, in my view --
11 at that time, there certainly was no requirement that
12 he reimburse. It was not until the Commission issued
13 its guidance, its advisory opinion, that there was a
14 determination that there was a reimbursement
15 requirement.

16 Q. So it was your understanding at May 17th that there
17 was no reimbursement requirement as long as there was
18 any official use of the plane?

19 A. Yes.

20 Q. Was Mr. Dopp ever told not to follow-up on the May 17
21 release?

22 MR. MOSCHETTI: I think you've asked him
23 that three times. And I don't want to interfere,
24 certainly I've sat here, but I think it's pretty

1 clear that you've asked him that three times.

2 Q. Was Mr. Dopp ever instructed to stand down from his
3 activities with Senator Bruno?

4 A. I don't know what you mean by his activities with
5 respect to Senator Bruno.

6 My recollection of the meeting is that there was
7 a proposal to issue this press release and that a
8 determination was made that we should not put this
9 press release out. There was, you know -- I don't
10 recall any discussions of him having other activities
11 with respect to Senator Bruno.

12 Q. You indicated that the Governor was contacted during
13 the course of this meeting?

14 A. Yes.

15 Q. What was relayed to the Governor, in terms of issues?

16 A. Best of my recollection, he too was presented with the
17 possibility that we would issue this statement. I
18 don't know if it was read to him over the phone or we
19 just told him the substance of it. My recollection is
20 that his view also was not to issue this release.

21 Q. And was there an explanation as to why?

22 A. Again, I don't recall what anybody said specifically.
23 I know that, you know, it was essentially a consensus
24 determination, as happens on a daily basis in our

1 office where an issue comes up, should we do this,
2 should we do that, people get together, they talk
3 about it, a decision is made. And I think that's what
4 occurred in this situation.

5 Q. Do you have any knowledge as to what Darren Dopp's
6 activities were going to be concerning the inquiries
7 he had received in this regard?

8 A. I do not at this time recall anything on that issue.
9 The best of my recollection is he was not going to be
10 issuing this release.

11 MR. TEITELBAUM: Mr. Nocenti, when Mr. Dopp
12 came into Richard Baum's office where your
13 meeting occurred with Commission 30, did he
14 express a point of view as to whether this
15 document should be issued?

16 THE WITNESS: It is my recollection that
17 Darren thought that this was a statement that
18 should be issued.

19 MR. TEITELBAUM: Did he tell you why?

20 THE WITNESS: Again, I don't recall anything
21 that people said in particular. I mean,
22 obviously, if the Senator is using State aircraft
23 for predominantly or exclusively political
24 purposes -- and again, I did not believe he was

1 using it exclusively for political purposes --
2 that was something that the public might want to
3 know, but a consensus decision was made that
4 because he was probably using it for legislative
5 purposes and we were in the middle of a
6 legislative session, a statement would not be
7 well received by the Senator. The best of my
8 recollection is we collectively decided not to
9 have the statement issued.

10 MR. TEITELBAUM: Did Mr. Dopp agree with the
11 idea that the Senator was probably using the
12 aircraft for legislative purposes?

13 THE WITNESS: I can't tell you what he
14 thought. I don't know. That would be his state
15 of mind, I don't know.

16 MR. TEITELBAUM: No, I'm asking you what he
17 said.

18 THE WITNESS: I don't recall. I don't
19 recall any specific statements.

20 MR. TEITELBAUM: Any sum and substance, if
21 you can't remember specifically, the sum and
22 substance?

23 THE WITNESS: The sum and substance --

24 MR. TEITELBAUM: From Dopp?

1 THE WITNESS: I don't recall a sum and
2 substance from Dopp as to whether he agreed that
3 the Senator must have had some other legislative
4 meetings at that time or not.

5 MR. TEITELBAUM: Was there a difference
6 expressed during this meeting among its
7 participants with respect to whether this exhibit
8 should be issued?

9 THE WITNESS: Certainly Darren had proposed
10 issuing it. My recollection is that Darren --
11 sorry -- that Rich, the Governor and I thought
12 that it shouldn't be issued. And again, it
13 wasn't issued. So a difference, in a meeting,
14 someone says should we do this, someone else says
15 no, that would be a difference.

16 MR. TEITELBAUM: Was there any statement
17 made during this meeting in words or substance
18 that the issuance of this Exhibit 30 could hurt
19 Senator Bruno politically?

20 THE WITNESS: I don't recall any specific
21 statements. I don't recall any specific
22 statements.

23 MR. TEITELBAUM: In sum or substance?

24 THE WITNESS: You know, when I say "sum or

1 substance", I remember the sum and substance of
2 the meeting. I don't remember the sum and
3 substance of what Rich said versus what Darren
4 said versus what I said. I don't recall the
5 specific words that were used.

6 MR. TEITELBAUM: Just so we're clear, I'm
7 not asking for specific words.

8 THE WITNESS: You are asking for sum and
9 substance of what a particular person said.

10 MR. TEITELBAUM: What one person said or
11 another person said.

12 THE WITNESS: In sum and substance --

13 MR. TEITELBAUM: Did anybody say at that
14 meeting, did anybody say in sum or substance that
15 the issuance of 30 could be hurtful to Senator
16 Bruno politically?

17 THE WITNESS: I don't recall that.

18 BY MS. TOOHER:

19 Q. Did anyone discuss the issue that if the plane were
20 being used for inappropriate purposes, it could
21 reflect poorly on the Chamber because you were
22 responsible for approving the plane?

23 A. Again, I don't recall that. I can only tell you that
24 I remember the sum and substance of the meeting as to

1 whether it should be issued or whether it should not
2 be. At this particular meeting, I don't recall if
3 that came up or not.

4 Q. So you don't recall, and correct me if I'm wrong, the
5 reasons behind the decision; you remember that
6 decision was made at this meeting?

7 A. Correct.

8 MR. TEITELBAUM: Why was the Governor
9 brought into the conversation?

10 THE WITNESS: There are many issues that we
11 deal with on a daily basis, some of which the
12 Governor is consulted with, some of which he is
13 not. A decision as to whether we should put out
14 a statement implying that the Senator is, you
15 know, using the aircraft inappropriately for, you
16 know -- and could be read to be illegal if it was
17 exclusively for political purposes, to the press
18 is a type of issue that we would consult the
19 Governor on.

20 BY MS. TOOHER:

21 Q. When was the next time that the issue of Senator
22 Bruno's use of the aircraft was brought to your
23 attention after the May 17 meeting?

24 A. To the best of my recollection, I heard that there was

1 going to be a story in the Times Union regarding
2 Senator Bruno's use of the aircraft.

3 Q. And you weren't privy to any conversations prior to
4 the story?

5 A. I was told that the story was going to come out, and
6 so I would have to say that that was probably, maybe,
7 Friday before it came out. So it was certainly -- I
8 was privy to a conversation that the story was going
9 to come out. I don't recall conversations regarding
10 Senator Bruno's use of the aircraft between May 17th
11 and the end of June.

12 MR. TEITELBAUM: Just for the record. The
13 article, that appeared on Sunday?

14 THE WITNESS: I believe it was Sunday the
15 1st of July.

16 MR. TEITELBAUM: So you are talking about
17 the Friday immediately before the Sunday?

18 THE WITNESS: To the best of my
19 recollection, yes.

20 BY MS. TOOHER:

21 Q. I want to show you what's previously been marked as
22 Commission's 63.

23 A. Okay.

24 Q. And this is apparently an e-mail thread, it starts on

- 1 May 23rd and completes -- I'm sorry -- may 23rd at
2 10:25, and it completes on May 23rd at 8:22 p.m. It
3 starts with Anthony Williams to Preston Felton and
4 completes with William Howard to Darren Dopp, and the
5 subject matter of the e-mail is, "We've been informed
6 Senator Bruno's travels, again, to New York using the
7 helicopter"; are you familiar with this document?
- 8 A. I'm sorry, I see the subject matter "FW: Schedule";
9 where are you reading from?
- 10 Q. Yes. I'm just telling you the testimony thus far --
- 11 A. Okay.
- 12 Q. -- has told us that this is relating to Senator
13 Bruno's use of the helicopter again.
- 14 A. Okay.
- 15 Q. Are you familiar with this document?
- 16 A. I know I've seen it.
- 17 Q. On or about May 23rd, did anyone bring to your
18 attention the issue of the use of the helicopter again
19 to go to New York?
- 20 A. Not to my recollection.
- 21 Q. Did Darren Dopp ever show you this document during
22 that time frame, the May 23rd, 24th time frame?
- 23 A. Not to my recollection.
- 24 Q. And did he discuss with you that he was in

1 communications with Bill Howard and Acting
2 Superintendent Felton at that time frame concerning
3 Senator Bruno's activities?

4 A. Not to my recollection.

5 MR. TEITELBAUM: If he were in communication
6 with those people, is that something that Dopp
7 would inform you about?

8 THE WITNESS: I know I was in the meeting on
9 the 17th. Is it possible that he said to me
10 sometime around this time frame, Bruno took the
11 helicopter to New York again; he may have. I
12 mean, you know, frankly, it also wasn't a secret,
13 because, obviously, people -- Marlene Turner
14 would know when he used it, whoever traveled with
15 him would know when he used it, people who saw
16 him in New York would know that he used it, so
17 it's not like there was any -- it's not like it's
18 a secret helicopter trip, so it's possible Darren
19 would have said, he took the helicopter. I'm
20 just telling you, between the 17th and the end of
21 June, I have no recollection with respect to
22 Senator Bruno's use of the helicopter. It
23 doesn't mean I didn't have a conversation, I just
24 don't recall.

1 MR. TEITELBAUM: Did he tell you around this
2 time of Commission's 63 that through Mr. Howard
3 he was in communication with the State Police?

4 THE WITNESS: I don't recall being told
5 that.

6 BY MS. TOOHER:

7 Q. Did Darren Dopp ever relate to you that he had
8 discussions with Peter Pope in the Executive Chamber
9 concerning Senator Bruno's use of the aircraft?

10 A. I know I had a conversation with Darren about a
11 conversation that Darren had with Peter. To the best
12 of my recollection, that occurred after the -- I know
13 I had a conversation with Darren about his
14 conversation with Peter after the article came out.
15 It's possible that we talked about his conversation
16 with Peter before. I don't know when that
17 conversation took place. So if he had it
18 contemporaneously as well, I don't know. I know that
19 he told me about it afterwards.

20 Q. What did he tell you was the conversation he had with
21 Peter?

22 A. He had a conversation with Peter as to whether the --
23 Senator Bruno's use of the aircraft should be referred
24 to the State IG.

- 1 Q. And when was your understanding as to when that
2 conversation occurred?
- 3 A. You know, I only remember talking to Darren about it
4 after the article came out. My recollection is that
5 he had this conversation before the article came out.
6 But how much before, I just don't know.
- 7 Q. Did he say anything else beyond just that this was a
8 conversation concerning referral to the IG?
- 9 A. It's my understanding that Peter had advised Darren of
10 his view that this is a matter that should be referred
11 to the IG.
- 12 Q. And did he ever discuss with you the concept of -- did
13 Darren ever discuss with you the concept of referral
14 to the IG?
- 15 A. I know I discussed it afterwards. I don't recall
16 having a conversation with Darren beforehand about the
17 referral to the IG. It's possible that there was a
18 discussion of it at the May 17th meeting, I just don't
19 recall.
- 20 Q. Do you -- did you ever have a conversation with Darren
21 concerning potential criminal prosecution for not
22 referring it to the IG?
- 23 A. It's my understanding that Peter had indicated to
24 Darren that he had an obligation to refer it to the

1 IG. I did not think that there was an obligation to
2 refer it to the IG.

3 Q. Did you relay that to Darren?

4 A. Again, the only conversation that I recall was
5 afterwards. It certainly --

6 Q. After the article?

7 A. After the article.

8 You know, the IG does not have jurisdiction over
9 alleged wrongdoing by the State Legislature, so I
10 don't see this as a mandatory referral requirement to
11 the State Legislature -- to the IG.

12 MR. TEITELBAUM: Just so the record is
13 clear, were you told that Mr. Pope told Mr. Dopp
14 that he could have criminal exposure if he didn't
15 make a referral?

16 THE WITNESS: I know that I had a
17 conversation with Darren about his conversation
18 with Peter as to whether this was a mandatory
19 reporting requirement. I don't recall in that
20 conversation discussing what the potential
21 consequences would be for failure to refer.

22 (Commission's Exhibit 122 was marked for
23 identification.)

24 BY MS. TOOHER:

- 1 Q. I'm showing you what's been marked as
2 Commission's 122.
- 3 A. Okay.
- 4 Q. This appears to be an e-mail from Peter Pope to you
5 dated 7/16 at 8:36 a.m. Can you identify this
6 document?
- 7 A. I mean, I know I've seen it. It is what it purports
8 to be, an e-mail from Peter to me and to Sean Maloney.
- 9 Q. Did you request Peter to create this memo?
- 10 A. No.
- 11 Q. Is this in response to any communication you had with
12 Peter concerning these events?
- 13 A. Yeah. At some point, at around this time frame, Peter
14 mentioned to me that he had had conversations with
15 Darren prior to July 1st about the matter generally,
16 and I believe that this, you know, perhaps -- I mean,
17 I don't recall exactly what he said, but I know that
18 this was followed up with an e-mail, basically, giving
19 a short description of the two conversations that
20 Peter recalled.
- 21 Q. And in the second paragraph it indicates, "He" -- and
22 I'm going to assume we're referring to Darren Dopp
23 here -- "showed me" -- Peter Pope -- "a request for
24 flight submitted by Bruno and asked whether, given my

- 1 experience as a former prosecutor, it constituted a
2 false swearing." Do you know what the sum and
3 substance of that conversation was? Did Peter relay
4 anything further to you?
- 5 A. I don't recall the details of the conversation. I
6 don't, you know -- I presume that this is, you know, a
7 recitation of what occurred. So I wasn't a party to
8 that conversation, so I can't say anything more than
9 what's in this e-mail. This is him advising me of a
10 conversation that he had with Darren.
- 11 Q. Did Darren ever discuss with you the issue of Bruno
12 providing a false swearing in the context of the
13 flight request form?
- 14 A. I know that I discussed it with him after July 1st. I
15 don't recall discussing it with him before July 1st.
16 Again, it could have been something that was discussed
17 on May 17th, I don't recall.
- 18 Q. And did Peter indicate to you that he had any
19 follow-up with Darren on these conversations?
- 20 A. You mean other than after July 16th?
- 21 Q. After he had the initial conversations?
- 22 A. Again, I know that Peter advised me that he had had a
23 couple conversations with Darren, I know that it was
24 followed up with this e-mail. I don't recall him

1 telling me further follow-up that he might have had
2 with Darren about this.

3 Q. Did he ever discuss with you that Darren had come to
4 him?

5 A. He --

6 Q. Prior to the --

7 A. I don't -- this is a discussion of two conversations.
8 It may well be that Darren came to him and those would
9 be the two conversations that are being referred to.

10 Q. Did Peter ever come to you about the issue of
11 referring this matter to the IG?

12 A. I don't recall having a conversation with Peter prior
13 to July 1st about the referral.

14 Q. Did you have any conversations prior to July 1st
15 concerning the referral of the matter to the IG?

16 A. Again, I don't think I had a conversation with Peter.
17 It's possible I had a conversation with Darren, I just
18 don't recall. The only conversations that I recall
19 relating to Senator Bruno's use of the aircraft were
20 May 17th, and then again when I heard prior to
21 July 1st that the article was going to come out. It
22 is possible that Darren had a conversation with me, I
23 just don't recall it. I do recall talking to him
24 about it after July 1st.

1 Q. Did Rich Baum ever say anything to you about Darren
2 having a conversation with Peter Pope?

3 A. Again, I, you know, I've spoken with Rich and with
4 Peter and with Darren after July 1st. I know that I
5 had a conversation with, you know -- I believe that I
6 spoke both with Peter and with Darren about their
7 conversation with each other, but I don't recall
8 talking to Rich about it. I assume that's what you
9 are asking --

10 Q. Yes.

11 A. -- my recollection of having a conversation with Rich
12 about Darren's conversation with Peter. I just don't
13 recall.

14 Q. Did Darren ever indicate to you that he spoke with
15 Richard Rifkin about his conversations with Peter
16 Pope?

17 A. I think, and I can't say for sure, I think that Darren
18 mentioned to me that he had also spoken with Richard
19 Rifkin -- not -- well, I'll take that back.

20 I think he had spoken with Richard Rifkin about
21 the referral issue. I don't recall him telling me
22 that he spoke with Richard Rifkin about his
23 conversation with Peter Pope. If I understand your
24 question correctly.

1 Q. Did Darren ever indicate to you, prior to the July 1st
2 time frame, that he had spoken with Richard Rifkin
3 about the policy on the use of the aircraft?

4 A. Ask the question again.

5 MS. TOOHER: Can you read back the question.

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

8 QUESTION: "Did Darren ever indicate to you,
9 prior to the July 1st time frame, that he had
10 spoken with Richard Rifkin about the policy on
11 the use of the aircraft?")

12 A. Answering that question, obviously, there were a lot
13 of discussions relating to use of State aircraft
14 generally. I have indicated Richard Rifkin would be a
15 logical person to consult on that. I know that I was
16 in conversations with Darren, with Marlene, with
17 Richard Baum, with Bill Howard. I don't, in my head,
18 recall a conversation with Richard Rifkin that I would
19 have had. It's quite possible that I had such a
20 conversation and in my conversations with Darren about
21 the use of State aircraft and this policy we're trying
22 to develop, it's quite possible that he told me that
23 he had spoken with Richard Rifkin, but I don't
24 remember the details of my conversations with any of

1 those individuals.

2 Q. After May 17th, did Darren indicate that he had spoken
3 with Richard Rifkin concerning the use of the State
4 aircraft?

5 A. Not that I recall.

6 MR. TEITELBAUM: Mr. Nocenti, did you ever
7 inquire as to why the Communications Director was
8 involved in an inquiry as to whether Senator
9 Bruno had committed a crime?

10 THE WITNESS: I guess I don't understand the
11 question.

12 MR. TEITELBAUM: Can you read the question
13 back, please.

14 (Thereupon, the following excerpt of the
15 proceedings was read back by the Court Reporter:

16 QUESTION: "Mr. Nocenti, did you ever inquire
17 as to why the Communications Director was
18 involved in an inquiry as to whether Senator
19 Bruno had committed a crime?")

20 THE WITNESS: I don't know what you mean by
21 an inquiry as to --

22 MR. TEITELBAUM: As I read 122, and tell me
23 if you don't read it that way, that Mr. Dopp was
24 asking Mr. Pope, a former prosecutor, whether

1 Senator Bruno did something which constituted a
2 false swearing?

3 THE WITNESS: Mm-hmm.

4 MR. TEITELBAUM: Which constitutes a crime?

5 THE WITNESS: Mm-hmm.

6 MR. TEITELBAUM: So did you ever inquire as
7 to why the Communications Director was making
8 that kind of inquiry?

9 THE WITNESS: No. It's not surprising.

10 MR. TEITELBAUM: Why?

11 THE WITNESS: Well, I -- he had proposed a
12 press release relating to Senator Bruno's use of
13 the aircraft. If Senator Bruno had used the
14 aircraft for illegal purposes or had, you know,
15 committed a false swearing, that would be
16 incredibly newsworthy, it would be something he
17 would need to know about, you know, there would
18 be a tremendous amount of press inquiry into that
19 issue.

20 MR. TEITELBAUM: Had the facts and
21 circumstances changed since May 17th when your
22 view was that you assume that there was
23 legislative business being conducted by Senator
24 Bruno when he used the aircraft at the point in

1 time, July 1st, on that subject?

2 THE WITNESS: I don't know what you mean by
3 the facts changing.

4 MR. TEITELBAUM: Well, did you learn
5 anything which would have caused you to change
6 your mind?

7 THE WITNESS: No.

8 MR. TEITELBAUM: As I read this document,
9 122, Mr. Nocenti, it looks to me like Mr. Dopp
10 was trying to find a way to trigger some kind of
11 punishment with respect to the Senator in regard
12 to his use of the aircraft. Do you read it that
13 way?

14 THE WITNESS: No.

15 BY MS. TOOHER:

16 Q. Was there any written policy in the Chamber concerning
17 the use of the aircraft?

18 A. There was a 1999 aircraft policy, which we had never
19 updated.

20 Q. And do you know what that policy was in sum or
21 substance?

22 A. I don't recall that policy in sum or substance. It
23 was a policy of the prior administration.

24 (Commission's Exhibit 123 was marked for

1 identification.)

2 Q. I'm showing you what's been marked as Commission's 123
3 and ask you if you can identify this document.

4 A. I know I've seen it. That's all I can say.

5 Q. At the top of this document, it says, "State Aircraft
6 Policy".

7 "State policy regarding use of the aircraft is as
8 follows: The executive aircraft is to be utilized
9 only if the requesting official's trip is related to
10 State business or such usage facilitates the execution
11 of official duties."

12 A. Mm-hmm.

13 Q. And that's a quote?

14 A. Mm-hmm.

15 Q. Are you familiar with that statement as an accurate
16 statement of the policy?

17 A. It seems to, in sum or substance -- I actually don't
18 know the difference between something being related to
19 State business or facilitating the execution of
20 official duties, that just seems similar. But the
21 bottom line is, you can't use the aircraft for solely
22 nongovernmental purposes, which seems to be what this
23 is saying.

24 Q. It says it can be utilized only if the requesting

1 individual's trip is related to State business or
2 usage?

3 A. Correct.

4 Q. This appears to be a quotation, do you know where that
5 was taken from?

6 A. I do not know where that's taken from.

7 Q. Do you know if this policy was provided to anyone in
8 the Executive Chamber?

9 A. Well, it says -- it's entitled, "State Aircraft
10 Policy", but, I mean, this is not like a policy
11 memorandum of any sort. You know, we have certain
12 policies that are set forth in different formats.
13 This is not the format that we would distribute a
14 policy if anyone were asked, you know, what the policy
15 is.

16 Again, it doesn't really get into the mixed-use
17 issue, so it's an extremely short description of, you
18 know, one aspect of the policy, I guess is the best
19 way to describe it.

20 Q. And to your knowledge, there is no other written
21 memorialization of the policy in the Chamber?

22 A. We have policies that either by executive order or
23 otherwise have, you know, circulated to, you know,
24 people in the Executive Chamber. Only people in the

1 Executive Chamber who use the State aircraft,
2 predominantly the Governor and Lieutenant Governor,
3 although other staff can use the aircraft, we did not
4 take it upon ourselves after January 1st, 2007 to,
5 essentially, rewrite what the prior administration had
6 written as the aircraft policy. We had general rules
7 that we would follow and procedures that you would
8 need to adopt, such as the form that you've seen, but
9 we didn't, you know, formalize a policy.

10 Q. Were you aware of an article that came out concerning
11 Senator Bruno and Ken Abbruzzese in the beginning of
12 June?

13 A. Yes.

14 Q. How did you become aware of that?

15 A. I don't recall, but someone could have told me about
16 it. I get news clips in the morning, I could have
17 read it in the news clips. I believe it was in the
18 Albany Times Union.

19 Q. Was there a reaction within the Chamber to that news
20 article coming out?

21 A. I know I've seen e-mails where people reacted to the
22 article. I don't, you know, have any specific
23 recollection of, you know -- you are asking the
24 reaction of the Chamber, the Chamber is a governmental

1 entity and I can only speak to reactions of
2 individuals, and I only know that I've seen e-mail
3 back and forth on that article.

4 Q. Do you know what Mr. Dopp's reaction was to the
5 article?

6 A. I can't speak to Mr. Dopp's reaction.

7 Q. Do you know what was reflected in the e-mails that
8 Mr. Dopp sent out?

9 A. I know I've seen e-mails that he was involved in and
10 that Rich Baum was involved in. I don't remember
11 whose reaction was which.

12 Q. Were you a participant in any discussions concerning
13 the Abbruzzese article?

14 A. An article like that, people talk about the office, so
15 I'm sure I was party to discussions about it.

16 Q. And when you say people talk to the office, what kind
17 of discussions are we talking about?

18 A. Well, it's like, you know, there are primary results
19 from Tuesday, people talk about the primary results;
20 this is an article that people talk about. I wouldn't
21 be surprised if I didn't have a conversation with
22 somebody about it. I actually don't have any specific
23 recollection of conversations about that article.

24 Q. And did Darren Dopp discuss with you anything

1 concerning Senator Bruno's travel in the context of
2 the Abbruzzese article?

3 A. Not to the best of my recollection.

4 Q. Are you aware of him having conversations with anyone
5 else concerning the Abbruzzese article and Senator
6 Bruno's travels?

7 A. I don't have any knowledge of conversations that he
8 would have with other individuals. I believe I've
9 seen an e-mail exchange at about that time period that
10 mentions travel, but that would be the source of my
11 knowledge on that.

12 Q. I am going to show you what's previously been marked
13 as Commission's Exhibit 47 and ask you if you can
14 identify this document.

15 A. All I can say is it's an e-mail that I've seen before.

16 Q. And in what context have you seen it before?

17 A. Well, I've been involved in reviewing thousands of
18 pages of e-mails in response to the inquiries, and
19 this is one of the e-mails that I've seen in the
20 course of my review of those documents.

21 Q. Had you seen this e-mail on or about June 3rd?

22 A. No.

23 Q. And had you seen this e-mail prior to July 1st?

24 A. No.

- 1 Q. Were you aware that this e-mail existed prior to
2 July 1st?
- 3 A. No.
- 4 Q. Did Rich Baum ever discuss with you that he had
5 received communications from Darren Dopp concerning
6 the travel issue and Senator Bruno --
- 7 A. No.
- 8 Q. -- around the Abbruzzese article?
- 9 A. No.
- 10 Q. And when you say you saw this article in the context
11 of reviewing the State Police --
- 12 A. This e-mail.
- 13 Q. -- this e-mail, I apologize, Commission's 47.
14 What was the context of that?
- 15 A. We had ongoing inquiries from the Inspector General's
16 Office -- at various times there have been inquiries
17 by the Inspector General's Office, the Attorney
18 General, the Albany District Attorney and the Ethics
19 Commission of Public Integrity. There were various
20 document requests from each of those entities. I've
21 spent a tremendous amount of time over the past, you
22 know, nine months, eight months, whatever it's been,
23 reviewing e-mails to find documents that are
24 responsive to those requests. This is one of the

1 e-mails that I know that I saw in the course of
2 responding to those inquiries.

3 Q. In the context of those inquiries, did you have any
4 reaction to seeing this e-mail?

5 A. I mean, I would have come across this e-mail among
6 hundreds of thousands of others. I don't recall any
7 reaction to this e-mail in particular.

8 Q. Were you surprised to see Darren discussing a travel
9 story with Rich Baum in June 3rd of '07?

10 A. I don't recall what my reaction was.

11 MR. TEITELBAUM: Mr. Nocenti, between
12 May 17th and the early part of June, did you have
13 any knowledge that Mr. Dopp was continuing to
14 want to put out a story in the newspapers on
15 Senator Bruno that would be negative regarding
16 his use of State aircraft?

17 THE WITNESS: Between May and shortly before
18 July 1st, I was not aware -- I was not aware that
19 Darren was -- when you say "continuing",
20 continuing to look to put out an article, not to
21 my knowledge. Again, I remember the May 17th
22 meeting relating to Senator Bruno, I remember
23 hearing that the article was going to come out.
24 So I remember the March 17th(sic) meeting

1 regarding the press statement, and I remember
2 the, shortly before July 1st, discussion that the
3 article was going to come out. I don't recall
4 having conversations about a release about
5 Senator Bruno in the intervening time period.

6 MR. TEITELBAUM: And during this time
7 period, had your perspective changed with regard
8 to your assumption that Senator Bruno had been
9 using State aircraft consistently with the policy
10 that you have been articulating today?

11 THE WITNESS: Well, his use of the
12 aircraft -- the policy or the law? My assumption
13 has always been and remains that Senator Bruno
14 would not use the State aircraft for exclusively
15 political purposes. So there was nothing that
16 happened between -- to my knowledge, nothing
17 happened between March 17th(sic) or July 1st or
18 thereafter that would cause me to believe that on
19 any particular occasion he used it for purely
20 political purposes. Obviously, if he had done
21 so, that's probably illegal. But I have no
22 reason to believe that that occurred.

23 MR. TEITELBAUM: To your knowledge, had the
24 Governor's perspective changed since the May 17th

1 conversation regarding putting out an article on
2 Senator Bruno's use of the State aircraft?

3 THE WITNESS: The Governor's view on
4 May 17th was that the -- that that press
5 statement should not go out. I don't -- I'm
6 certain I didn't have any conversations with the
7 Governor about that issue until after the article
8 came out.

9 MR. TEITELBAUM: I'm not talking about the
10 May 17th press release. Specifically, I'm
11 talking about a press release that would be
12 negative on Senator Bruno's use of the State
13 aircraft.

14 THE WITNESS: I don't recall having any
15 conversations with the Governor after May 17th
16 and before July 1st regarding whether a press
17 statement of any sort should be put out relating
18 to Senator Bruno's use of the aircraft.

19 MR. TEITELBAUM: Did anybody tell you that
20 he or she had any such conversation with the
21 Governor during that time frame?

22 THE WITNESS: I don't recall. I know that
23 after July 1st, I have spoken with, you know,
24 Darren, Rich, the Governor about this issue. I

1 don't recall anybody telling me about
2 conversations that they had with the Governor
3 about that issue.

4 MR. TEITELBAUM: To your knowledge, had
5 Baum's perspective changed since May 17th going
6 forward to the early part of June or before
7 June 3rd that a negative press story should not
8 be put out on Senator Bruno because the
9 assumption was that he was not using the aircraft
10 exclusively for non-State business?

11 THE WITNESS: I have no reason to believe
12 that Rich Baum's view changed between May 17th,
13 and I think you said, June 3rd, no.

14 BY MS. TOOHER:

15 Q. I want to show you what's been previously marked as
16 Commission's Exhibit 23.

17 A. Okay.

18 Q. And ask you if, prior to July 1st, you had ever seen
19 this document.

20 A. No.

21 Q. And can you identify this document?

22 A. I just know it's a document that I've seen in the
23 course of review.

24 I can tell you what my understanding of it is.

1 Q. What is your understanding as to what it is?

2 A. I believe this is a document -- I take that back. I
3 know that I've seen documents such as Exhibit 5,
4 Commission's Exhibit 5, which are a listing of Senator
5 Bruno's travels on May 17th and 18th. I believe that
6 the Senator used the aircraft on the dates listed
7 here, that's why my assumption is this is a State
8 Police document.

9 Q. Why would you assume this is a State Police document?

10 A. Because it has information about -- it says, "Inv", I
11 assume that investigator, it's talking about -- I'm
12 assuming that it's use of the State aircraft, so
13 that's why I'm assuming that it's a State Police
14 document.

15 Q. And why are you assuming this is a document related to
16 the use of the State aircraft?

17 A. I'm pretty sure I've seen it before, it looks similar
18 to Commission Exhibit 5. So that's just my
19 assumption.

20 Q. I'm going to give you what's previously been marked as
21 Commission's 1, 2 and 3 and ask you if you can
22 identify these documents.

23 A. Again, they look similar to documents that I've seen
24 in the course of the investigation or responding to

1 the document requests.

2 Q. And had you seen these documents prior to responding
3 to the document requests?

4 A. No.

5 Q. When you say "the document requests", to what are you
6 referring?

7 A. Well, I know that there were some State Police
8 documents that were provided to the Times Union. I
9 don't recall if these are in there or not, if these
10 were included there or not. I know that there were
11 documents that were provided to, you know, the
12 Commission and to the DA and to others. You know,
13 these documents like Commission's Exhibit 5 are not
14 numbered, so they don't look like documents that we
15 produced to -- all I can say is they look similar to
16 documents that I have seen before that have been
17 produced. I can't say whether these are the same or
18 different.

19 Q. Did you see documents similar to this prior to
20 July 1st?

21 A. No.

22 Q. Did you see these documents prior to any inquiry from
23 the Attorney General's Office?

24 A. I know that the documents provided to Jim Odatto

- 1 included documents that were State Police documents.
2 I know that at some point I looked through those
3 documents. I think we actually, you know, then
4 produced those documents, I think we produced them
5 also in response to other FOIL requests. I can't tell
6 you whether this document is identical to -- these
7 documents are identical or similar to -- they
8 obviously seem to cover similar topics, I just don't
9 know if these are documents that we provided or not.
- 10 Q. Let's go first to the documents that were provided to
11 Jim Odatto.
- 12 A. Mm-hmm.
- 13 Q. When you say provided to Jim Odatto, at what time?
- 14 A. It was my understanding that somewhere around
15 June 28th, 27th, 28th, 29th was the time frame, that a
16 FOIL request came in, I think, on the 27th, and I
17 think the documents were provided the next day. But
18 it was within that time frame. Obviously, it was
19 before July 1st. It was between -- so my
20 understanding is between June 27th and July 1st
21 documents were provided to Jim Odatto.
- 22 Q. And why were documents provided to Jim Odatto?
- 23 A. I believe he had submitted a FOIL request for
24 documents and Darren provided him with documents that

1 he believed to be responsive to the FOIL request.

2 Q. I'm going to show you what's been marked as
3 Commission's 66 and ask you if you can identify this
4 document.

5 A. Again, it's a document that I've seen in responding
6 after July 1st. It appears to be the FOIL request
7 from Jim Odatto to Darren Dopp, June 27th.

8 Q. Had you seen the FOIL request from Jim Odatto to Darren
9 Dopp, the June 27th FOIL request, prior to July 1st?

10 A. No.

11 Q. Did Darren Dopp ever show you the FOIL request prior
12 to providing documents in response thereto?

13 A. No.

14 Q. Did you see the documents that were provided to
15 Mr. Odatto prior to their being turned over to him?

16 A. No.

17 Q. You were not privy to the documents that were provided
18 to Mr. Odatto prior to them being turned over pursuant
19 to the FOIL request?

20 A. Correct.

21 Q. And are you aware whether Darren showed the documents
22 to anyone else in the Executive Chamber prior to
23 providing them to Mr. Odatto?

24 A. I do not know who he showed them to before providing

1 them.

2 MR. TEITELBAUM: Was there an inquiry made
3 as to whether Mr. Dopp showed the documents to
4 anybody in the Executive Chamber prior to turning
5 them over to Odato?

6 THE WITNESS: An inquiry? There's been a
7 number of --

8 MR. TEITELBAUM: No, no, I mean by the
9 Executive Chamber.

10 THE WITNESS: No, the Executive Chamber
11 didn't do an independent inquiry. I know that,
12 like, Peter Pope and Sean Maloney and I have had
13 conversations with Darren. I don't recall my
14 asking if he had shown the documents to anybody
15 prior to turning them over to Jim Odato.

16 MR. TEITELBAUM: Was that ever a subject of
17 discussion among members of the Executive
18 Chamber?

19 THE WITNESS: Well, I know I told Darren
20 when he got the FOIL request, he should have sent
21 it to the FOIL Officer.

22 MR. TEITELBAUM: Did Mr. Dopp say whether he
23 sent it to anybody?

24 THE WITNESS: I don't recall him telling me

1 that he gave a FOIL request to anybody. And I
2 don't recall him telling me that he showed the
3 documents to anybody.

4 MR. TEITELBAUM: Was he asked who he had
5 shown it to?

6 THE WITNESS: I don't recall asking him who
7 he had shown it to.

8 MR. TEITELBAUM: Did anybody tell you that
9 he had asked Dopp or she had asked Dopp that
10 question?

11 THE WITNESS: Again, I don't recall if Peter
12 or Sean mentioned to me that they may have had
13 that conversation. I just -- I don't recall
14 anybody telling me that Darren told them that he
15 had shown the documents to somebody else.

16 MR. TEITELBAUM: Or that he hadn't?

17 THE WITNESS: Or that he hadn't.

18 BY MS. TOOHER:

19 Q. I'm going to show you what's been marked as
20 Commission's Exhibit 67, and ask if you can identify
21 this document.

22 A. Again, this is -- well, the stuff at the bottom seems
23 odd. I believe that I've seen, certainly, the top
24 part of it, again, in the course of the responding to

1 the inquiry.

2 Q. When you say the stuff at the bottom looks odd, what
3 do you mean by that?

4 A. Well, I know I've seen a document that started out
5 "For background only" and that has this information.
6 I don't recall seeing this document with anything
7 below, starting with "Document properties" and below.
8 We printed out, you know -- this looks to be a
9 document, you know, the substance of which I've seen,
10 and I think this is the document properties of where
11 it came from, so I think that's not initially on the
12 document as it was created.

13 Q. Do you know what would cause that to be on the bottom
14 of the document?

15 A. I know that I have seen documents that have had
16 similar things at the bottom when we have asked a
17 legal tech to produce a document that we didn't have,
18 so it looks like the kind of stuff that would come
19 from a legal tech printout.

20 Q. And did you see this document prior to July 1st?

21 A. No.

22 Q. When did you first see this document?

23 A. I can only say it was after July 1st. I can't tell
24 you how soon after.

1 MR. TEITELBAUM: What were the circumstances
2 that you first saw this document?

3 THE WITNESS: Again, I don't recall. I
4 mean, I've seen tens of thousands of documents,
5 you know. The best I can say is I probably -- I
6 believe I saw it shortly after July 1st. I think
7 it's a document that accompanied -- I don't want
8 to say accompanied -- I know there was a document
9 that sort of like went with the documents
10 provided to Jim Odatto. I don't know whether it
11 actually went to Jim Odatto or not. And I believe
12 that I saw this shortly, you know, after the 1st.

13 BY MS. TOOHER:

14 Q. What is your understanding as to what this is?

15 A. I believe that this is a description of documents
16 provided to Jim Odatto.

17 Q. And what is that belief based upon?

18 A. I'm fairly certain that the documents provided to Jim
19 Odatto included Senator Majority Leader Joe Bruno's use
20 of State aircraft, and it may have been -- you know, I
21 may have seen it at about the same time that I saw the
22 documents. Yeah, best I can say is I think it, you
23 know, talks about, to some extent, the documents
24 provided to Jim Odatto, the best I can say.

1 Q. Well, Mr. Odatto is not mentioned anywhere in this
2 document, so from where do you glean the information
3 that this was with the documents that went to
4 Mr. Odatto?

5 A. Again, I say that I don't know that it went to
6 Mr. Odatto. I think this is a document that describes
7 in some way the documents that went to Mr. Odatto.

8 Q. And what is that information based upon?

9 A. I would have to actually look at the documents again
10 to see.

11 Q. Have you seen the documents that go with this?

12 A. I know -- well, I don't know that they go with this.
13 I know that I've seen the documents that he provided
14 to Mr. Odatto, and I would actually have to compare the
15 two sets of documents. Do you have them here?

16 Q. Yes, we do.

17 But my question to you is: In terms of your
18 knowledge concerning what this document is, are you
19 drawing that from reading the document now or did
20 someone inform you as to what this document is?

21 A. I don't think anybody ever told me what this document
22 is. I know I've seen it before. I always assumed
23 that that's what it was.

24 MR. MOSCHETTI: Let's take a two minute

1 break, if we can, please.

2 MS. TOOHER: Sure.

3 (A break was taken in the proceedings.)

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

6 QUESTION: "Yes, we do.

7 But my question to you is: In terms of your
8 knowledge concerning what this document is, are
9 you drawing that from reading the document now or
10 did someone inform you as to what this document
11 is?"

12 ANSWER: "I don't think anybody ever told me
13 what this document is. I know I've seen it
14 before. I always assumed that that's what it
15 was.")

16 BY MS. TOOHER:

17 Q. So is your recollection at this time that you had not
18 seen this document prior to July 1st?

19 A. I did not see this document prior to July 1st.

20 Q. And after July 1st, did you ever see this document in
21 connection to referring documents to a law enforcement
22 entity?

23 A. Say again.

24 Q. After July 1st, did you ever see this document in

1 connection to a referral to a law enforcement entity?

2 A. I believe that -- putting aside the language at the
3 bottom, I believe this is a document that we produced
4 to at least one law enforcement entity.

5 Q. In what context?

6 A. Responding to document requests.

7 Q. Did you ever see this document in connection with
8 providing documents to a law enforcement entity in
9 connection with Senator Bruno?

10 A. I'm sorry. Say that again.

11 MS. TOOHER: Could you read back the
12 question, please.

13 (Thereupon, the following excerpt of the
14 proceedings was read back by the Court Reporter:

15 QUESTION: "Did you ever see this document in
16 connection with providing documents to a law
17 enforcement entity in connection with Senator
18 Bruno?")

19 A. I guess I don't understand the question. We produced
20 a lot of documents to the DA to the AG to the IG and
21 to your office. I believe that I've seen this
22 document when it has been produced. This one doesn't
23 have our number at the bottom, but I believe that we
24 have produced this document.

1 Q. But did you ever see this document in the context of
2 the Chamber providing documents to a law enforcement
3 entity for purposes of reviewing Senator Bruno's
4 activities?

5 A. No.

6 MR. TEITELBAUM: Are you aware that Paul
7 Larrabee brought documents to District Attorney
8 Soares?

9 THE WITNESS: I am.

10 MR. TEITELBAUM: Around the beginning of
11 July?

12 THE WITNESS: Mm-hmm.

13 MR. TEITELBAUM: Did this document, 67,
14 accompany that submission to Soares?

15 THE WITNESS: I do not know.

16 MR. TEITELBAUM: Did you see the documents
17 that were delivered to Soares before they were
18 delivered?

19 THE WITNESS: No.

20 MR. TEITELBAUM: You didn't review them at
21 all?

22 THE WITNESS: No -- I take that back. It
23 was my understanding that we were providing to
24 DA Soares the documents provided to Jim Odatto. I

1 believe that I was provided with a copy of the
2 documents provided to Jim Odatto.

3 Again, I don't know that this was provided
4 to Jim Odatto, I don't know if this was provided
5 to the DA. I see "DA-03" at the bottom of it.
6 But I certainly saw, contemporaneously, the
7 documents provided to Jim Odatto. I don't know
8 what documents were provided to the DA, period.

9 MR. TEITELBAUM: Were you provided with a
10 package or a copy of the package that was being
11 delivered to the District Attorney that was
12 identified as such?

13 THE WITNESS: (Pause.)

14 MR. TEITELBAUM: Initiated by the Executive
15 Chamber?

16 THE WITNESS: I don't recall. I know that
17 the story broke on July 1st, on July 2nd, I'm
18 fairly certain that I got a copy of the documents
19 that were provided to Jim Odatto, whether I got
20 one copy or more than one copy, I don't know.
21 But I know that I've seen this document --

22 MR. TEITELBAUM: 67?

23 THE WITNESS: 67.

24 I frankly don't know if this was a document

1 that was provided to the DA by Paul Larrabee or
2 not.

3 MR. TEITELBAUM: Did you know that Larrabee
4 was delivering the documents to the District
5 Attorney before he in fact delivered them?

6 THE WITNESS: No.

7 MR. TEITELBAUM: When did you first find
8 that out?

9 THE WITNESS: Sometime after it occurred, I
10 found out that Paul had been the one who had gone
11 over and delivered the documents to the DA.

12 MR. TEITELBAUM: What was your understanding
13 as to why he did that?

14 THE WITNESS: I believe that Darren asked
15 him to do it.

16 MR. TEITELBAUM: What's your understanding
17 as to why Darren asked him to do that?

18 THE WITNESS: We were providing the
19 documents both to the AG and to the DA, and I
20 believe that I had a conversation with Darren in
21 which he told me that he would have the documents
22 sent over to the DA.

23 MR. TEITELBAUM: He told you that before he
24 had sent them over?

1 THE WITNESS: Yes.

2 MR. TEITELBAUM: What was your understanding
3 as to why he was sending the documents over to
4 the District Attorney?

5 THE WITNESS: Because we had had
6 conversations with the District Attorney's
7 Office, in fact, I personally had conversations,
8 about whether they wanted these documents to
9 review. And the end of June was an incredibly
10 busy time, and beginning of July was an
11 incredibly busy time, and I think I had a
12 conversation with Darren in which he said he
13 would get the documents over to Soares' Office
14 once Soares' Office indicated that they wanted
15 the documents.

16 MR. TEITELBAUM: Did you have a conversation
17 with somebody at the District Attorney's Office?

18 THE WITNESS: I did.

19 MR. TEITELBAUM: Who did you have the
20 conversation with?

21 THE WITNESS: District Attorney Soares.

22 MR. TEITELBAUM: When did you have the
23 conversation?

24 THE WITNESS: On or about July 2nd.

1 MR. TEITELBAUM: Who initiated the
2 conversation?

3 THE WITNESS: I did.

4 MR. TEITELBAUM: For what purpose?

5 THE WITNESS: To see if he wanted the
6 documents that we had relating to Senator Bruno's
7 travels.

8 MR. TEITELBAUM: Why did you ask him that
9 question?

10 THE WITNESS: We had had an internal
11 discussion as to what we should do with these
12 documents if the Senator was using the aircraft
13 for purely political purposes, either on the
14 trips that we had or on any other trips, that
15 would be criminal activity. Again, there was no
16 specific line that had been drawn in the law.
17 The Hevesi matter had just occurred. A decision
18 was made that we would reach out to the AG, the
19 IG and the Manhattan -- I'm sorry. The AG, the
20 DA in Albany and the DA in Manhattan to see if
21 they wanted these documents, and so I talked to
22 all three offices.

23 MR. TEITELBAUM: Is it fair to say that none
24 of these law enforcement agencies initiated the

1 request for these documents at that time?

2 THE WITNESS: Correct.

3 MR. TEITELBAUM: Had any facts come into
4 your knowledge between May 17th and the time that
5 you offered the documents to Soares which would
6 have changed your mind concerning the propriety
7 of Senator Bruno's use of the aircraft?

8 THE WITNESS: No.

9 MR. TEITELBAUM: What caused you, then,
10 to --

11 THE WITNESS: I take that back. I'm sure I
12 read the article, which had more details than I
13 knew about Senator Bruno's use of the aircraft.

14 MR. TEITELBAUM: Is your testimony that the
15 Odato article contained facts concerning Senator
16 Bruno's use of the aircraft that the Chamber
17 personnel were not aware of?

18 THE WITNESS: I can only speak to --

19 MR. TEITELBAUM: On May 17th?

20 THE WITNESS: I can only speak to my own
21 knowledge.

22 MR. TEITELBAUM: What in the Odato article
23 indicated to you that Senator Bruno's use of the
24 State aircraft may not have been proper?

1 THE WITNESS: I would have to review the
2 article to refresh my recollection.

3 MS. TOOHER: I'm handing you what's been
4 marked Commission's 85, the Times Union article,
5 dated July 1, 2007, "State Flies Bruno to
6 Fundraisers".

7 THE WITNESS: (Pause.)

8 Okay. What was the question?

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

11 QUESTION: "What in the Odatto article
12 indicated to you that Senator Bruno's use of the
13 State aircraft may not have been proper?")

14 THE WITNESS: Just to give one example, the
15 article refers to a May 24th trip where they left
16 Albany at 3:30 and were taken to a Sheraton Hotel
17 and then to Russo's restaurant, and it indicates
18 that Russo's -- it appears to indicate that
19 Russo's restaurant was a campaign event, and then
20 he was picked up at 7:00 and taken back to
21 Albany; that would appear to be a trip that is
22 predominantly, if not exclusively, for political
23 purposes.

24 MR. TEITELBAUM: Anything else?

1 THE WITNESS: There's no discussion in
2 these -- about May 3rd and May 17th as to
3 whether -- certainly some of these are clearly
4 political events, some you can't really tell
5 whether they're political or nonpolitical, and
6 so, again, if they were political events, then,
7 again, he would be using the plane exclusively
8 for political purposes, which would be illegal.

9 BY MS. TOOHER:

10 Q. I'm going to direct your attention to Commission's
11 Exhibit 3, the transportation assignment for Senator
12 Bruno.

13 A. Mm-hmm.

14 Q. For May 24, 2007, which is also annexed as the final
15 page. These were part of the blog on the Times Union
16 article, which indicates, "3:30, arrived at downtown
17 heliport and transported to meeting at City Hall."

18 A. Mm-hmm.

19 Q. Could the City Hall meeting be considered legislative
20 business?

21 A. Certainly could.

22 Q. So if Senator Bruno traveled to attend the meeting at
23 City Hall, that would be a legitimate use of State
24 aircraft?

1 A. If he were going for a governmental purpose, that
2 would be -- certainly, based upon the rules at that
3 time, if there was some governmental business being
4 done, one could find that that would be a legitimate
5 use of State aircraft.

6 Again, you can go back to the ten minute meeting
7 versus the eight hour meeting example, but again, the
8 rules were not perfectly clear. But yes.

9 Q. Well, that was part of the Times Union article, so it
10 would appear that under your earlier analysis --

11 MR. MOSCHETTI: What's part of the Times
12 Union article?

13 MS. TOOHER: Commission's 3.

14 A. Yeah, I don't know what he was doing at City Hall.

15 Q. Was any effort made to reach out to Senator Bruno
16 concerning his activities during that time frame?

17 A. No.

18 MR. TEITELBAUM: Was there any effort to
19 reach out to City Hall?

20 THE WITNESS: Not by me.

21 BY MS. TOOHER:

22 Q. Was there any effort to reach out to the State Police
23 concerning these activities?

24 A. Not by me.

1 Q. Were you aware of any activities in that regard to
2 reach out to the State Police?

3 A. What do you mean by -- both by time frame and State
4 Police, obviously Darren and Bill Howard were --
5 withdrawn.

6 Bill Howard was in communication with the State
7 Police regarding these travels at that time.

8 Q. On July 2nd?

9 A. I don't know the specific -- I know I've seen e-mails
10 between Bill Howard and the State Police about Senator
11 Bruno's travels. I don't recall off the top of my
12 head whether it was June 2nd(sic).

13 Q. But when you made a decision to send these documents
14 down to the District Attorney's Office, were you aware
15 that Bill Howard had been in contact with the State
16 Police concerning Senator Bruno's travels?

17 A. I don't think I was.

18 Q. So prior to referring these documents -- by "these
19 documents", I indicate the ones that were captioned,
20 Commission's 67 and the documents that went down to
21 the District Attorney's Office with --

22 A. I don't know if Commission 67 went to the District
23 Attorney's Office.

24 Q. The documents that Paul Larrabee brought to the

1 District Attorney's Office, that you are aware that
2 Paul Larrabee brought to the District Attorney's
3 Office, were you in contact with the State Police
4 prior to referring those documents to the District
5 Attorney's Office?

6 A. Was I? I had no conversations or communications with
7 the State Police.

8 Q. Were you aware of anyone from the Executive Chamber
9 being in touch with the State Police prior to bringing
10 these documents down to the District Attorney's
11 Office?

12 A. These were documents that, to my knowledge, were State
13 Police documents, so somebody had to have been in
14 communication with the State Police to gather these
15 documents.

16 Q. Where was your understanding that these were State
17 Police documents from on July 2nd?

18 A. I believe that the documents included documents
19 that -- I'd have to look at them, but from the outward
20 appearance, appeared to be State Police documents.

21 Q. So no effort was made to verify whether or not Senator
22 Bruno had conducted legitimate State business prior to
23 referring this matter down to the District Attorney's
24 Office?

1 A. If you are talking about on July 1st -- the article
2 comes out on July 1st, did we, after the article came
3 out, then seek to verify in some way what Senator
4 Bruno was doing on each of these days? Not to my
5 knowledge.

6 Q. So what had changed between the time Darren Dopp came
7 to you and said, it looks like Senator Bruno is
8 engaging in activities that are a misuse of the
9 helicopter and July 2nd? Just the Times Union
10 article?

11 A. The Times Union article certainly gave more details
12 about more trips that I was not previously aware of.
13 We had documents that could be of interest to a
14 prosecutor or not. You are faced with a question of,
15 do I just hold them, do I reach out to a prosecuting
16 office to see if they want them; those are basically
17 the two options. We chose to reach out to the offices
18 to provide them.

19 MR. TEITELBAUM: With respect to the -- to
20 your view on May 17th, you didn't know in fact
21 whether Bruno was conducting State business at
22 C.V. Starr; correct?

23 THE WITNESS: I did not know if he was
24 conducting State business at C.V. Starr.

1 MR. TEITELBAUM: You presumed that?

2 THE WITNESS: I don't know if I -- I
3 certainly presumed -- I'm certain I was told that
4 the Sheraton event was a fundraising event. I
5 don't recall a discussion of the C.V. Starr
6 portion.

7 MR. TEITELBAUM: You presumed that there was
8 State business being performed with respect to
9 the trip that was under discussion on March 17th?

10 THE WITNESS: I -- yes.

11 MS. TOOHER: May.

12 MR. TEITELBAUM: May 17th? I'm sorry.

13 THE WITNESS: Sorry. Ask the question
14 again.

15 MR. TEITELBAUM: You presumed that with
16 regard to the trip that was under discussion at
17 the May 17th meeting that State business was
18 being performed by Senator Bruno?

19 THE WITNESS: I did.

20 MR. TEITELBAUM: Why didn't you have that
21 same presumption with respect to the City Hall
22 meeting?

23 THE WITNESS: I'm not saying I didn't have
24 the same presumption. It could well have been.

1 The logical assumption would be that it would be
2 a governmental event.

3 MR. TEITELBAUM: Since your assumptions
4 were, it sounds to me, anyway, pretty much the
5 same, that State business was being performed on
6 the trip in which Senator Bruno went to City
7 Hall, I'm confused as to what caused you to
8 initiate a submission to law enforcement
9 authorities on July 2nd.

10 THE WITNESS: There's more details in this
11 article, it appears that the predominant purpose
12 is political. I would let a law enforcement
13 office determine whether that line had been
14 crossed or not.

15 MR. TEITELBAUM: Why didn't you do that with
16 respect to the May 17th trip that was in
17 discussion on May 17th?

18 THE WITNESS: It wasn't clear to me from
19 that press release how -- you know, what else he
20 was doing during that day. This had specific
21 times when he was being picked up in Albany and
22 dropped off.

23 MR. TEITELBAUM: You said that there was an
24 internal discussion concerning what to do in

1 connection with the Times Union article?

2 THE WITNESS: Mm-hmm.

3 MR. TEITELBAUM: Who were the participants?

4 THE WITNESS: I know that I was involved, I
5 know that Darren was involved, I know that Rich
6 was involved, wouldn't be surprised if the
7 Governor was involved, but I don't know where he
8 was on that day, whether he was in Albany or not.
9 I don't specifically recall having a conversation
10 with him.

11 MR. TEITELBAUM: Did Rich Baum concur in
12 submitting these documents to law enforcement
13 authorities?

14 THE WITNESS: The decision was made that I
15 would reach out to law enforcement to see if they
16 wanted the documents.

17 MR. TEITELBAUM: Did Rich Baum concur with
18 your doing that?

19 THE WITNESS: Yes.

20 MR. TEITELBAUM: Did the Governor concur
21 with your doing that?

22 THE WITNESS: I don't recall. I don't
23 recall.

24 MR. TEITELBAUM: Did you have a conversation

1 with the Governor concerning that?

2 THE WITNESS: I don't recall if I had a
3 conversation with the Governor or not.

4 MR. TEITELBAUM: Well, referring a matter
5 concerning the Senate Majority Leader to a
6 District Attorney is a very important step --

7 THE WITNESS: Yeah, no, it's the type of
8 matter that we would have consulted the Governor
9 on. I don't recall if I had a conversation with
10 him, if Rich had a conversation with him, if
11 Darren had a conversation with him.

12 MR. TEITELBAUM: Is it fair --

13 THE WITNESS: Certainly the type of matter
14 that we would have consulted with him on.

15 MR. TEITELBAUM: Is it fair to say that your
16 communication -- your initiating communication
17 with the District Attorney would not have
18 happened without the Governor's approval?

19 THE WITNESS: I can't say for sure. I can't
20 say for sure. It wouldn't have happened if he
21 had said not to.

22 And again, we didn't decide to refer the
23 matter; we decided to ask whether they wanted the
24 documents.

1 MR. TEITELBAUM: I understand.

2 The reason I'm asking you this, Mr. Nocenti,
3 is because on May 17th, the Governor was made a
4 party to a discussion concerning whether to
5 release to the press a press release?

6 THE WITNESS: Mm-hmm.

7 MR. TEITELBAUM: Would you agree with me
8 that that action is less serious than initiating
9 a communication with a law enforcement authority
10 concerning possible crimes committed by the
11 Majority Leader of the Senate?

12 THE WITNESS: Yes.

13 MR. TEITELBAUM: Isn't it fair to say that
14 without permission from the Governor, that
15 contact would not have been made?

16 THE WITNESS: Again, I don't recall having a
17 conversation with the Governor. If Rich said, I
18 talked to the Governor and he wants to do this,
19 or Darren said I talked to the Governor, he wants
20 to do this, or maybe there was a call in which I
21 was on -- I just don't recall the specifics of
22 July 1st. My sense is this is not the type of
23 matter that would have been referred without
24 talking to the Governor, but I don't have a

1 specific recollection of a conversation with the
2 Governor.

3 MR. TEITELBAUM: Did -- bear with me one
4 second.

5 When you called David Soares on July 2nd,
6 what time of the day was that; before noon or
7 after noon?

8 THE WITNESS: Best guess, after noon.

9 MR. TEITELBAUM: How long was your
10 conversation with him?

11 THE WITNESS: I believe that I had
12 relatively short conversations with all three
13 offices. I don't recall, you know, the length,
14 but they would have been, essentially, five
15 minute conversations.

16 And I also don't know if I first called the
17 District Attorney and then got a return call or
18 whether I got him on my first call. I believe
19 that he was the last person that I heard from.

20 MR. TEITELBAUM: Did you have conversations
21 with anybody else in the District Attorney's
22 Office concerning the matter?

23 THE WITNESS: Not to my recollection.

24 MR. TEITELBAUM: How many conversations did

1 you have with District Attorney Soares?

2 THE WITNESS: I believe it was one.

3 MR. TEITELBAUM: Was this matter made
4 available to District Attorney Soares because the
5 Executive Chamber felt it needed to do something
6 politically in light of the Times Union article?

7 THE WITNESS: No.

8 MR. TEITELBAUM: There were no political
9 considerations in this decision?

10 THE WITNESS: It depends on what you mean by
11 "political considerations".

12 MR. TEITELBAUM: Given the fact that an
13 article appeared which alluded to the possible
14 misuse of the State aircraft and given the fact
15 that the Executive Chamber had oversight
16 responsibilities with respect to the use of State
17 aircraft that the Executive Chamber needed to get
18 this matter into somebody's hands in order to
19 show that it was taking action?

20 THE WITNESS: There was an internal
21 discussion about what to do now. There was an
22 article that was out, should we do nothing,
23 should we refer it. We had documents that may be
24 evidence of illegal conduct, so a discussion was

1 made, should we just sit and wait or should we
2 affirmatively reach out, and the decision was
3 made to affirmatively reach out.

4 MR. TEITELBAUM: Was there any discussion
5 among the group who was participating in these
6 deliberations to speak to Senator Bruno?

7 THE WITNESS: I don't believe so.

8 MR. TEITELBAUM: Why?

9 THE WITNESS: I think that would be a, you
10 know -- if we have evidence of potential
11 illegality, my first reaction would not be to
12 talk to the individual about that issue.

13 MR. TEITELBAUM: The only -- well, one
14 reason I raise this question is because
15 Exhibit 30, which is the aborted press release,
16 refers to, "We have asked the Senator to verify
17 that these meetings involved official State
18 business."

19 THE WITNESS: Mm-hmm.

20 MR. TEITELBAUM: So apparently, at least
21 Mr. Dopp, on May 17th, had the thought of an
22 inquiry to the Senator?

23 THE WITNESS: Again, my assumption on the
24 17th was he would have a lot of other, you know,

1 governmental meetings on the same day.

2 I know that there was, to my recollection,
3 no discussion of reaching out to Senator Bruno
4 after the article came out on the day -- the day
5 after the article came out.

6 MR. TEITELBAUM: What about a reference to
7 the Ethics Commission, was that raised?

8 THE WITNESS: I don't recall if it was
9 raised. The Ethics -- the State Ethics
10 Commission, as you know, doesn't have
11 jurisdiction over legislators.

12 MR. TEITELBAUM: True.

13 How about the legislative?

14 THE WITNESS: I don't believe that the
15 Legislative Ethics Commission existed.

16 MR. TEITELBAUM: On July 2nd?

17 THE WITNESS: On July 2nd. I don't believe
18 there was a Legislative Ethics Commission.

19 MR. TEITELBAUM: How about committee,
20 Legislative Committee?

21 THE WITNESS: There used to be a Legislative
22 Ethics Committee.

23 MR. TEITELBAUM: Yes.

24 THE WITNESS: It was replaced by the

1 Legislative Ethics Commission.

2 MR. TEITELBAUM: Yes.

3 THE WITNESS: And I don't believe that there
4 had been appointments to the Legislative Ethics
5 Commission, so I think, literally, there was no
6 Legislative Ethics Commission at that time.

7 MR. TEITELBAUM: Was there a Legislative
8 Ethics Committee?

9 THE WITNESS: I believe that that -- well, I
10 believe that the committee, in an early chapter
11 of the laws of 2007, the Legislature and the
12 Governor abolished the Legislative -- withdrawn.

13 In the early chapter of the laws of 2007,
14 the Legislature passed a law that would replace
15 the State Ethics Commission with the Commission
16 on Public Integrity and would create a
17 Legislative Ethics Commission, so it was in
18 statute, but I don't believe anyone had been
19 appointed. So I don't think there was a
20 commission. I think it existed only in the
21 statute books, but there was no person, no
22 entity, at the time.

23 MR. TEITELBAUM: Before the appearance of
24 the Times Union article, had you participated in

1 any discussion or activity concerning possible
2 crimes committed by Senator Bruno with respect to
3 the use of State aircraft?

4 THE WITNESS: The only thing prior to
5 July 1st that I recall is the May 17th
6 discussion. As I've indicated, I know that I had
7 a conversation with Darren and Peter after
8 July 1st regarding the false swearing thing, I
9 just don't have a recollection of having a
10 similar conversation before July 1st. It could
11 have been on July -- on May 17th that there was a
12 discussion as to whether this was a crime or not.
13 But again, because my presumption was that there
14 was -- must be other governmental activities
15 going on on the 17th, I didn't think that it
16 would be a crime -- let me take that back. I
17 didn't think it would be prosecuted as a crime.

18 BY MS. TOOHER:

19 Q. The e-mail that sets forth the FOIL request from
20 Mr. Odatto came in on June 27th?

21 A. Mm-hmm.

22 Q. That you have in front of you, Exhibit 66?

23 A. Mm-hmm.

24 Q. And at that time you indicated that you were not shown

1 any of the information that was provided in advance of
2 it being provided to Mr. Odatto?

3 A. Correct.

4 Q. Did you have discussions with Darren concerning the
5 FOIL request in advance of providing the information
6 to Mr. Odatto?

7 A. It's quite possible -- well, I know someone told me,
8 and I don't remember who, that the article was coming
9 out. So I presume, in that conversation, I was told
10 that it was coming out, in part relating to documents
11 that were being provided to Mr. Odatto. So I must have
12 had a conversation about that at that time.

13 (Commission's Exhibit 124 was marked for
14 identification.)

15 Q. I'm going to show you what's been marked as
16 Commission's Exhibit 124 and ask you if you can
17 identify this document.

18 A. It's an e-mail from Darren to me on June 27th asking
19 me to have someone on my staff get him a description
20 of "Scheme to defraud the government".

21 Q. Do you recall getting this e-mail?

22 A. I do.

23 Q. And what was this about, do you know?

24 A. I don't. I don't recall receiving it, I don't recall

1 replying to it, and I believe I cc'd two attorneys in
2 my office who have a criminal background; I do not.

3 Q. Did you ever ask Darren why he was asking for these
4 descriptions?

5 A. I don't believe that I did.

6 (Commission's Exhibit 125 was marked for
7 identification.)

8 Q. Showing you what's been marked as Commission's
9 Exhibit 125.

10 A. Mm-hmm.

11 Q. It's a three page document, on the third page -- the
12 third page initiates the thread, which runs backwards,
13 with the same description as 124. "Can one of your
14 folks get me a citation description of "scheme to
15 defraud the government" in the Penal Law, what
16 constitutes a crime in this regard". And then there
17 is a response from you cc'ing Robert Forshaw and Steve
18 Krantz, and then it continues with a response from
19 Steve Krantz to Darren Dopp with a copy to Robin David
20 and a Bcc to himself. Can you identify this document?

21 A. Yeah, this is a continuation of that e-mail chain. It
22 has my response to Darren where I cc'd Robin and
23 Steve, and it has Steve separately, then, responding
24 to Darren providing a different statutory cite.

- 1 Q. Can you explain what this document is?
- 2 A. It's the continuation of the e-mail.
- 3 Q. What was your understanding as to the purpose of this
4 information?
- 5 A. This information, being the information --
- 6 Q. That's contained in the e-mail?
- 7 A. Darren asked for someone to get him a description of
8 "scheme to defraud the government", so I sent him a
9 response that had Scheme to Defraud in the Second
10 Degree and the First Degree. I said, I did not know
11 if there's a separate "scheme to defraud the
12 government" crime. I cc'd Robin and Steve, and then
13 Steve sent Darren a defrauding the government
14 provision.
- 15 Q. What was your understanding as to why Mr. Dopp was
16 looking for this information?
- 17 A. I did not know why Mr. Dopp was looking for this
18 information.
- 19 Q. Did you ever inquire of Mr. Dopp why he was looking
20 for this information?
- 21 A. I don't believe that I did.
- 22 Q. And I believe you testified earlier that it was not
23 Mr. Dopp's responsibilities to investigate criminal
24 activity; is that correct?

- 1 A. I don't recall if I said that. It certainly is not
2 his responsibility to investigate criminal activity.
- 3 Q. And did it ever occur to you, between June 27 and
4 July 1st, that this had something to do with the
5 information being provided to Mr. Odatto?
- 6 A. Yes. After learning that the -- that there was going
7 to be an article, I wondered in my head, gee, I wonder
8 if Darren's e-mail to me related to that issue.
- 9 Q. And did you ever do anything to follow-up on that?
- 10 A. I don't recall that I did.
- 11 Q. Did you ever discuss the issue of the criminal
12 liability with Mr. Krantz or Ms. Forshaw, as far as
13 Senator Bruno goes?
- 14 A. At this time June 27th to July 1st, to the best of my
15 recollection, we just had e-mail exchanges. I don't
16 recall actually having a conversation with them about
17 it.
- 18 Q. In your conversations with the District Attorney,
19 District Attorney Soares, did you discuss the scheme
20 to defraud or defrauding the government?
- 21 A. I don't -- I do not believe so.
- 22 Q. What was your conversation with District Attorney
23 Soares concerning Senator Bruno's actions?
- 24 A. I believe it was a conversation in which I noted the

1 article that had come out the prior day, indicated
2 that we had documents and asked if he wanted those
3 documents, we would provide them to his office. And I
4 believe he indicated that he would take the documents,
5 and I'm sure I told him we'll have someone take them
6 over to him.

7 Q. And did you provide any of the statutory references --

8 A. No.

9 Q. -- set forth in these e-mails to the District
10 Attorney?

11 A. No.

12 MR. TEITELBAUM: Just so the record is
13 perfectly clear, was 67 provided to the District
14 Attorney?

15 THE WITNESS: I don't know.

16 MR. TEITELBAUM: And you never found out?

17 THE WITNESS: Sitting here, I don't know.
18 Sitting here, I don't know.

19 BY MS. TOOHER:

20 Q. When you read the --

21 MR. TEITELBAUM: Wait.

22 MS. TOOHER: I'm sorry.

23 MR. TEITELBAUM: There's evidence in the
24 record that 67 was intended for you,

1 Mr. Nocenti --

2 MR. MOSCHETTI: Which record?

3 MR. TEITELBAUM: The record of this
4 Commission.

5 MR. MOSCHETTI: You mean in previous
6 testimony?

7 MR. TEITELBAUM: Correct.

8 THE WITNESS: Intended for me for what
9 purpose?

10 MR. TEITELBAUM: To brief you.

11 THE WITNESS: Absolutely not before
12 July 1st, 2007.

13 MR. TEITELBAUM: How about July 2nd?

14 THE WITNESS: I know I've seen this
15 document, I know -- you know, I assumed, because
16 I've seen so many documents, that I saw it in the
17 gathering of the documents. But it also has been
18 my assumption that it was in some way --
19 accompanies, although not necessarily physically
20 accompanies, but refers to the documents that
21 were provided, I thought, to Odato, but it could
22 be the DA. Again, I think I saw it sometime
23 shortly after the 1st. That's all I can say.

24 MR. TEITELBAUM: Is this a document that was

1 handed to you for your benefit?

2 THE WITNESS: No. I mean, I -- I don't
3 recall anyone just like handing me this document.

4 MR. TEITELBAUM: Or delivering it to you?

5 THE WITNESS: Or delivering it to me. I
6 think you indicated earlier that, perhaps, this
7 was in the documents that Paul provided to the DA
8 or provided to me as a copy of what he provided
9 to the DA. It's not drafted as a document for
10 me; it just doesn't have that feel, it just
11 doesn't read like, you know, that's what this
12 would be.

13 MR. TEITELBAUM: 67 doesn't simply reference
14 enclosed materials that are -- there are opinions
15 in this document; correct?

16 THE WITNESS: That is correct.

17 MR. TEITELBAUM: And would you agree with me
18 that the opinions seem to go towards the Senator
19 engaging in wrongful conduct?

20 THE WITNESS: Yes.

21 MR. TEITELBAUM: Would Darren Dopp have
22 provided this document to anybody outside the
23 Executive Chamber without your approval?

24 THE WITNESS: Could have.

1 MR. TEITELBAUM: In the normal course, would
2 he have sought your approval before releasing a
3 document of this sort to somebody outside the
4 Executive Chamber?

5 THE WITNESS: I guess, you know, I don't
6 know in this matter if there is a normal course.
7 I know I did not see this document prior to
8 July 1st, it is not -- I'll tell you, as far
9 as -- I can't -- I don't know who drafted this
10 document, so I don't know what their intent was
11 when they drafted it. It wasn't drafted at my
12 request, and it doesn't look like a document that
13 would be provided to brief me.

14 MR. TEITELBAUM: 67 has at the bottom that
15 the author was Darren Dopp.

16 THE WITNESS: Okay. So assuming that Darren
17 Dopp drafted it, it still was not done at my
18 request and it doesn't appear to be a document,
19 to me, for the purposes of briefing me, just, you
20 know -- this is not how Darren would, you know,
21 do this.

22 MR. TEITELBAUM: Well, the reason I'm asking
23 about your approval of documents of this sort,
24 and you tell me if you disagree with me, it seems

1 to indicate that the Majority Leader of the
2 Senate may have committed crimes?

3 THE WITNESS: Correct.

4 MR. TEITELBAUM: Would a document from
5 Mr. Dopp setting forth that the Senate Majority
6 Leader may have committed crimes be released from
7 the Executive Chamber to somebody outside without
8 your reviewing it, according to protocol?

9 THE WITNESS: We certainly didn't have any
10 protocols on documents relating to, you know,
11 potential criminal conduct, but if, you know --
12 if one were to release information about
13 potential criminal con- -- well, see, I don't
14 know if this is before or after -- I don't know
15 if this was released, and I don't know if it was
16 released before or after July 1st. It starts,
17 "For background only", which, to me, means
18 something for a reporter.

19 MR. TEITELBAUM: Why do you say that?

20 THE WITNESS: Because that's the general
21 term of art when you are talking to reporters
22 about information that's provided for the record
23 or for background only.

24 MR. TEITELBAUM: Have you ever seen a

1 document formatted as 67 is formatted with "for
2 background only" at the top?

3 THE WITNESS: I know in communications with
4 the Press Office, sometimes you have a
5 conversation about what you are going to tell a
6 reporter for the record and what you are going to
7 tell them for background only, so it could well
8 be that I've seen documents where it's, you
9 know -- it's an e-mail document or in an e-mail
10 says "for background only".

11 MR. TEITELBAUM: Did you or anybody else, to
12 your knowledge, in the Executive Chamber inquire
13 as to whether this document, 67, was given to
14 Mr. Odatto?

15 THE WITNESS: As I indicated, I know I've
16 seen this document before. It's my understanding
17 that it accompanied materials. Again, my
18 assumption was it was for a reporter, so I may
19 have -- it's possible that Darren said to me at
20 the time, this is something that I gave to Odatto;
21 it's possible he didn't, I just don't recall.

22 MR. TEITELBAUM: You are drawing an absolute
23 blank on that?

24 THE WITNESS: I don't recall.

1 BY MS. TOOHER:

2 Q. After the July 1 article came out, did you ever go
3 back to Mr. Dopp and ask him why he hadn't brought
4 these matters to your attention sooner?

5 A. I know that I had conversations with Darren after
6 July 1st, I know that I told him that if he gets any
7 FOIL requests, he should forward them to the FOIL
8 Officer. You know, the Press Office gets media
9 requests all the time, they respond to them, they
10 don't check with me. But when you get a FOIL request,
11 it's supposed go to the FOIL Officer. It wasn't
12 necessarily just a matter that he had to bring it to
13 my attention. You know, when the FOIL request came
14 in, it should have gone to the FOIL Officer to respond
15 to.

16 Q. My question must not have been clear.

17 You testified that after Commission's 85, the
18 July 1st article came out, that there was information
19 in here that compelled you to contact the District
20 Attorney's Office?

21 A. It didn't compel us to contact the District Attorney's
22 Office; we had a conversation as to whether we should
23 reach out to the District Attorney's Office or not.

24 Q. And you did reach out to the District Attorney's

1 Office?

2 A. I did, yes.

3 Q. And did you reach out to any other law enforcement
4 entities?

5 A. The Manhattan District Attorney's Office and the
6 Attorney General's Office.

7 Q. So you did that as a consequence of the information
8 contained in the article; is that correct?

9 A. Well, there was a question, again, of what do we do
10 with this information that we have that could, upon
11 further inquiry, be evidence of criminal conduct. So
12 a decision was made to reach out to the entities that
13 would have an interest in that to see if they wanted
14 the information.

15 Q. But my question to you is: You hadn't heard from
16 Darren Dopp on the issue of Senator Bruno's travels
17 since May 17, and now there's --

18 A. Well, I had a conversation with someone, I don't know
19 if it was Darren or Rich or someone else, that the
20 article was going to be coming out. So it's quite
21 possible that Darren actually told me that the article
22 was going to be coming out relating to Senator Bruno's
23 travels.

24 Q. And did he tell you the information that was in the

1 article?

2 A. Again, I don't recall if I had a conversation with
3 Darren or with someone else. It could have been Rich
4 that told me. I just know that I was advised that
5 there was going to be an article about Senator Bruno's
6 travels, and I'm sure I was told that it related to
7 information that had been provided by us.

8 Q. And we're talking a relatively short window here; the
9 FOIL came in on June 27, the article is July 1st?

10 A. Correct.

11 Q. Is this conversation that you are referring to now
12 sometime in that window?

13 A. Yes. Best of my recollection was the Friday before,
14 which I guess, 30 days in June, means it was Friday
15 the 29th of June.

16 Q. It appears to me that this is a fairly big deal, that
17 you now have information in this article that seems to
18 indicate the Senator may have engaged in criminal
19 activity?

20 A. Mm-hmm.

21 Q. And that Darren had this information, or at least some
22 of this information, and provided it to the Times
23 Union?

24 A. Mm-hmm.

- 1 Q. Did you ever have a conversation with Darren, or are
2 you aware of anyone having a conversation with Darren
3 saying, why didn't you bring this to us before you let
4 it out there?
- 5 A. Well, he did bring it to us on May 17th.
- 6 Q. Correct.
- 7 A. It was my understanding at the time -- it was my
8 understanding during this time period that he was
9 responding to media inquiries. Our general rule is
10 you provide information to the press. So I mean, I
11 don't know that he needs to necessarily tell me, you
12 know, all of his conversations with the press,
13 providing information that the press has asked for.
- 14 Q. But I don't think this article is in response, and
15 certainly the FOIL request was not separate responses,
16 that there's one May 17, one May 24, one -- this is a
17 compilation of information that Darren puts together
18 and provides to the media; correct?
- 19 A. Correct.
- 20 Q. And it is information that results in a fairly serious
21 article concerning the Senate Majority Leader; is that
22 correct?
- 23 A. Correct, yup.
- 24 Q. Did anyone reach out to Darren after the article came

1 out and say, why didn't you bring this to us sooner?
2 A. Well, again, he had brought it to us sooner. It was
3 my understanding that the media had inquired about the
4 Senator's travels, and actually, the Governor's
5 travels as well. You know, the fact that Darren is
6 responding to a media request for information is not,
7 you know -- not that remarkable, so I don't recall
8 going to him -- I wouldn't have gone to him and say,
9 why didn't you tell me before, because I know I had a
10 meeting with him in March about this.

11 Q. In mid May?

12 A. Sorry. Mid May.

13 MR. TEITELBAUM: Let me see if I can be
14 helpful here.

15 I think what we're trying to find out is:
16 You testified something changed between May 17th
17 and the appearance of the article on July 1st
18 which caused members of the Executive Chamber to
19 conclude that it was appropriate to send these
20 materials to the District Attorney's Office in
21 Albany; correct?

22 THE WITNESS: Mm-hmm.

23 MR. TEITELBAUM: And you testified that what
24 had occurred between May 17th and the appearance

1 of the article is that further information came
2 out in the article?

3 THE WITNESS: Yeah.

4 MR. TEITELBAUM: More detail?

5 THE WITNESS: Yeah.

6 MR. TEITELBAUM: And Darren Dopp had the
7 information that contained that detail before
8 July 1st; correct?

9 THE WITNESS: Yes.

10 MR. TEITELBAUM: In retrospect, at least,
11 members of the Executive Chamber knew that Dopp
12 was collecting materials purportedly to respond
13 to the press inquiry?

14 THE WITNESS: I knew -- it was my
15 understanding that he was responding to a press
16 inquiry when I had the conversations on May 17th.
17 Frankly, I didn't know whether he had already,
18 you know -- I don't know what he had provided or
19 when.

20 MR. TEITELBAUM: This is what I think we're
21 trying to get to. At a point earlier than
22 July 1st and at a point earlier than Friday,
23 June 29th, Dopp had the information that you say
24 caused the Executive Chamber to believe that it

1 was appropriate to provide documentation to the
2 District Attorney. Did anybody say to Dopp, why
3 didn't you come to us with this information as to
4 possible criminal conduct on the part of the
5 Majority Leader earlier, since we have oversight
6 responsibilities with respect to the aircraft?

7 THE WITNESS: I can just say that I did not.

8 MR. TEITELBAUM: Take a break for a minute.

9 (A break was taken in the proceedings.)

10 BY MS. TOOHER:

11 Q. Mr. Nocenti, I'm going to draw your attention to
12 Commission's Exhibit 67, again.

13 A. Mm-hmm.

14 Q. And as I read this document, it's a fairly detailed
15 description of a number of events and facts. And the
16 second page of this document indicates that this
17 document was created on June 25th at 1:42?

18 A. Mm-hmm.

19 Q. And last printed on June 27, 2007?

20 A. Mm-hmm.

21 Q. And that the total editing time on this is six hours
22 and fifty-six minutes?

23 A. Mm-hmm.

24 Q. So would it be fair to say that it appears that a fair

1 amount of work was put into this document?

2 A. I don't know how they get total editing time. If I
3 have a document that's up on my screen, I don't know
4 if it counts each edit I make or just how long it's on
5 the screen. So obviously, enough effort had to be
6 made to put this together, so I mean --

7 Q. If I can direct your attention to the bottom of
8 Page 1, it says Revision Number 18?

9 A. Mm-hmm.

10 Q. So in some sense or another, there were apparently a
11 number of revisions made to this document, and you
12 have no recollection of ever working on this document;
13 is that correct?

14 A. I absolutely never worked on this document.

15 Q. And do you have any knowledge of anyone besides Darren
16 Dopp working on this document?

17 A. I mean, other than it says, "Author Darren Dopp",
18 that's the only, you know, knowledge I would have. So
19 I don't know who else would have -- I don't know if
20 anyone else worked on this document, and if so, who it
21 would have been.

22 Q. Have you ever discussed with Darren Dopp the
23 authorship of this document?

24 A. I don't have a recollection of having a conversation

1 with Darren. Again, when I first saw this document, I
2 thought it was a document that accompanied the
3 documents that went to Odatto. It's quite possible
4 that Darren -- that I got that from Darren, but I
5 don't have a recollection of having that specific
6 conversation.

7 Q. So as you sit here today, is it -- your best
8 understanding of this document was that it accompanied
9 documents to Mr. Odatto?

10 A. By accompanied, I mean not necessarily physically
11 accompanied. You know, you ask me what my
12 understanding is, my mental impression is that this
13 was a document that accompanied documents that went to
14 Mr. Odatto. It could also be something that went to
15 the DA. I don't know, but my initial reaction was
16 that this was somehow related to the documents that
17 were provided to Jim Odatto, and if you have those
18 documents, I could compare them and that would help
19 refresh my recollection.

20 MR. TEITELBAUM: Let's get the documents.

21 (Commission's Exhibit 126 was marked for
22 identification.)

23 BY MS. TOOHER:

24 Q. I'm going to apologize that I don't have multiple

1 copies.

2 A. That's all right, we can look on with each other.

3 Q. This is Exhibit 126. I'll give you an opportunity to
4 look at that.

5 The first page is an e-mail from Sean Maloney,
6 and I believe it's to Ellen Biben of the Attorney
7 General's Office identifying the documents that were
8 provided in response to Mr. Odatto's FOIL request and
9 identifying the Bates numbers of those documents, and
10 the subsequent documents following are the Bates
11 numbers as identified to us, June 27th. I'm sorry.

12 MR. TEITELBAUM: It's the June 27th FOIL
13 request?

14 MS. TOOHER: Yes.

15 A. (Pause.)

16 MS. TOOHER: Just for purposes of the
17 record, a subpoena request was made of the
18 Executive Chamber to provide the cover letter and
19 any cover documents that were provided to
20 Mr. Odatto in response to his June 27th FOIL
21 request. We have not received any further
22 response to that beyond the documents that are
23 here as Exhibit 126.

24 THE WITNESS: I'm sorry. Could you say that

1 again?

2 MS. TOOHER: A request was made for any
3 cover letter that was provided to Mr. Odatto with
4 the response to the FOIL request and the
5 documents that were provided to him, and we have
6 received nothing in addition to the information
7 that has now been marked.

8 THE WITNESS: Okay.

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

11 QUESTION: "So as you sit here today, is
12 it -- your best understanding of this document
13 was that it accompanied documents to Mr. Odatto?"

14 ANSWER: "By accompanied, I mean not
15 necessarily physically accompanied. You know,
16 you ask me what my understanding is, my mental
17 impression is that this was a document that
18 accompanied documents that went to Mr. Odatto. It
19 could also be something that went to the DA. I
20 don't know, but my initial reaction was that this
21 was somehow related to the documents that were
22 provided to Jim Odatto, and if you have those
23 documents, I could compare them and that would
24 help refresh my recollection.")

1 THE WITNESS: Okay, but just going through
2 Commission's 67 -- I haven't had an opportunity
3 to look through them closely enough to count, but
4 there are certainly documents relating to the use
5 of State aircraft by the Senate Majority Letter
6 and by the Governor and by the Lieutenant
7 Governor.

8 There seem to be itineraries and manifests
9 which are referred to as File A and File B.
10 There do not appear to be, in my quick glance,
11 and you can correct me if I missed something,
12 invites or contribution information, which would
13 be File C and File D. There does seem to be
14 requests for use of State aircraft, which would
15 be File E. And there does not appear to be Bruno
16 comments on Hevesi, which is File F. And I
17 haven't had a chance to see specifically if there
18 is this April 10th document which is File G.

19 So it appears that this document does not
20 accompany the documents provided to Jim Odatto, at
21 least to the extent that I am aware of the
22 documents provided to Jim Odatto.

23 BY MS. TOOHER:

24 Q. And if I can just be clear for purposes of the record.

1 The cover e-mail, 126, from Sean Maloney to Ellen
2 Biben identifies these documents as follows: "To the
3 best of our knowledge, the materials relating to the
4 Governor and Senator Bruno were produced to the Times
5 Union on June 28, 2007. Materials relating to
6 Lieutenant Governor Patterson and the document
7 entitled 'Aviation Procedures' were produced on
8 June 29. We believe that those documents appear in
9 the production as follows", and it lists the Bates
10 numbers. The e-mail does not indicate that this is in
11 toto what was produced to James Odatto.

12 And those are the documents we have provided to
13 you are just as represented in the e-mail.

14 A. Yeah.

15 Q. Is it your understanding that Mr. Maloney is
16 representing this is the entire FOIL package?

17 A. Yes. Yes.

18 Q. And did he discuss that with you at the time he was
19 producing these documents to the Attorney General's
20 Office?

21 A. I had many, many conversations with Sean Maloney
22 during this time period. The AG's Office had
23 requested the documents provided to Jim Odatto. My
24 assumption would be that he would have gotten all the

1 documents provided to Jim Odatto and would have
2 provided them. So, again, it would appear that
3 Commission's 67 is not a document that accompanied the
4 documents provided to Jim Odatto.

5 Q. But if I can draw your attention to Commission's 67
6 and back to Commission's 85, and if we look in the
7 first column of Commission's 85, "According to flight
8 documents, State Police Aviation Unit request forms
9 obtained through a request under the Freedom of
10 Information Law, Bruno and his top aides used the
11 State air fleet 11 times in the first five months of
12 the year, compared with 19 flights by Spitzer during
13 the same period." If we compare that with the first
14 sentence of Commission's 67, "The enclosed materials
15 show that the Senate Majority Leader used State
16 aircraft 11 times during the first five months of the
17 year and the Governor used State aircraft 19 times
18 during the same period." Would you conceded that
19 there is certainly similarity in the information
20 contained therein?

21 A. Yes, there are.

22 Q. And if we continue in Commission's 67, "With regard to
23 the Majority Leader" -- this is the second
24 paragraph -- "the record shows that he and his senior

1 staff routinely used the State helicopter for
2 transportation to New York City, the Bruno manifests,
3 where on at least four occasions they attended
4 political events." And the article refers to the
5 May 3rd, May 17th and May 24 events, those would be
6 reflected in the Bruno itineraries which are
7 Commission's 1, 2 and 3?

8 A. Yes. And it also appears to be OAG 218, 219 and 220.

9 Q. Which were provided to Mr. Odato in response to the
10 FOIL request?

11 A. Yes.

12 Q. And then it -- the Commission's 67 goes on to indicate
13 that, "This situation may be similar to the Hevesi
14 scandal", and details the incident, "The former
15 Comptroller claimed there was a security threat that
16 warranted having a staffer assigned to his wife. Upon
17 closer examination, it was revealed that there was no
18 threat and the staffer was acting as a companion", and
19 that the article also references, in the third column,
20 "Disclosure last fall of Hevesi's use of State
21 personnel to chauffeur his wife, who he claimed needed
22 security, led to the end of Hevesi's three decade
23 career in government." And the Commission's 67, in
24 that same paragraph, "Majority Leader was quick to

1 denounce the former Comptroller and called on others
2 to do so", File F, Bruno's comments on Hevesi, the
3 next comment on column three on page two of
4 Commission's 85, "Last fall Bruno forcefully called
5 for Hevesi to resign and reimburse the State for using
6 a staffer as his wife's driver before prosecutors
7 completed investigation. He also declared it wasn't
8 an appropriate question to ask him if he had ever used
9 drivers too."

10 That also seems to parallel the information
11 provided with Commission's 67; would that be accurate?

12 A. Yeah, I mean, there's certainly -- these are two
13 documents; one is a newspaper article, one is a
14 separate document, that talk about the same issues,
15 basically.

16 Q. Would it be fair to say that the article somewhat
17 parallels Commission's 67?

18 A. Again, it has, you know -- it seems to have similar
19 information in it. I don't know what you mean by
20 "parallels". But yeah, I mean, they're both talking
21 about Senator Bruno's use of aircraft, the Hevesi
22 situation, political activities.

23 Q. Well, it also talks about the Governor's use of State
24 aircraft?

1 A. Mm-hmm.

2 Q. And "With one exception, there were no political
3 events on the schedule on days when State aircraft was
4 used to transport the Governor. The only possible
5 exception is April 10th when the Governor was speaker
6 at an event sponsored by the Monroe Democratic
7 Committee. His drop by was part of a full day of
8 public events and meetings with local officials in
9 Binghamton and Rochester." And in the fourth column
10 of Commission's 85, page two, "Spitzer and Patterson
11 provided daily itineraries for the days they used
12 public planes during a day of stops in Binghamton and
13 Rochester on April 10th. The State Police Aviation
14 Unit brought Spitzer and four aides to the Monroe
15 Democratic Committee dinner the records show."

16 A. Mm-hmm.

17 Q. So it would appear that all of the information
18 contained in Commission's 67 is paralleled in the
19 article; is that correct?

20 MR. MOSCHETTI: What's the purpose of the
21 question? That's really a legal conclusion or
22 conclusion someone can make. You guys can sit
23 there and -- there's no real question to David
24 here that is specific to him.

1 MS. TOOHER: I'm just asking for his
2 observations of what's contained in 67.

3 MR. MOSCHETTI: You are asking for opinions
4 about whether or not they're parallel or not. I
5 don't -- what's the relevance of that?

6 MS. TOOHER: I understand your -- is that an
7 objection you are noting for the record?

8 MR. MOSCHETTI: Yes.

9 A. The -- yeah, these are two documents that contain
10 similar information.

11 MR. TEITELBAUM: Let me ask you a question
12 concerning 85, which is the article. Getting
13 back to the aftermath of the article appearing on
14 July 1st and the response of the Executive
15 Chamber. It says in the article, in the second
16 column, as you look at the second page, in the
17 next to the last paragraph in that column,
18 "Senator Bruno uses the transportation services
19 provided to him in his role as Majority Leader
20 for State purposes" -- quoting a man named Mark
21 Hansen, H-A-N-S-E-N, who at least the article
22 describes as a Bruno spokesman, he goes on to
23 say -- "As he has and continues to receive death
24 threats and other threats to his safety, based on

1 what people read in the Times Union and other
2 negative reports, he is provided with State
3 Police protection when traveling" -- and some of
4 this, of course, deals with who's driving him
5 around, and some of that quote, I think you'll
6 agree, deals with whether he's performing State
7 business; correct?

8 THE WITNESS: Mm-hmm.

9 MR. TEITELBAUM: So if you were to read this
10 article and you see that essentially there's a
11 statement from Bruno's office that he was using
12 the State aircraft for State purposes; right? Is
13 that how you read what I've just put into the
14 record?

15 THE WITNESS: The quote is that Senator
16 Bruno uses the transportation services in his
17 role as Majority Leader. That's what it says.

18 MR. TEITELBAUM: Right. So having seen
19 this, did it occur to you or to anybody else, to
20 your knowledge, in the Executive Chamber that you
21 got the Senate Majority Leader essentially
22 saying, through his spokesman, that he's in
23 compliance; correct?

24 THE WITNESS: In compliance with what?

1 MR. TEITELBAUM: In compliance with the
2 policy with respect to the use of the State
3 aircraft; he's saying he's using it for State
4 purposes?

5 THE WITNESS: Yeah.

6 MR. TEITELBAUM: That's compliance, isn't
7 it?

8 THE WITNESS: Again, it depends on where you
9 are on the mixed-use continuum. If you take it
10 for, you know, a trip that's 95 percent political
11 and 2 percent -- or 5 percent governmental, you
12 are, presumably, getting close to the line of
13 what's in compliance or not. And of course,
14 that's his spokesperson. I think his
15 spokesperson is also talking about death threats,
16 and I think there was some e-mail traffic that
17 the State Police is not aware of the death
18 threats, so --

19 MR. TEITELBAUM: If I told you that there's
20 evidence in the record in this investigation from
21 the State Police that they disagreed with a
22 proposal that Senator Bruno's risk assessment, I
23 guess it's called, was not low.

24 THE WITNESS: Okay.

1 MR. TEITELBAUM: So notwithstanding whatever
2 e-mail traffic you may be referring to --

3 THE WITNESS: When was the risk assessment
4 done?

5 MR. TEITELBAUM: It was a -- I can tell you
6 this, there was an inquiry made to the State
7 Police as to whether Senator Bruno -- whether
8 there was risk with regard to Senator Bruno.

9 THE WITNESS: Mm-hmm.

10 MR. TEITELBAUM: I don't know what a risk
11 assessment really is, quite frankly, I don't
12 think it's been done more than once by the State
13 Police.

14 But my question to you is: Having seen this
15 denial from whomever it comes from on behalf of
16 the Senate Majority Leader, why didn't somebody
17 inquire as to what was meant by he was using it
18 for State purposes before going to the District
19 Attorney?

20 THE WITNESS: Again, this is a statement
21 from his spokesperson. The documents and the
22 article appear to indicate that the plane is
23 being used, at least predominantly, for political
24 purposes. A discussion was had internally, what

1 do we do with these documents, it is potentially
2 illegal, it follows on the Hevesi investigation,
3 which District Attorney Soares had handled, so
4 there was a discussion as to whether we should
5 just hold onto the documents and see if anybody
6 asks for them or whether we should reach out and
7 see if anybody wants them. If they didn't want
8 them, that would be closed. If they did want
9 them, we would provide them. Or we could have
10 just, you know, waited to see if they asked.
11 Those are, basically, the options. So a decision
12 was made to allow a criminal investigatory entity
13 determine whether a crime had occurred.

14 MR. TEITELBAUM: Let me ask you this about
15 providing documents: With regard to the
16 Manhattan District Attorney's Office, was there a
17 conversation -- did you call the Manhattan DA?

18 THE WITNESS: I did.

19 MR. TEITELBAUM: Did you speak to --

20 THE WITNESS: Dan Castleman.

21 MR. TEITELBAUM: Dan Castleman. And how
22 long did that conversation take place?

23 THE WITNESS: Again, it was a short
24 conversation, just like the Soares conversation.

1 MR. TEITELBAUM: When was that?

2 THE WITNESS: July 2nd.

3 MR. TEITELBAUM: Did that conversation take
4 place before or after the Soares conversation?

5 THE WITNESS: Before.

6 MR. TEITELBAUM: Was it the intention of the
7 Executive Chamber to refer this -- strike
8 refer -- to provide information to both the
9 Manhattan District Attorney's Office and the
10 Albany District Attorney's Office?

11 THE WITNESS: We would have provided
12 information to whichever entity wanted
13 information. We were advising three offices that
14 we had these documents. And if they wanted them,
15 we would provide them to them.

16 MR. TEITELBAUM: What was said during your
17 conversation with Mr. Castleman?

18 THE WITNESS: Again, in sum and substance, I
19 don't remember specific words, I referred to the
20 article, told him that we had documents,
21 indicated that if this was something that they
22 would want to look at, we would provide those
23 documents to him. He indicated that as a general
24 matter, they don't, you know, reach out and

1 request documents, it would have to be more of a
2 formal referral. He said he would talk to the
3 District Attorney and get back to me.

4 MR. TEITELBAUM: What happened next with
5 regard to Mr. Castleman?

6 THE WITNESS: I know we did not end up
7 sending the documents to the Manhattan DA. I'm
8 presuming, although I don't have a specific
9 recollection, that Dan called me back and said,
10 no thanks.

11 MR. TEITELBAUM: Was the issue with the
12 Manhattan DA's Office in regard to the documents
13 as to whether they would request the documents,
14 as opposed to the Executive Chamber providing the
15 documents without a request?

16 THE WITNESS: I don't recall. I know that
17 we had internal discussions as to whether we
18 should simply refer the matter and send it to the
19 appropriate prosecutorial entities or whether we
20 should simply advise them that we had the
21 documents and see if they wanted them. And a
22 decision was made that we would simply advise
23 them and see if they wanted them. If they did
24 want them, we would provide them.

1 MR. TEITELBAUM: Putting aside the issue of
2 a referral, which you and I know has a
3 particularly technical meaning; correct?

4 THE WITNESS: Yes.

5 MR. TEITELBAUM: Okay. Was there a concern
6 on the part of the Executive Chamber that if you
7 gave the documents to a law enforcement authority
8 without the law enforcement authority requesting
9 the documents, it could appear that the Executive
10 Chamber was, essentially, stirring this thing up?

11 THE WITNESS: I really can't answer that
12 question. I mean, we had conversations about
13 whether we should do a formal referral. You
14 know, as you know, whether you do a referral in
15 part determines how sure you are that there might
16 be actual criminal conduct involved or whether
17 it's just an open issue, whether, as a general
18 rule, a DA will decide whether they have
19 jurisdiction, particularly with the Manhattan DA,
20 although the trips were to Manhattan, you know,
21 there's -- there's a lot of issues go into
22 whether there's a referral or not. My view is
23 this didn't really rise to the level of a formal
24 referral, so we chose not to do it as a referral.

1 As to whether there was any conversations of what
2 the appearances of that would be, I'm sure there
3 were, I just don't recall any specifics.

4 MR. TEITELBAUM: My question was: Was there
5 a desire on the part of the Executive Chamber to
6 have the law enforcement authorities request the
7 document -- the documentation, rather than having
8 the Executive Chamber just send them over so that
9 it would not appear as if the Executive Chamber
10 was initiating a review by law enforcement
11 authorities of the possible criminality of the
12 Senate Majority Leader's conduct?

13 THE WITNESS: I'll agree with the first part
14 of it. There certainly was a desire to provide
15 them, if it was requested. A decision was made
16 not to do a formal referral. There certainly
17 would be -- if none of them had asked -- if none
18 of them had formally -- if none of them had said,
19 yes, I would like the documents, we would not
20 have forwarded the documents to them.

21 MR. TEITELBAUM: Is that because the
22 Executive Chamber wanted it to be seen as being
23 initiated by the law enforcement authorities,
24 rather than the Executive Chamber?

1 THE WITNESS: I think that's inherent in the
2 question of referral versus a request. There was
3 a desire not to refer but to provide if
4 requested. And so I don't think, you know --
5 certainly, did not want to be referring the
6 matter to law enforcement. There was clearly a
7 preference that we provide them only if
8 requested.

9 MR. TEITELBAUM: Did Castleman say to you
10 that the only circumstance under which the DA in
11 Manhattan would review documents is in connection
12 with a referral, but they would not review them
13 as you just wanted them to look at them for
14 possible criminal conduct, or words to that
15 effect?

16 THE WITNESS: Well, he said, as a general
17 rule, the DA's Office doesn't ask for documents,
18 people refer matters to them. It's not that if
19 we sent them to him, he wouldn't look at them.
20 And to me, there's really either us referring the
21 matter to them or them asking for the documents.
22 I guess there was something in the middle where
23 we just say, look at these documents, we're not
24 actually referring; that was really not part of

1 the conversation, internally or externally. It
2 was basically do we refer or do we see if they
3 want to request.

4 MR. TEITELBAUM: And with regard to the
5 Albany District Attorney, when you spoke to
6 Mr. Soares and asked if he wanted to look at
7 these documents, did you explain why he might
8 want to look at these documents?

9 THE WITNESS: I believe that my
10 conversations with all three offices were short.
11 I think it's apparent from the article and also
12 he, as you know, had just recently done the
13 Hevesi matter, that the use of State aircraft and
14 personnel, actually, is potentially criminal, so
15 I don't recall in my mind the -- whether there
16 was a discussion of that or whether we just both
17 assumed that he knew about it because he had just
18 handled the Hevesi case.

19 MR. TEITELBAUM: So when you asked him if he
20 would like to see the documents, words or
21 substance, he said --

22 THE WITNESS: Yeah, basically, I'm sure you
23 saw the -- I'm going to completely rephrase the
24 sum and substance -- I'm sure you saw the

1 article, we have documents, don't know if this is
2 something you want to review or not. If you do,
3 we can provide the documents to you. You know,
4 and again, I don't know if I had -- I think I
5 only had one conversation. He could have said,
6 I'll get back to you and called me back. But I
7 think there was just one conversation at which he
8 said that he would take the documents.

9 MR. TEITELBAUM: And did Mr. Soares ever
10 have a conversation with you after the documents
11 were delivered to him concerning the documents?

12 THE WITNESS: No.

13 MR. TEITELBAUM: Did he have any
14 conversations with anybody on your staff, to your
15 knowledge?

16 THE WITNESS: I know that Paul Larrabee took
17 the documents over, but I don't believe that he
18 spoke with District Attorney Soares.

19 You know, I know when he was doing an
20 investigation, so to speak, he certainly -- just
21 like we've had conversations with you, there's
22 certainly conversations that go back and forth.
23 But if you are talking about this time frame,
24 because, again -- to my knowledge, no.

1 MR. TEITELBAUM: Documents were also made
2 available to the Attorney General?

3 THE WITNESS: Correct.

4 MR. TEITELBAUM: When was the communication
5 first with the Attorney General concerning these
6 documents?

7 THE WITNESS: Same day, July 2nd.

8 MR. TEITELBAUM: In the sequencing of
9 communications, where was the Attorney General's
10 conversation?

11 THE WITNESS: I don't recall, but I know
12 from e-mails that I had spoken with the AG and
13 the -- I had gotten answers from the AG and the
14 Manhattan DA before getting an answer from the
15 Albany DA, but again, I don't recall whether that
16 was just because the call occurred later or
17 because he was getting back to me, but
18 certainly -- they were all in a very short time
19 period, essentially successive phone calls.

20 MR. TEITELBAUM: On July 2nd?

21 THE WITNESS: Correct.

22 MR. MOSCHETTI: May I interrupt?

23 MR. TEITELBAUM: Sure.

24 MR. MOSCHETTI: It's a little before 5:00.

1 I think we've gone about five hours, give or
2 take. Do we have much more?

3 MR. TEITELBAUM: Much more beyond what we've
4 done?

5 MR. MOSCHETTI: We're at a quarter of 5:00.

6 MR. TEITELBAUM: We have much more to go. I
7 think we're going to need to break. Off the
8 record.

9 (A break was taken in the proceedings.)

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

12 QUESTION: "In the sequencing of
13 communications, where was the Attorney General's
14 conversation?"

15 ANSWER: "I don't recall, but I know from
16 e-mails that I had spoken with the AG and the --
17 I had gotten answers from the AG and the
18 Manhattan DA before getting an answer from the
19 Albany DA, but again, I don't recall whether that
20 was just because the call occurred later or
21 because he was getting back to me, but
22 certainly -- they were all in a very short time
23 period, essentially successive phone calls."

24 QUESTION: "On July 2nd?"

1 ANSWER: "Correct.")

2 MR. TEITELBAUM: And the communications with
3 the three law enforcement authorities, was that
4 discussed and agreed upon by the people who are
5 participating in the discussion that you
6 described within the Executive Chamber, that
7 there would be three people -- three law
8 enforcement authorities contacted?

9 THE WITNESS: Yes.

10 MR. TEITELBAUM: And I know we've covered
11 this to some extent before, but was the Governor
12 aware that you were contacting three law
13 enforcement authorities concerning possible
14 criminal conduct by the Senate Majority Leader?

15 THE WITNESS: Again, I didn't have a
16 conver- -- I don't recall having a conversation
17 with the governor, I don't even know where he was
18 on July 2nd. So I assume this is the type of
19 matter that someone would have informed him of,
20 it could be that Darren told me he informed him
21 or Rich told me he informed him, but, you know, I
22 just don't have an independent recollection.

23 MR. TEITELBAUM: Was it you yourself who
24 called somebody at the Attorney General's Office?

1 THE WITNESS: Yes.

2 MR. TEITELBAUM: With whom did you speak?

3 THE WITNESS: The Attorney General.

4 MR. TEITELBAUM: How long was that
5 conversation?

6 THE WITNESS: Again, it was a short
7 conversation.

8 MR. TEITELBAUM: What did you say to one
9 another?

10 THE WITNESS: Same sum or substance, wanted
11 to know whether he wanted these documents. He
12 inquired as to what the other offices -- I think
13 I told all three offices, actually, who else I
14 was talking to -- he wanted to know what the
15 other offices were doing, he expressed a view
16 that he didn't want to be the only person
17 requesting these documents, but, essentially,
18 said that he would be happy to receive them --
19 strike happy -- he would receive them.

20 MR. TEITELBAUM: Did he say why he didn't
21 want to be the only person --

22 THE WITNESS: I don't recall.

23 MR. TEITELBAUM: -- office receiving the
24 documents --

1 THE WITNESS: I don't recall.

2 MR. TEITELBAUM: -- or asking for them?

3 THE WITNESS: I don't recall if he did.

4 MR. TEITELBAUM: And what did you tell him
5 in regard to that issue, in other words, his
6 desire not to be the only one?

7 THE WITNESS: I don't know if at the time of
8 that conversation I had heard back either from
9 the Manhattan DA or the Albany DA, so you know --
10 I know by the end of the day I knew that District
11 Attorney Soares was seeking them, and I know that
12 we provided them to both offices, but not to the
13 Manhattan DA's Office. So again, these are short
14 conversations and I don't recall specifics.

15 MR. TEITELBAUM: Did you ever form a view as
16 to whether Mr. Dopp fomented the Odatto article?

17 THE WITNESS: Fomented? What was the word
18 you used?

19 MR. TEITELBAUM: Initiated it? Urged it?

20 THE WITNESS: It was always my understanding
21 that Darren was responding to inquiries from --
22 inquiry or inquiries from Jim Odatto.

23 MR. TEITELBAUM: You'll recall that I had
24 asked you with respect to Exhibit Number 122,

1 when we were discussing that, whether you agreed
2 with me that it appeared that -- which was
3 Mr. Pope's communication with you concerning his
4 recollection of conversations with Mr. Dopp, I
5 had asked you as to the nature of those
6 communications, particularly the reference to
7 Dopp asking Pope whether Bruno had engaged in
8 false swearing, which was a crime, and then an
9 inquiry from Mr. Dopp about a referral to a the
10 District Attorney, I had asked you whether, as
11 you read this, had you concluded at some point
12 that Dopp was out to see to it that the Senate
13 Majority Leader would be in some way punished,
14 and you didn't agree with that?

15 THE WITNESS: I actually don't recall
16 exactly what you asked me. I know I answered no
17 to --

18 MR. TEITELBAUM: Fair enough, fair enough.
19 What I'm getting to is: Here, in 122, there
20 is Pope's description of Dopp raising criminal
21 conduct on the part of Senator Bruno?

22 THE WITNESS: Mm-hmm.

23 MR. TEITELBAUM: And on July 2nd, law
24 enforcement authorities are now engaged?

1 THE WITNESS: Mm-hmm.

2 MR. TEITELBAUM: Do you see any connection
3 between the conversation that was had with Pope
4 and what happened on July 2nd?

5 THE WITNESS: I mean, they're the same
6 topic, they relate to whether a matter relating
7 to Senator Bruno's flights should be referred to
8 a DA or an IG.

9 MR. TEITELBAUM: And it was referred to a
10 District Attorney? Using referral not in the
11 technical sense.

12 THE WITNESS: The documents were provided to
13 the District Attorney, yes.

14 MR. TEITELBAUM: Right. And would you agree
15 with me that prior to July 2nd and prior to the
16 appearance of the Times Union article on
17 July 1st, there was a desire on the part of, at
18 least, Mr. Dopp to have Mr. Bruno looked at by
19 the District Attorney's Office?

20 THE WITNESS: I can't draw that conclusion.

21 MR. TEITELBAUM: Okay.

22 THE WITNESS: Darren is asking a lawyer a
23 legal question relating to false swearing and
24 whether something is criminal and should be

1 referred. That's different to me from a decision
2 that something should be referred.

3 MR. TEITELBAUM: And I would -- would your
4 answer be the same if I just pointed out to you
5 that in Exhibit Number 125, which is a string of
6 e-mails involving yourself, Dopp and others in
7 which he asks for research on subjects involving
8 criminal conduct, that that e-mail to you is sent
9 at 6:06 p.m. on June 27th and Exhibit Number 67,
10 which has "for background only", which also
11 discusses criminal conduct is last -- is printed
12 at 12 minutes after 8:00 on that same day? Would
13 that change your view as to whether Mr. Dopp had,
14 before the appearance of the Times Union article,
15 a desire to have a law enforcement authority look
16 at Senate Majority Leader Bruno for possible
17 criminal conduct?

18 THE WITNESS: Again, I can't tell you what's
19 in Darren's mind. Certainly, you know, there are
20 discussions with reporters about whether
21 something the Governor has done is appropriate or
22 illegal or whatever, questions about the campaign
23 contributions, that's different from a referral.

24 You should ask Darren if, in his view, he

1 was looking to have the matter referred to a
2 district attorney, you know. All I can say is
3 that he asked me questions about whether
4 something might be a crime. It's possible that
5 you would respond by letting the press know but
6 without doing a criminal referral.

7 MR. TEITELBAUM: Okay. We are going to
8 adjourn.

9 (Whereupon, the examination of DAVID NOCENTI
10 in the above-entitled matter adjourned at
11 4:59 p.m.)

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I, DAVID NOCENTI, have read the foregoing record of my testimony taken at the time and place noted in the heading hereof, and I do hereby acknowledge it to be a true and accurate transcript of same.

DAVID NOCENTI

DATED: _____

Sworn to before me this _____

day of _____, 20_____

Notary Public

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C E R T I F I C A T I O N

I, SADIE L. HERBERT, Shorthand Reporter and
Notary Public in and for the State of New York,
do hereby CERTIFY that the foregoing record taken
by me at the date and place noted in the heading
hereof is a true and accurate transcript of same,
to the best of my ability and belief.

SADIE L. HERBERT

Dated: February 8, 2008

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