STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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IN THE MATTER OF AN INVESTIGATION

INTO THE ALLEGED MISUSE OF RESOURCES

OF THE DIVISION OF STATE POLICE

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VOLUME I

STENOGRAPHIC MINUTES OF SWORN TESTIMONY

conducted of DAVID NOCENTI on the 7th day of
February, 2008, at the offices of the Commission
on Public Integrity, 540 Broadway, Albany, New
York, commencing at 11:52 a.m.; before SADIE L.
HERBERT, a Shorthand Reporter and Notary Public
within and for the State of New York.

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795  1-877 NYS DEPO
APPEARANCES:

ON BEHALF OF COMMISSION:

NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY
540 Broadway
Albany, New York 12207
BY: MEAVE M. TOOHER, ESQ.
   Investigative Counsel

BY: HERBERT TEITELBAUM, Executive Director
   JOAN P. SULLIVAN, Associate Counsel
   ROBERT J. SHEA, Associate Confidential
   Investigatory
   BARRY GINSBERG

ON BEHALF OF WITNESS:

ANDERSON, MOSCHETTI & TAFFANY
26 Century Hill Drive
Suite 206
Latham, New York 12110
BY: PETER J. MOSCHETTI, JR., ESQ.
The following proceedings occurred in the presence of Mr. Richard Rifkin via telephone:)

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

MR. GINSBERG: Barry Ginsberg.

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

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

THE WITNESS: David Nocenti, Counsel to the Governor.

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

Mr. Rifkin, the Commission and the Executive Chamber have entered into stipulations contained in correspondence between yourself and me relating to documents furnished to the Commission by the Executive Chamber in which the Executive Chamber has taken the position that certain of those documents are covered by the
attorney-client privilege and has asserted that
with respect to the documents being furnished to
us, which fall within that category, that there
is a limited waiver that's applicable. The
Commission has taken the position that it is not
conceding that any of the documents are covered
by the attorney-client privilege.

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

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

MR. TEITELBAUM: Correct.

MR. RIFKIN: And under those circumstances,
the Executive Chamber is prepared to agree and
does agree that the Commission may question
Mr. Nocenti with respect to those documents under
the terms and conditions set forth in the limited
waiver agreements that we have signed.

MR. TEITELBAUM: So agreed.

(A discussion was held off the record.)

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

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

MR. TEITELBAUM: Thank you very much.

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

DAVID NOCENTI,

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

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EXAMINATION

BY MS. TOOHER:

Q. Would you state your full name for the record, please.
A. David Nocenti.

Q. And Mr. Nocenti, where are you employed?
A. State of New York, Governor's Office.

Q. What is your position?
A. I am the Counsel to the Governor.

Q. And briefly, what are your responsibilities in that position?
A. I can either do it very briefly or the long -- I'm basically responsible for, you know, oversight of all legal matters that come before the Governor's Office. It involves legal issues, litigation oversight, legislative issues, you know, there's no real way to cap what can fall into the bucket.

Q. And in terms of the organization of the Executive Chamber, where do you fall in that organization?
A. I'm a counsel to the Governor, it's a statutory position. I report to the Governor.

Q. So your direct report is to the Governor?
A. Yes.

Q. Who reports to you?
A. I have a staff that includes a first assistant counsel.
and 11 assistant counsels.

Q. So the Counsel's Office reports to you?
A. Yes. Plus support staff.

Q. And does anyone else report directly to you?
A. Depending on how you define support staff. The Counsel's Office has secretaries, librarian, there's a legislative secretary's office, that's the primary liaison with the legislature on pure bill matters and someone who is the executive director of judicial screen committees as well.

Q. Do you know Richard Baum?
A. I do.

Q. And who is Mr. Baum?
A. He's the Secretary to the Governor.

Q. Does Mr. Baum report to you?
A. He does not.

Q. Where does Mr. Baum fall on the organization as far as the Governor's Office?
A. He's -- I mean, I don't know what you mean. I think that's also a statutory position. He's like, you know, essentially, the head of the Executive Chamber, would be the best way to describe it, other than the Governor and the Lieutenant Governor as well.

Q. And his official position?
A. Secretary to the Governor.

Q. To your knowledge, does he report directly to the governor?

A. Yes.

Q. Do you discuss issues on a regular basis with Mr. Baum?

A. I do.

Q. And is Mr. Baum on par with you in terms of his reporting relationship to the Governor?

A. I guess it depends on the matter. For many issues, I would take issues to Rich Baum; for other issues, I would take them directly to the Governor. So for some matters, I report directly to the Governor, for some I would normally report through Rich.

Q. Can you give me an example of the types of issues that you would discuss with --

A. Sure. If it's a pure legal litigation issue that I felt the Governor needed to be aware of, I would discuss it directly with the Governor. Whereas, if it's policy matters -- it's not really a direct flowchart. I mean, we have a much more collaborative working relationship. It's like, whoever needs to be involved in discussions is 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 when I was an assistant counsel to Governor Cuomo.

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

7 A. I did.

8 Q. What was his position?

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

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

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

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

13 A. Sure. Yes.

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

15 A. No real -- I mean, all sorts of issues. Obviously,
press issues, if there were things I knew that were
going to be newsworthy, I would tell him about it, or
if he was aware of things that have legal issues or
even sometimes policies, he would let me know.
Sometimes there would be staff meetings where
everybody would be talking to different people, so
just again, he would talk to people on an as needed
basis based upon who you thought would be the people
that needed to know.

Q. Did Mr. Dopp ever discuss Freedom of Information Law
issues with you?
A. Sure.

Q. Did you have a role in terms of Freedom of Information
Law requests with the Chamber?
A. I don't have a formal role. The Chamber has a Freedom
of Information Law Officer, referred to as a FOIL
Officer. And then if someone makes a FOIL request and
it is declined, they have a right to appeal. It would
go to the Appeals Officer under the FOIL Law. So I
was not technically involved, but people would consult
with me if legal issues arose relating to anything,
and FOIL would be something that there might be a
legal issue that arises, or they could check with the
FOIL Officer or the Appeals Officer.
Q. The FOIL officer in the Executive Chamber, who is that?
Q. And is Ms. Treisman in Counsel's Office?
A. She is.
Q. And does she report directly to you?
A. She does.
Q. And does she discuss FOIL issues with you?
A. On occasion.
Q. What type of FOIL issues would she bring to your attention?
A. I think just if there was a matter that she wasn't sure how to handle, she would bring it to my attention, or she might bring it to the Appeals Officer's attention.
Q. Who is the Appeals Officer?
A. It's Terryl, T-E-R-R-Y-L, Brown Clemons, C-L-E-M-O-N-S.
Q. I want to come back to the FOIL in just a bit, but going back to Mr. Dopp, is he currently employed at the Executive Chamber?
A. He is not.
Q. Do you know when he left employment with the Executive Chamber?
A. I don't recall a specific date. It was in the September, October time frame.

Q. And that's September, October of 2007?
A. Correct.

Q. And do you know why he left the Executive Chamber?
A. I believe he was offered a position outside of the Executive Chamber and accepted it.

Q. And at the time that he accepted the other position, what was Mr. Dopp's status with the Executive Chamber?
A. He was the Director of Communications.

Q. What was his employment status?
A. I believe -- I don't know. He was on -- suspended without pay for a time period, and then he went back to paid status. So I believe he was, at that point, the Director of Communications.

Q. Do you know the basis for his suspension?
A. Yes. It was a suspension arising out of the circumstances surrounding the report that the Attorney General issued.

Q. And do you know why Mr. Dopp was placed on suspension as a consequence of that report?
A. The Governor decided that, based upon the findings in the AG's report, that there were lapses in judgment and that some disciplinary action should be taken, and
two individuals were disciplined; Mr. Dopp and William Howard. And his suspension was a result of the lapses in judgment.

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

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

Q. We can do both.

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

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

A. Well, for example, we received a FOIL request from a newspaper reporter and that request was not processed through the FOIL Officer. The FOIL request related to documents, documentation of the apparent misuse of State aircraft and personnel by the Senate Majority Leader, who was generally viewed as a political opponent of the Governor's, and so the manner in which that was handled, you know, essentially could have been handled differently, for example, documents from the State Police were obtained direct- -- through us,
through the Governor's Office rather than directly
from the State Police. You know, we obviously could
choose to handle it one way or the other, but
certainly, could have referred the reporter to the
State Police for those documents.

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

Q. What do you mean by that?
A. There's no law on this. If you get a FOIL request,
you know, there's no prohibition against asking
another agency to provide you with documents. And so
if, for example, we were to get a FOIL request for
500 pages of materials and we knew that the Department
of Health had the 501st, we could contact the
Department of Health and ask for it and send it with
the rest of the documents.

You know, as a general rule, we try to be
accommodating to reporters who are seeking
information, didn't require them to make a FOIL
request every time they sought information, so you
could instead choose to say to the reporter, here's
500 pages, if you want anything else, go FOIL the
Department of Health.
Q. So what was Mr. Dopp's error in judgment in obtaining the documents from the State Police?

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

Q. I understand that you could have done that.

A. Mm-hmm.

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

A. Right.

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

A. Yeah.

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

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

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

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

A. Right.

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

A. Mm-hmm.

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

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

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

A. You know, that seems to ask for a legal conclusion. I would instead say that there's no law that says that you can't ask another agency for documents.
obviously has been a lot of press about this case in which people have questioned, quote, "the use of the State Police to gather these documents", and so had he simply asked the State Police -- asked the reporter to go to the State Police, that would have avoided that, any appearance at all.

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

Q. What would be the appearance issue?

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

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

A. If you want to avoid the appearance that you are asking the State Police or utilizing the State Police with respect -- in an inappropriate manner with respect to the -- a political opponent, had he asked
the reporter to talk to the State Police, that would have avoided any such appearance. So obviously, it's an action you take before the fact, not after the fact.

Q. So --

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

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

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

MR. TEITELBAUM: Mr. Nocenti, there's been testimony in the record in this investigation that it was the practice and protocol of this administration that if a request for documents was made to the Executive Chamber and the Executive Chamber did not possess the documents but they were possessed by another agency that
the Executive Chamber would refer the person requesting the documents to the other agency; is that accurate?

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

MR. TEITELBAUM: In the normal course, if a request were made as I described it, would the person making the request, in the normal course, in this administration, be sent to the agency that possessed the documents?
THE WITNESS: I guess it depends on what the request is. Again, if you are asked for something and you have 500 pages and the other has the 501st, I think we would not turn over the 500 and say, you know, anything else, you need to go to somebody else. If there was a request where it essentially requested documents from another agency, we would probably refer them to another agency.

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

MR. TEITELBAUM: In the instance in which we are concerned involving Mr. Dopp and the documents that he had collected from the State Police, under the circumstances there, in the normal course, how would these -- what was the protocol in the Executive Chamber as to how that volume of documentation and the nature of the documentation be handled?
THE WITNESS: I don't think there was a normal course. We had only been in office for five months. You don't necessarily know what the volume of documents is going to be when you first get the request, so I don't think there was a normal course, normal practice at that time. The Governor generally has a view that, you know, you should not make every -- we could have a policy that anybody wants anything, you have to make a FOIL request, it goes to the FOIL Officer, they get a five day letter, you gather the documents, you charge them 25 cents a page and you turn it over; that clearly was not our policy. The policy was to be much more open than the prior administration was, to not make people jump through all of those hoops, so we did not have a formal policy on how that would be handled. Everything was done on a case-by-case basis.

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

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: -- and how it would be
handled. Can you tell us about that.

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

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

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

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

THE WITNESS: Again, I don’t think there was
any typically. Again, we're only five months
into the administration at that time, and I think
it also depends if you get -- you know, I think
it really depends if a reporter FOILed documents
and we knew that the Department of Health had
most of the documents, my guess is that the Press
Office would tell the reporter, you know, by the
way, the Department of Health has a bunch of
documents. But if you just get a request from
somebody, as a general rule, you just respond to
the request.

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

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

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

THE WITNESS: Correct.

MR. TEITELBAUM: If the Executive Chamber
does not have the documents, but the documents
were at another agency, what does the FOIL
Officer do?
THE WITNESS: As a general rule, the FOIL Officer would just respond indicating we don't have any documents.

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

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

BY MS. TOOHER:

Q. In terms of FOIL requests or document requests in that regard, you indicated earlier that if someone were to call in -- or I'm sorry -- to write in looking for documents that were in the possession of, I think you used the example of the Department of Health that
there could be circumstances where you would get those
documents and provide them to the individual
requesting the documents?

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

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

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

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

A. Right.

Q. If someone makes an oral request, just happens to call
someone in the Press Office and say, I'd like these
documents and they happen to know where the documents
are --

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

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

A. Correct.

Q. Is that correct?

A. Correct.

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

A. I think that's the same question I've answered before,
I'll give you the same answer. This was a unique
situation because the individual involved was the
Senate Majority Leader who the public generally views to be a political opponent of the governor. So as we all know from the aftermath of the report, there have been a lot of accusations that the State Police was somehow politicized, and that it was wrong to use the State Police to gather these documents, as opposed to sending the reporter to the State Police to get the documents. So had Darren told the reporter, go talk to the State Police, I'm not going to help you out, then that appearance issue would have been avoided.

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

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

MR. TEITELBAUM: Mr. Nocenti, getting back
to the general procedure in the context of the
FOIL request and sending the requesting party to
another agency, if the Executive Chamber doesn't
have it, you characterized it as the general
practice that that would happen; is that fair to
say?

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

MR. TEITELBAUM: In the instance of a FOIL
request, the FOIL request goes to the FOIL
Officer, the Executive Chamber does not have the
documents; do you know of an instance in which
the FOIL Officer went to another agency to secure
the documents in satisfaction of the FOIL
request?
BY MS. TOOHER:

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

A. Mm-hmm.

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

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

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

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

Q. And who was privy to those conversations?

A. Again, there's ten thousand things going on, so I can't say for sure, but I know that I had conversations with Bill Howard about it, with Marlene...
Q. And how do you know you had conversations with those individuals? Was there a particular conversation that you recall?

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

Q. And why would Rich Baum have been involved?

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

Q. Was Rich involved, Rich Baum involved in the approval process for use of the helicopter?
Q. And do you know what the approval process is for use of the helicopter?
A. Well, for Governor's travel, I mean, if the Governor is traveling and he needs to use the helicopter, he just uses the helicopter.
Q. What about for Senator Bruno?
A. It's my understanding that if other people want to use the helicopter, they make a request, which goes through Marlene Turner.
Q. And how do they make that request?
A. We have a form that is -- well, the Governor and Lieutenant Governor are different, as opposed to outside parties like the Senator. We have a form that someone would fill out explaining when they need it and the general purpose of the travel.
Q. And were there any changes made to this form when you came into the administration?
A. Yes, there were.
Q. Do you know what those changes were?
A. I believe that we asked for a little more specification, what the purpose of the travel was and we added a certification line that the person was certifying -- I would have to see the form to tell you
Q. What was your understanding as to what those changes were intended to do?
A. Intended to make sure that the plane was being used for governmental purposes, predominantly governmental purposes.
Q. And when you say "predominantly governmental purposes", what do you mean?
A. Well, I mean, if you take the helicopter down and you have government meetings and then you have lunch with friends and then you take the helicopter back after governmental meetings, we would certainly allow that. If you were taking it down for, you know, predominantly nongovernmental purposes, we probably would have had a discussion as to whether we would authorize the use of the helicopter for that purpose, but I don't think that issue ever arose.

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

Q. Mr. Nocenti, I'm showing you what's been marked as Commission's Exhibit 121.
A. Mm-mm.
Q. And ask if you can identify this document.
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
asks that the individual certify the document and if it's a true and accurate please indicate --

A. Which document are you looking at right now?

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

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

A. Mm-hmm.

Q. And below that is a certification?

A. Mm-hmm.

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

A. Mm-hmm.

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

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

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

A. Yes. But I know -- I believe that there was a form from the prior administration that we started with, and then I can't tell you the -- I'm presuming that
this is what I would describe as an interim draft.

Q. 121?

A. 121, yes. Sorry.

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

A. Mm-hmm.

Q. And requests reimbursement for those portions?

A. Mm-hmm.

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

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

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

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

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

A. I don't recall. I mean, I don't know whether we had one form and then it turned into this form. I just --

I don't know. I certainly didn't have any conversations with anybody in Senate on that.

Q. Did you have any conversations with anybody in the
Executive Chamber?

A. Not that I recall.

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

THE WITNESS: Mm-hmm.

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

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

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

THE WITNESS: Because I don't think we would
have felt that it would be appropriate to take
the aircraft on what was essentially a beach
vacation.

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

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

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

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

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

THE WITNESS: He could have easily been
involved. I don't have any specific
recollection. He was the former Executive
Director of the Ethics Commission, he would have
been an appropriate person to consult with. I
just don't recall.

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

THE WITNESS: I consult with Richard Rifkin
on --

MR. TEITELBAUM: On this particular subject?

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

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

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

MR. TEITELBAUM: Are you able to place the
conversation that you had with Mr. Rifkin
concerning this subject prior to the point in
time when the Ethics Commission was issuing or
working on an opinion concerning the proper use
of State aircraft?

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

MR. TEITELBAUM: This is July 1st?

THE WITNESS: Yeah.

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

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

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

THE WITNESS: I do not recall having any
conversations with anybody in the Senate about this form. It doesn't mean it didn't happen; I just don't recall.

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

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

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

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

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

THE WITNESS: I don't remember having any
conversation with the Senate, and I don't remember anybody telling me that they had a conversation with the Senate. I mean, obviously, you know, I don't see these forms. I don't send them to the Senate, they don't send them back to me. So it's obviously possible that that was an issue that was raised, I just don't know.

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

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

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

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

MR. TEITELBAUM: I may have had his title wrong. What was he?
THE WITNESS: I think he was a lobbyist. I think he left at the end of -- the counsel to the majority leader is Mike Avella, he's my primary contact with Senator Bruno's Office. He's been in that position since very early in this administration. I know Ken, I've spoken with him many times when he was the counsel to the majority leader. I don't know the exact date of his departure, you know, whether it was December 31st or shortly thereafter. I don't know, but I don't recall having a conversation with him about it. It seems I would have talked to Mike Avella about it, but again, I just -- you know, a million things going on. I had lots of phone conversations. I just don't recall.

BY MS. TOOHER:

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

A. I don't.

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

A. Relating to this form, yeah. He actually, I think,
was the person who sent me the initial -- sent me the
aircraft procedures that was used by the prior
administration, and I believe there was a form
attached to those aircraft procedures.

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

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

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

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

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

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

THE WITNESS: I'm sorry. I wasn't paying
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
the helicopter and then he's going to have a lunch
with friends, we would not, you know -- we didn't do
an hour-by-hour allocation of it.

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

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

Q. You were looking to change what?

A. It's my understanding that the prior administration
would refuse Senator Bruno on occasion the ability to
use the aircraft, I don't want to say for no reason,
but if things weren't going well between the
administration and the Senate, and we didn't want to
tie use of the aircraft to relationships.
Q. Were you looking to tie use of the aircraft to anything in particular?
A. It had to be used for a governmental purpose.
Q. But you were not looking to tighten up on that policy or require greater documentation on that policy?
A. We certainly had discussion about that and we changed -- and we did change the documentation. Again, neither of these is the original form, so I can't say --
Q. And you mean the original form from the prior administration?
A. Neither of these are the prior administration. I would have to compare the two to see what the differences are. I don't believe the prior form had a certification requirement. In our view, we wanted to make sure that they were using the aircraft for official State business, but we chose not to ask for an hour-by-hour allocation of time.
Q. And do you know how that decision came about, the decision not to ask for an hour-by-hour?
A. I know that there were discussions, you know, I can't say for sure. I, you know -- I don't know, I don't know.
Q. And those discussions concerning the hour-by-hour and
whether or not to have it, when was that?

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

Q. So that was early in the administration?

A. Yes, yes.

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

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

Q. And how would it diminish that?

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

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

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

Q. So, in effect, they're making an oath or taking some
sort of formal statement?

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

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

THE WITNESS: That's a legal question.

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

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

BY MS. TOOHER:

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

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

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

A. I know that there have been numerous stories over the
years about use of aircraft, going back to prior
administrations. It depends on what you mean by
"regular". Every administration has questions about
the use of the aircraft.

Q. In your administration, in the Spitzer administration,
did this issue come up early in the administration?
A. I don't recall. No one would have called me. I mean,
there were certainly -- when you say came up, I mean,
we had internal discussions about it, we talked about
the form, we talked about whether we should change the
form, what the policy should be, so yes, it certainly
came up.

Q. In terms of the press, when was the first time the
issue of use of the aircraft came up in the press in
the Spitzer administration?
A. I -- you know, the press generally doesn't call me, so
I can't answer that question.

Q. But you are certainly aware of what's going on in the
press --
A. Sure.

Q. -- that concerns the administration.

Were you aware of any incidents that were in the
press concerning the use of the airplane?
A. Well, look, I -- it's my understanding that Darren was
asked about use of the aircraft. But are you asking
for my personal knowledge, I didn't have any
conversations with reporters, and I actually don't
recall whether there were, you know, issues with
respect to our use of the aircraft. I know there were
articles of Governor Pataki's use of the aircraft in
2007, including articles about reimbursements. I know
there were e-mails on that issue that I've seen, so I
know that that came up. But as far as press calls, no
press called me. And as far as press articles, off
the top of my head, you know, I don't recall a press
article about this governor's use of the aircraft
during this time frame.

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

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

Q. When was that?

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

Q. Were you ever aware of FOIL requests concerning the

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

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

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

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

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

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

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

A. I believe at one point the Inspector General asked me
for any FOIL requests that might have come in, and I believe that I gathered whichever ones -- I believe that I collected them and then forwarded them to him.

Q. And those would include the FOIL requests that came in that resulted in the July 1 article?
A. I don't think I -- yeah, it would have included that one, yes.

Q. Do you have -- were there any other earlier FOIL requests than the --
A. I'm sure I did not keep a copy -- I don't think I kept a copy of the documents that I -- you know, the Inspector General's Office asked for FOIL requests, and we provided the ones that had come in at that time. And my guess is, probably since that time, there's been more FOIL requests.

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

Okay.

Q. Who is Paul Larrabee?
A. He is a press secretary of the Governor's Office, or was at that time.
Q. And as I read this e-mail, it seems to be from Mr. Miner to Mr. Larrabee advising him that they've received a request for aviation records and they've required a FOIL request to get those documents?

A. Mm-hmm.

Q. And there's been prior testimony that indicates that these documents were provided to Mr. Dicker from the Executive Chamber, as opposed to requiring a FOIL request; do you have any knowledge of that?

A. I don't have any personal knowledge of it.

Q. Do you have any other knowledge?

A. Well, I mean, I've seen this e-mail before. I know that the documents were provided. As I indicated before, our general rule was to try to be accommodating to reporters and not to take the position of the prior administration, which my understanding was, every request for any documents, no matter how easily provided, required a FOIL request. So you know -- but this was happening, to my knowledge, unbeknownst to me at the time.

Q. Was Mr. Larrabee disciplined for providing these documents to Mr. Dicker?

A. No.

Q. Was any policy put in place after Mr. Larrabee's
actions or after the Attorney General report at the Executive Chamber for provision of documents under FOIL?

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

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

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

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

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

Q. Before the report came out and before the article came out, were you ever advised of other media inquiries?
concerning use of the helicopter?

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

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

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

Q. And what did Darren tell you?

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

Q. And that press release, the May press release -- I'm going to show you what's been marked as Commission's
Exhibit 30 and ask you if that's the document you are referring to.

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

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

A. To the best of my recollection, yes.

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

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

Q. And who was at that meeting?

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

Q. Was Marlene Turner present?

A. Not to my recollection.

Q. Was the Governor present?

A. No.

Q. And what was the purpose of that meeting?

A. I don't know if we had like a -- when you say purpose of the meeting, it wasn't a meeting that was called.

I just remember being in his office. I don't know what the circumstances were. But I know that Darren,
Rich and I discussed whether this press release should be issued or not. And I actually think that we -- at some point I believe that we spoke with the Governor by telephone.

Q. And what was that conversation?
A. As the press release indicates, Senator Bruno had asked for -- to use the State helicopter for legislative meetings. Apparently, there was a fundraising event that he was going to, so the question was, should we issue this release pointing out that, although he said he was going for legislative meetings, he apparently was using the State aircraft for political purposes.

Q. And who said what in that meeting?
A. I don't recall. I mean -- I don't recall any, Joe said this and then Tom said this. I can give you the sum and substance of it, but I just can't quote people's words or whatever.

Q. Did Darren bring the release to the meeting?
A. I know that I had the release. I mean, I'm assuming that Darren brought it, so I don't know if I got there first or he got there first, so I don't -- I mean, bring the release -- but I know that this release was at the meeting, at the discussion and, you know, I can
tell you my view is that we shouldn't issue it and we
basically -- a decision was made at the meeting not to
issue the release.

Q. And why did you think it shouldn't be issued?
A. My assumption was that, even though he might have been
having meetings for political purposes, he was
probably having meetings the same day for governmental
purposes so, you know, aircraft had been used in the
past for mixed purposes, so there didn't seem to be
any real point to issuing this release in the middle
of a legislative session. It obviously -- you know,
the Senator would have had an adverse reaction to us
putting this release out. It just didn't seem
advisable.

Q. Now, the first line, "Our office has received
inquiries regarding Senate Majority Leader Joe Bruno's
use of State aircraft."
A. Mm-hmm.

Q. Were you ever advised as to what those inquiries were?
A. I believe that that refers to media inquiries.

Q. And do you know who those inquiries were coming from?
A. I now know that it was Jim Odato at the Times Union.

It is possible that Darren said at that meeting that
it was Jim Odato at the Times Union. I don't recall
any specifics. I now know that there were media
inquiries.

Q. How do you know that it was Jim Odato?
A. Because he's the person that Darren provided the
documents to and who wrote the article.

Q. But those documents were in response to a later FOIL
request?
A. Correct.

Q. Or a FOIL request dated sometime thereafter?
A. Correct.

Q. So how do you know this refers to --
A. That's a good point. I stand corrected. I can't say,
since I don't remember who said what at that meeting,
I can't say for certain which inquiries that refers
to.

Q. Was it ever identified at that meeting that there were
specific inquiries?
A. Again, I don't recall the specifics of what anybody
said. I can give you the sum and substance of the
conversation, what the decision was that was made. I
can't say.

Q. And I think you said a little earlier that there were
questions as to whether there were fundraising
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
recall whether it was the 17th or a subsequent one,
but I do know that when I was in that meeting at that
time, I was told that this related to political
activities.
Q. And were you shown any other documents at that time
when you were shown the statement?
A. I don't recall.
Q. I'm going to show you what's previously been marked as
Commission's Exhibit 5.
A. Okay.
Q. And ask you if you were provided this document at the
time you were provided the statement by Darren Dopp.
A. No.
Q. You were not provided this document when you were
provided the statement by Darren Dopp?
A. No.
Q. And I believe you testified that a determination was
made not to release this press release?
A. Mm-hmm.
Q. Was there any other discussion concerning Senator
Bruno's activities at that time?
A. Again, I know I was in a meeting, I know that Rich was
there and Darren was there, I know a decision was made
not to go forward with this. There could well have
been discussions, I just -- you know, I don't recall
the specifics of anything, other than a decision not
to release this.

Q. Did you discuss anything further in terms of
Mr. Dopp's actions and Senator Bruno's use of the
helicopter?
A. Not that I remember.

Q. Did you discuss how Mr. Dopp would respond to the
media inquiries that were apparently coming in
concerning Senator Bruno's use of the helicopter?
A. Again, I have been in so many meetings, I just don't
recall the specifics of this meeting. I can tell you
in sum and substance what happened, but I don't recall
discussions as to how we should proceed from there.

Q. Did Mr. Dopp indicate during that meeting that he
would continue to monitor Senator Bruno's activities
concerning use of the aircraft?
A. I don't recall him saying that.

Q. Did anyone instruct Mr. Dopp at that time that he
should not continue to monitor Senator Bruno's use of
the aircraft?
A. I don't know that he was monitoring Senator Bruno's
use of the aircraft, so I don't -- I don't recall
that.
Q. Do you recall anyone advising Mr. Dopp to do anything following this meeting?

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

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

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

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

A. No.

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

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

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

THE WITNESS: I don't recall how I read it.
at the time.

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

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

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

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

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

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

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

THE WITNESS: I can only assume that he got the information from the State Police. But
because I don't have a specific recollection of what people said at that time, I, you know -- I don't recall him saying that, but they're the entity that I presume -- let me take that back.

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

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

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

MR. TEITELBAUM: On May 17th, did either yourself or Mr. Baum -- you said the Governor was
called as well, did any of the three of you
authorize Dopp on a going-forward basis to track
the Senate Majority Leader's use of the State
aircraft and his ground itinerary?

THE WITNESS: No.

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

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

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

THE WITNESS: Sorry. If it was being used,
certainly, exclusively for non-State purposes, in
my view, that would be illegal. To the extent
it's being used -- you know, nearly exclusively
for it, if the Governor took the aircraft to
Hawaii and had a two week vacation with his
family and spent two minutes on the phone on
official business and came back, then that I
would not consider an appropriate use of the aircraft. So I don't know -- I don't recall if we had a discussion about whether an apparent misuse was a continuing issue or not. I just -- you know, obviously, the fact that one is using the aircraft for political purposes, and, again, I don't know what other meetings the Senator had, raises that issue, so there could have been a discussion on that. I just do not recall the specific words that people said at that meeting.

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

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

MR. TEITELBAUM: I understand that.

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

THE WITNESS: I just don't recall. It's
possible that someone said, well, look, we'll see
if this is a pattern or see if this is continuing
or not. I just -- I have no recollection -- if
you are asking me do I have any recollection of
someone saying, Darren, let's track him, let's
follow him, let's get his itineraries and, you
know, keep track of him, no. I can say that that
did not occur, you know, because -- that did not
occur.

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

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

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

MR. TEITELBAUM: Did you eventually find out
that Darren Dopp was monitoring Senator Bruno's
movements in connection with the State aircraft,
subsequent to May 17th?

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

MR. TEITELBAUM: Would you call that monitoring?

THE WITNESS: I don't know the circumstances that caused that to happen. If, again, if Darren had a reporter who is asking, I want any document relating to Senator Bruno's travels and he was responding to the FOIL request -- I'm sorry -- responding to a document request, then that would be responding to a document request. So not knowing which reporter Darren spoke to and when
or what the specific requests were or any of that, I can't answer that question.

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

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

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

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

MR. TEITELBAUM: Did anybody tell you that
there were such conversations?

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

BY MS. TOOHER:

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

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

MR. MOSCHETTI: Can we take a break.

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

(A lunch break was taken from 1:35 p.m. to 1:57 p.m.)
(Thereupon, the following excerpt of the proceedings was read back by the Court Reporter

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

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

BY MS. TOOHER:

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

A. Our line was predominantly governmental purposes. We would not let the Governor use the aircraft unless it was predominantly a governmental purpose.
Q. And what about Senator Bruno?
A. Again, I don't -- you know, I didn't see the requests, we didn't ask for the hour-by-hour stuff. I think that, you know, we didn't really have a line.

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

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

Q. And was there a determination that he actually was engaged in some sort of legislative business?
A. Exhibit 28b is a form where he said on the 17th he would be doing it for legislative business meetings. My assumption is that even if he's going to a fundraiser, that he would also have legislative meetings at about the same time.

And again, I don't recall the exact words that people said at the meeting, but, you know, I probably articulated that we don't know what else he's doing.

So I -- my assumption is that -- put it this way: My
assumption is that the Senator would not take the plane for purely political purposes.

Q. What is that assumption based on?

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

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

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

Q. But at this juncture --

A. It was my --

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

A. Yes.

Q. -- members of the Executive Chamber --

A. Correct.

Q. -- that Senator Bruno is engaging in predominantly
other use of the aircraft; is that an accurate read of this?

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

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

A. I know that one of the reasons that I thought that this should not be put out was my assumption that he would be doing governmental business on the same day. I presume that I articulated that. I can't say, I said, 'X', but, you know...
In the penultimate paragraph of the release, the last sentence, "We have asked the Senator to verify that these meetings involve official State business." Was that ever done, was there ever any attempt to verify that his meetings were official State business?

Not to my knowledge.

Was it discussed at the meeting whether or not you should verify whether these involved official State business?

The only thing that I recall was the decision that this was not a press release that we thought should be issued or pursued. It's -- you know, it's quite possible that there was a discussion of that, but I just don't recall. I only recall the sum and substance of the conversation, which was, should this go out. No, I can tell you why. I think it shouldn't have been issued, which included my presumption that the Senator was also having legislative meetings. I see from, you know, document 5 that the Senator's counsel was at the meeting. He certainly knows what the rules are, he's aware of the Hevesi case.

But I believe you testified you didn't have Commission's 5 --

No.
Q. -- when you were given Commission's 30?
A. No, I see now -- yes. My assumption at the time was that he would not use the aircraft for purely political purposes, exclusively political purposes. That was my assumption at the time.
Q. And if the Senator were using the aircraft for purely political purposes, that would be a problem; is that correct?
A. In my view, absolutely.
Q. And if he had been taking this trip solely for the purposes of political -- going to a political fundraiser, that would have been a problem; is that correct?
A. Absolutely, yes.
Q. And was Darren Dopp given any instruction in that meeting as to following up on any of those issues?
A. No. Because my assumption is that there's no way that the Senator was using the aircraft for only political purposes, so I'm not -- again, the rules with respect to the State aircraft, the legal rules, what's legal and what's illegal, you know, were never fully defined. You can certainly make a strong argument that it is legal to use the aircraft even for predominantly nongovernmental purposes, if the
Governor absolutely, positively has to go to Chautauqua County and get there quickly for a one hour meeting, and then while he's there, he decides he's going to do other nongovernmental stuff, but he has to use the aircraft for that governmental purpose, I think you can make a very strong argument that that's perfectly appropriate because that's the only way he -- he's the Governor, he has to be there. Let's say there was a natural disaster or something, he has to use it for governmental purpose. But there were no clear-cut rules, which thankfully the Commission has now given guidance on, as to what is legal versus what is not legal. I just -- you know, at the time, I didn't think there was any way he was using the plane, only, exclusively for political purposes. That's the only circumstance which, in my view, clearly would have been illegal.

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

A. Not that I'm aware.

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

A. Sure, that was -- I take that back. I know that he reimbursed at least one flight. I don't think that
Q. I think in Commission's 121, the issue of reimbursement for personal use is raised?
A. It is.

Q. So it appears you were aware of the issue of reimbursement for partial use?
A. It is an issue. I don't think it's legally required.

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

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

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

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

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

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

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

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

A. Yes.

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

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

Q. And was there an explanation as to why?

A. Again, I don't recall what anybody said specifically. I know that, you know, it was essentially a consensus determination, as happens on a daily basis in our
office where an issue comes up, should we do this, 
should we do that, people get together, they talk 
about it, a decision is made. And I think that's what 
occurred in this situation.

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

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

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

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

MR. TEITELBAUM: Did he tell you why?

THE WITNESS: Again, I don't recall anything 
that people said in particular. I mean, 
obviously, if the Senator is using State aircraft 
for predominantly or exclusively political 
purposes -- and again, I did not believe he was
using it exclusively for political purposes -- that was something that the public might want to know, but a consensus decision was made that because he was probably using it for legislative purposes and we were in the middle of a legislative session, a statement would not be well received by the Senator. The best of my recollection is we collectively decided not to have the statement issued.

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

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

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

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

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

THE WITNESS: The sum and substance --

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

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

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

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

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

MR. TEITELBAUM: In sum or substance?

THE WITNESS: You know, when I say "sum or
substance", I remember the sum and substance of
the meeting. I don't remember the sum and
substance of what Rich said versus what Darren
said versus what I said. I don't recall the
specific words that were used.

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

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

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

THE WITNESS: In sum and substance --

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

THE WITNESS: I don't recall that.

BY MS. TOOHER:

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

A. Again, I don't recall that. I can only tell you that
I remember the sum and substance of the meeting as to
whether it should be issued or whether it should not be. At this particular meeting, I don't recall if that came up or not.

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

A. Correct.

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

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

BY MS. TOOHER:

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

A. To the best of my recollection, I heard that there was
going to be a story in the Times Union regarding Senator Bruno's use of the aircraft.

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

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

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

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

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

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

BY MS. TOOHER:

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

A. Okay.

Q. And this is apparently an e-mail thread, it starts on
May 23rd and completes -- I'm sorry -- May 23rd at 10:25, and it completes on May 23rd at 8:22 p.m. It starts with Anthony Williams to Preston Felton and completes with William Howard to Darren Dopp, and the subject matter of the e-mail is, "We've been informed Senator Bruno's travels, again, to New York using the helicopter"; are you familiar with this document?

A. I'm sorry, I see the subject matter "FW: Schedule"; where are you reading from?

Q. Yes. I'm just telling you the testimony thus far --

A. Okay.

Q. -- has told us that this is relating to Senator Bruno's use of the helicopter again.

A. Okay.

Q. Are you familiar with this document?

A. I know I've seen it.

Q. On or about May 23rd, did anyone bring to your attention the issue of the use of the helicopter again to go to New York?

A. Not to my recollection.

Q. Did Darren Dopp ever show you this document during that time frame, the May 23rd, 24th time frame?

A. Not to my recollection.

Q. And did he discuss with you that he was in
communications with Bill Howard and Acting
Superintendent Felton at that time frame concerning
Senator Bruno's activities?

A. Not to my recollection.

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

THE WITNESS: I know I was in the meeting on
the 17th. Is it possible that he said to me
sometime around this time frame, Bruno took the
helicopter to New York again; he may have. I
mean, you know, frankly, it also wasn't a secret,
because, obviously, people -- Marlene Turner
would know when he used it, whoever traveled with
him would know when he used it, people who saw
him in New York would know that he used it, so
it's not like there was any -- it's not like it's
a secret helicopter trip, so it's possible Darren
would have said, he took the helicopter. I'm
just telling you, between the 17th and the end of
June, I have no recollection with respect to
Senator Bruno's use of the helicopter. It
doesn't mean I didn't have a conversation, I just
don't recall.
MR. TEITELBAUM: Did he tell you around this time of Commission's 63 that through Mr. Howard he was in communication with the State Police?

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

BY MS. TOOHER:

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

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

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

A. He had a conversation with Peter as to whether the -- Senator Bruno's use of the aircraft should be referred to the State IG.
Q. And when was your understanding as to when that conversation occurred?
A. You know, I only remember talking to Darren about it after the article came out. My recollection is that he had this conversation before the article came out. But how much before, I just don't know.

Q. Did he say anything else beyond just that this was a conversation concerning referral to the IG?
A. It's my understanding that Peter had advised Darren of his view that this is a matter that should be referred to the IG.

Q. And did he ever discuss with you the concept of -- did Darren ever discuss with you the concept of referral to the IG?
A. I know I discussed it afterwards. I don't recall having a conversation with Darren beforehand about the referral to the IG. It's possible that there was a discussion of it at the May 17th meeting, I just don't recall.

Q. Do you -- did you ever have a conversation with Darren concerning potential criminal prosecution for not referring it to the IG?
A. It's my understanding that Peter had indicated to Darren that he had an obligation to refer it to the
IG. I did not think that there was an obligation to refer it to the IG.

Q. Did you relay that to Darren?

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

Q. After the article?

A. After the article.

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

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

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

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

BY MS. TOOHER:
Q. I'm showing you what's been marked as Commission's 122.

A. Okay.

Q. This appears to be an e-mail from Peter Pope to you dated 7/16 at 8:36 a.m. Can you identify this document?

A. I mean, I know I've seen it. It is what it purports to be, an e-mail from Peter to me and to Sean Maloney.

Q. Did you request Peter to create this memo?

A. No.

Q. Is this in response to any communication you had with Peter concerning these events?

A. Yeah. At some point, at around this time frame, Peter mentioned to me that he had had conversations with Darren prior to July 1st about the matter generally, and I believe that this, you know, perhaps -- I mean, I don't recall exactly what he said, but I know that this was followed up with an e-mail, basically, giving a short description of the two conversations that Peter recalled.

Q. And in the second paragraph it indicates, "He" -- and I'm going to assume we're referring to Darren Dopp here -- "showed me" -- Peter Pope -- "a request for flight submitted by Bruno and asked whether, given my
experience as a former prosecutor, it constituted a
false swearing." Do you know what the sum and
substance of that conversation was? Did Peter relay
anything further to you?

A. I don't recall the details of the conversation. I
don't, you know -- I presume that this is, you know, a
recitation of what occurred. So I wasn't a party to
that conversation, so I can't say anything more than
what's in this e-mail. This is him advising me of a
classification that he had with Darren.

Q. Did Darren ever discuss with you the issue of Bruno
providing a false swearing in the context of the
flight request form?

A. I know that I discussed it with him after July 1st. I
don't recall discussing it with him before July 1st.
Again, it could have been something that was discussed
on May 17th, I don't recall.

Q. And did Peter indicate to you that he had any
follow-up with Darren on these conversations?

A. You mean other than after July 16th?

Q. After he had the initial conversations?

A. Again, I know that Peter advised me that he had had a
couple conversations with Darren, I know that it was
followed up with this e-mail. I don't recall him
telling me further follow-up that he might have had
with Darren about this.

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

A. He --

Q. Prior to the --

A. I don't -- this is a discussion of two conversations.

It may well be that Darren came to him and those would
be the two conversations that are being referred to.

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

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

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

A. Again, I don't think I had a conversation with Peter.

It's possible I had a conversation with Darren, I just
don't recall. The only conversations that I recall
relating to Senator Bruno's use of the aircraft were
May 17th, and then again when I heard prior to
July 1st that the article was going to come out. It
is possible that Darren had a conversation with me, I
just don't recall it. I do recall talking to him
about it after July 1st.
Q. Did Rich Baum ever say anything to you about Darren having a conversation with Peter Pope?

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

Q. Yes.

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

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

A. I think, and I can't say for sure, I think that Darren mentioned to me that he had also spoken with Richard Rifkin -- not -- well, I'll take that back. I think he had spoken with Richard Rifkin about the referral issue. I don't recall him telling me that he spoke with Richard Rifkin about his conversation with Peter Pope. If I understand your question correctly.
Q. Did Darren ever indicate to you, prior to the July 1st time frame, that he had spoken with Richard Rifkin about the policy on the use of the aircraft?

A. Ask the question again.

MS. TOOHER: Can you read back the question. (Thereupon, the following excerpt of the proceedings was read back by the Court Reporter: QUESTION: "Did Darren ever indicate to you, prior to the July 1st time frame, that he had spoken with Richard Rifkin about the policy on the use of the aircraft?")

A. Answering that question, obviously, there were a lot of discussions relating to use of State aircraft generally. I have indicated Richard Rifkin would be a logical person to consult on that. I know that I was in conversations with Darren, with Marlene, with Richard Baum, with Bill Howard. I don't, in my head, recall a conversation with Richard Rifkin that I would have had. It's quite possible that I had such a conversation and in my conversations with Darren about the use of State aircraft and this policy we're trying to develop, it's quite possible that he told me that he had spoken with Richard Rifkin, but I don't remember the details of my conversations with any of...
Q. After May 17th, did Darren indicate that he had spoken with Richard Rifkin concerning the use of the State aircraft?

A. Not that I recall.

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

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

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

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

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

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

MR. TEITELBAUM: As I read 122, and tell me if you don't read it that way, that Mr. Dopp was asking Mr. Pope, a former prosecutor, whether..."
Senator Bruno did something which constituted a false swearing?

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: Which constitutes a crime?

THE WITNESS: Mm-hmm.

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

THE WITNESS: No. It's not surprising.

MR. TEITELBAUM: Why?

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

MR. TEITELBAUM: Had the facts and circumstances changed since May 17th when your view was that you assume that there was legislative business being conducted by Senator Bruno when he used the aircraft at the point in
time, July 1st, on that subject?

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

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

THE WITNESS: No.

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

THE WITNESS: No.

BY MS. TOOHER:

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

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

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

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

(Commission's Exhibit 123 was marked for}
1 Q. I'm showing you what's been marked as Commission's 123
2 and ask you if you can identify this document.
3 A. I know I've seen it. That's all I can say.
4 Q. At the top of this document, it says, "State Aircraft
5 Policy".
6 "State policy regarding use of the aircraft is as
7 follows: The executive aircraft is to be utilized
8 only if the requesting official's trip is related to
9 State business or such usage facilitates the execution
10 of official duties."
11 A. Mm-hmm.
12 Q. And that's a quote?
13 A. Mm-hmm.
14 Q. Are you familiar with that statement as an accurate
15 statement of the policy?
16 A. It seems to, in sum or substance -- I actually don't
17 know the difference between something being related to
18 State business or facilitating the execution of
19 official duties, that just seems similar. But the
20 bottom line is, you can't use the aircraft for solely
21 nongovernmental purposes, which seems to be what this
22 is saying.
23 Q. It says it can be utilized only if the requesting
individual's trip is related to State business or usage?

A. Correct.

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

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

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

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

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

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

A. We have policies that either by executive order or otherwise have, you know, circulated to, you know, people in the Executive Chamber. Only people in the
Executive Chamber who use the State aircraft, 
predominantly the Governor and Lieutenant Governor, 
although other staff can use the aircraft, we did not 
take it upon ourselves after January 1st, 2007 to, 
especially, rewrite what the prior administration had 
written as the aircraft policy. We had general rules 
that we would follow and procedures that you would 
need to adopt, such as the form that you've seen, but 
we didn't, you know, formalize a policy.

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

A. Yes.

Q. How did you become aware of that?

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

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

A. I know I've seen e-mails where people reacted to the 
article. I don't, you know, have any specific 
recollection of, you know -- you are asking the 
reaction of the Chamber, the Chamber is a governmental
entity and I can only speak to reactions of
individuals, and I only know that I've seen e-mail
back and forth on that article.

Q. Do you know what Mr. Dopp's reaction was to the
article?
A. I can't speak to Mr. Dopp's reaction.

Q. Do you know what was reflected in the e-mails that
Mr. Dopp sent out?
A. I know I've seen e-mails that he was involved in and
that Rich Baum was involved in. I don't remember
whose reaction was which.

Q. Were you a participant in any discussions concerning
the Abbruzzese article?
A. An article like that, people talk about the office, so
I'm sure I was party to discussions about it.

Q. And when you say people talk to the office, what kind
of discussions are we talking about?
A. Well, it's like, you know, there are primary results
from Tuesday, people talk about the primary results;
this is an article that people talk about. I wouldn't
be surprised if I didn't have a conversation with
somebody about it. I actually don't have any specific
recollection of conversations about that article.

Q. And did Darren Dopp discuss with you anything
concerning Senator Bruno's travel in the context of the Abbruzzese article?

A. Not to the best of my recollection.

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

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

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

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

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

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

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

A. No.

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

A. No.
Q. Were you aware that this e-mail existed prior to July 1st?
A. No.

Q. Did Rich Baum ever discuss with you that he had received communications from Darren Dopp concerning the travel issue and Senator Bruno --
A. No.

Q. -- around the Abbruzzese article?
A. No.

Q. And when you say you saw this article in the context of reviewing the State Police --
A. This e-mail.

Q. -- this e-mail, I apologize, Commission's 47. What was the context of that?
A. We had ongoing inquiries from the Inspector General's Office -- at various times there have been inquiries by the Inspector General's Office, the Attorney General, the Albany District Attorney and the Ethics Commission of Public Integrity. There were various document requests from each of those entities. I've spent a tremendous amount of time over the past, you know, nine months, eight months, whatever it's been, reviewing e-mails to find documents that are 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
18 THE WITNESS: Between May and shortly before
19 July 1st, I was not aware -- I was not aware that
20 Darren was -- when you say "continuing",
21 continuing to look to put out an article, not to
22 my knowledge. Again, I remember the May 17th
23 meeting relating to Senator Bruno, I remember
24 hearing that the article was going to come out.
25 So I remember the March 17th(sic) meeting

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

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

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

MR. TEITELBAUM: To your knowledge, had the
Governor's perspective changed since the May 17th
conversation regarding putting out an article on
Senator Bruno's use of the State aircraft?

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

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

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

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

THE WITNESS: I don't recall. I know that
after July 1st, I have spoken with, you know,
Darren, Rich, the Governor about this issue. I
don't recall anybody telling me about conversations that they had with the Governor about that issue.

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

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

BY MS. TOOHER:

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

A. Okay.

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

A. No.

Q. And can you identify this document?

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

I can tell you what my understanding of it is.
Q. What is your understanding as to what it is?
A. I believe this is a document -- I take that back. I know that I've seen documents such as Exhibit 5, Commission's Exhibit 5, which are a listing of Senator Bruno's travels on May 17th and 18th. I believe that the Senator used the aircraft on the dates listed here, that's why my assumption is this is a State Police document.

Q. Why would you assume this is a State Police document?
A. Because it has information about -- it says, "Inv", I assume that investigator, it's talking about -- I'm assuming that it's use of the State aircraft, so that's why I'm assuming that it's a State Police document.

Q. And why are you assuming this is a document related to the use of the State aircraft?
A. I'm pretty sure I've seen it before, it looks similar to Commission Exhibit 5. So that's just my assumption.

Q. I'm going to give you what's previously been marked as Commission's 1, 2 and 3 and ask you if you can identify these documents.
A. Again, they look similar to documents that I've seen in the course of the investigation or responding to
Q. And had you seen these documents prior to responding to the document requests?
A. No.

Q. When you say "the document requests", to what are you referring?
A. Well, I know that there were some State Police documents that were provided to the Times Union. I don't recall if these are in there or not, if these were included there or not. I know that there were documents that were provided to, you know, the Commission and to the DA and to others. You know, these documents like Commission's Exhibit 5 are not numbered, so they don't look like documents that we produced to -- all I can say is they look similar to documents that I have seen before that have been produced. I can't say whether these are the same or different.

Q. Did you see documents similar to this prior to July 1st?
A. No.

Q. Did you see these documents prior to any inquiry from the Attorney General's Office?
A. I know that the documents provided to Jim Odato
included documents that were State Police documents.
I know that at some point I looked through those
documents. I think we actually, you know, then
produced those documents, I think we produced them
also in response to other FOIL requests. I can't tell
you whether this document is identical to -- these
documents are identical or similar to -- they
obviously seem to cover similar topics, I just don't
know if these are documents that we provided or not.
Q. Let's go first to the documents that were provided to
Jim Odato.
A. Mm-hmm.
Q. When you say provided to Jim Odato, at what time?
A. It was my understanding that somewhere around
June 28th, 27th, 28th, 29th was the time frame, that a
FOIL request came in, I think, on the 27th, and I
think the documents were provided the next day. But
it was within that time frame. Obviously, it was
before July 1st. It was between -- so my
understanding is between June 27th and July 1st
documents were provided to Jim Odato.
Q. And why were documents provided to Jim Odato?
A. I believe he had submitted a FOIL request for
documents and Darren provided him with documents that
he believed to be responsive to the FOIL request.

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

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

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

A. No.

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

A. No.

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

A. No.

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

A. Correct.

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

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

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

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

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

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

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

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

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

THE WITNESS: I don't recall him telling me
that he gave a FOIL request to anybody. And I
don't recall him telling me that he showed the
documents to anybody.

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

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

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

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

MR. TEITELBAUM: Or that he hadn't?

THE WITNESS: Or that he hadn't.

BY MS. TOOHER:

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

A. Again, this is -- well, the stuff at the bottom seems
odd. I believe that I've seen, certainly, the top
part of it, again, in the course of the responding to
Q. When you say the stuff at the bottom looks odd, what do you mean by that?
A. Well, I know I've seen a document that started out "For background only" and that has this information. I don't recall seeing this document with anything below, starting with "Document properties" and below. We printed out, you know -- this looks to be a document, you know, the substance of which I've seen, and I think this is the document properties of where it came from, so I think that's not initially on the document as it was created.
Q. Do you know what would cause that to be on the bottom of the document?
A. I know that I have seen documents that have had similar things at the bottom when we have asked a legal tech to produce a document that we didn't have, so it looks like the kind of stuff that would come from a legal tech printout.
Q. And did you see this document prior to July 1st?
A. No.
Q. When did you first see this document?
A. I can only say it was after July 1st. I can't tell you how soon after.
MR. TEITELBAUM: What were the circumstances that you first saw this document?

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

BY MS. TOOHER:

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

A. I believe that this is a description of documents provided to Jim Odato.

Q. And what is that belief based upon?

A. I'm fairly certain that the documents provided to Jim Odato included Senator Majority Leader Joe Bruno's use of State aircraft, and it may have been -- you know, I may have seen it at about the same time that I saw the documents. Yeah, best I can say is I think it, you know, talks about, to some extent, the documents provided to Jim Odato, the best I can say.
Q. Well, Mr. Odato is not mentioned anywhere in this document, so from where do you glean the information that this was with the documents that went to Mr. Odato?

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

Q. And what is that information based upon?

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

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

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

Q. Yes, we do.

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

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

MR. MOSCHETTI: Let's take a two minute
break, if we can, please.

MS. TOOHER: Sure.

(A break was taken in the proceedings.)

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

QUESTION: "Yes, we do.

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

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

BY MS. TOOHER:

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

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

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

A. Say again.

Q. After July 1st, did you ever see this document in
connection to a referral to a law enforcement entity?

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

Q. In what context?

A. Responding to document requests.

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

A. I'm sorry. Say that again.

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

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

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

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

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

A. No.

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

THE WITNESS: I am.

MR. TEITELBAUM: Around the beginning of July?

THE WITNESS: Mm-hmm.

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

THE WITNESS: I do not know.

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

THE WITNESS: No.

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

THE WITNESS: No -- I take that back. It was my understanding that we were providing to DA Soares the documents provided to Jim Odato. I
believe that I was provided with a copy of the documents provided to Jim Odato.

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

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

THE WITNESS: (Pause.)

MR. TEITELBAUM: Initiated by the Executive Chamber?

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

MR. TEITELBAUM: 67?


I frankly don't know if this was a document
that was provided to the DA by Paul Larrabee or not.

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

THE WITNESS: No.

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

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

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

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

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

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

MR. TEITELBAUM: He told you that before he had sent them over?
THE WITNESS: Yes.

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

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

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

THE WITNESS: I did.

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

THE WITNESS: District Attorney Soares.

MR. TEITELBAUM: When did you have the conversation?

THE WITNESS: On or about July 2nd.
MR. TEITELBAUM: Who initiated the conversation?

THE WITNESS: I did.

MR. TEITELBAUM: For what purpose?

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

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

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

MR. TEITELBAUM: Is it fair to say that none of these law enforcement agencies initiated the
request for these documents at that time?

THE WITNESS: Correct.

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

THE WITNESS: No.

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

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

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

THE WITNESS: I can only speak to --

MR. TEITELBAUM: On May 17th?

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

MR. TEITELBAUM: What in the Odato article indicated to you that Senator Bruno's use of the State aircraft may not have been proper?
THE WITNESS: I would have to review the article to refresh my recollection.

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

THE WITNESS: (Pause.)

Okay. What was the question?

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

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

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

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

BY MS. TOOHER:

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

A. Mm-hmm.

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

A. Mm-hmm.

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

A. Certainly could.

Q. So if Senator Bruno traveled to attend the meeting at City Hall, that would be a legitimate use of State aircraft?
A. If he were going for a governmental purpose, that would be -- certainly, based upon the rules at that time, if there was some governmental business being done, one could find that that would be a legitimate use of State aircraft.

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

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

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

MS. TOOHER: Commission's 3.

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

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

A. No.

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

THE WITNESS: Not by me.

BY MS. TOOHER:

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

A. Not by me.
Q. Were you aware of any activities in that regard to reach out to the State Police?

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

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

Q. On July 2nd?

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

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

A. I don't think I was.

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

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

Q. The documents that Paul Larrabee brought to the
District Attorney's Office, that you are aware that Paul Larrabee brought to the District Attorney's Office, were you in contact with the State Police prior to referring those documents to the District Attorney's Office?

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

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

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

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

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

Q. So no effort was made to verify whether or not Senator Bruno had conducted legitimate State business prior to referring this matter down to the District Attorney's Office?
A. If you are talking about on July 1st -- the article comes out on July 1st, did we, after the article came out, then seek to verify in some way what Senator Bruno was doing on each of these days? Not to my knowledge.

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

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

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

THE WITNESS: I did not know if he was conducting State business at C.V. Starr.
MR. TEITELBAUM: You presumed that?

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

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

THE WITNESS: I -- yes.

MS. TOOHER: May.

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

THE WITNESS: Sorry. Ask the question
again.

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

THE WITNESS: I did.

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

THE WITNESS: I'm not saying I didn't have
the same presumption. It could well have been.
The logical assumption would be that it would be a governmental event.

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

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

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

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

MR. TEITELBAUM: You said that there was an internal discussion concerning what to do in
connection with the Times Union article?

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: Who were the participants?

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

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

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

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

THE WITNESS: Yes.

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

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

MR. TEITELBAUM: Did you have a conversation
with the Governor concerning that?

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

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

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

MR. TEITELBAUM: Is it fair --

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

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

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

And again, we didn't decide to refer the matter; we decided to ask whether they wanted the documents.
MR. TEITELBAUM: I understand.

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: Yes.

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

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

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

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

THE WITNESS: Best guess, after noon.

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

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

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

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

THE WITNESS: Not to my recollection.

MR. TEITELBAUM: How many conversations did
you have with District Attorney Soares?

THE WITNESS: I believe it was one.

MR. TEITELBAUM: Was this matter made

available to District Attorney Soares because the

Executive Chamber felt it needed to do something

politically in light of the Times Union article?

THE WITNESS: No.

MR. TEITELBAUM: There were no political

considerations in this decision?

THE WITNESS: It depends on what you mean by

"political considerations".

MR. TEITELBAUM: Given the fact that an

article appeared which alluded to the possible

misuse of the State aircraft and given the fact

that the Executive Chamber had oversight

responsibilities with respect to the use of State

aircraft that the Executive Chamber needed to get

this matter into somebody's hands in order to

show that it was taking action?

THE WITNESS: There was an internal

discussion about what to do now. There was an

article that was out, should we do nothing,

should we refer it. We had documents that may be

evidence of illegal conduct, so a discussion was
made, should we just sit and wait or should we
affirmatively reach out, and the decision was
made to affirmatively reach out.

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

THE WITNESS: I don't believe so.

MR. TEITELBAUM: Why?

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

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: Again, my assumption on the
17th was he would have a lot of other, you know,
governmental meetings on the same day.

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

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

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

MR. TEITELBAUM: True.

How about the legislative?

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

MR. TEITELBAUM: On July 2nd?

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

MR. TEITELBAUM: How about committee, Legislative Committee?

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

MR. TEITELBAUM: Yes.

THE WITNESS: It was replaced by the
Legislative Ethics Commission.

MR. TEITELBAUM: Yes.

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

MR. TEITELBAUM: Was there a Legislative Ethics Committee?

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

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

MR. TEITELBAUM: Before the appearance of the Times Union article, had you participated in
any discussion or activity concerning possible

crimes committed by Senator Bruno with respect to

the use of State aircraft?

THE WITNESS: The only thing prior to

July 1st that I recall is the May 17th
discussion. As I've indicated, I know that I had

a conversation with Darren and Peter after

July 1st regarding the false swearing thing, I

just don't have a recollection of having a

similar conversation before July 1st. It could

have been on July -- on May 17th that there was a
discussion as to whether this was a crime or not.

But again, because my presumption was that there

was -- must be other governmental activities

going on on the 17th, I didn't think that it

would be a crime -- let me take that back. I

didn't think it would be prosecuted as a crime.

BY MS. TOOHER:

Q. The e-mail that sets forth the FOIL request from

Mr. Odato came in on June 27th?

A. Mm-hmm.

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

A. Mm-hmm.

Q. And at that time you indicated that you were not shown
any of the information that was provided in advance of
it being provided to Mr. Odato?
A. Correct.
Q. Did you have discussions with Darren concerning the
FOIL request in advance of providing the information
to Mr. Odato?
A. It's quite possible -- well, I know someone told me,
and I don't remember who, that the article was coming
out. So I presume, in that conversation, I was told
that it was coming out, in part relating to documents
that were being provided to Mr. Odato. So I must have
had a conversation about that at that time.

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

Q. I'm going to show you what's been marked as
Commission's Exhibit 124 and ask you if you can
identify this document.
A. It's an e-mail from Darren to me on June 27th asking
me to have someone on my staff get him a description
of "Scheme to defraud the government".

Q. Do you recall getting this e-mail?
A. I do.
Q. And what was this about, do you know?
A. I don't. I don't recall receiving it, I don't recall
replying to it, and I believe I cc'd two attorneys in my office who have a criminal background; I do not.

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

A. I don't believe that I did.

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

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

A. Mm-hmm.

Q. It's a three page document, on the third page -- the third page initiates the thread, which runs backwards, with the same description as 124. "Can one of your folks get me a citation description of "scheme to defraud the government" in the Penal Law, what constitutes a crime in this regard". And then there is a response from you cc'ing Robert Forshaw and Steve Krantz, and then it continues with a response from Steve Krantz to Darren Dopp with a copy to Robin David and a Bcc to himself. Can you identify this document?

A. Yeah, this is a continuation of that e-mail chain. It has my response to Darren where I cc'd Robin and Steve, and it has Steve separately, then, responding to Darren providing a different statutory cite.
Q. Can you explain what this document is?
A. It's the continuation of the e-mail.

Q. What was your understanding as to the purpose of this information?
A. This information, being the information --
Q. That's contained in the e-mail?
A. Darren asked for someone to get him a description of "scheme to defraud the government", so I sent him a response that had Scheme to Defraud in the Second Degree and the First Degree. I said, I did not know if there's a separate "scheme to defraud the government" crime. I cc'd Robin and Steve, and then Steve sent Darren a defrauding the government provision.

Q. What was your understanding as to why Mr. Dopp was looking for this information?
A. I did not know why Mr. Dopp was looking for this information.

Q. Did you ever inquire of Mr. Dopp why he was looking for this information?
A. I don't believe that I did.

Q. And I believe you testified earlier that it was not Mr. Dopp's responsibilities to investigate criminal activity; is that correct?
A. I don't recall if I said that. It certainly is not his responsibility to investigate criminal activity.

Q. And did it ever occur to you, between June 27 and July 1st, that this had something to do with the information being provided to Mr. Odato?

A. Yes. After learning that the -- that there was going to be an article, I wondered in my head, gee, I wonder if Darren's e-mail to me related to that issue.

Q. And did you ever do anything to follow-up on that?

A. I don't recall that I did.

Q. Did you ever discuss the issue of the criminal liability with Mr. Krantz or Ms. Forshaw, as far as Senator Bruno goes?

A. At this time June 27th to July 1st, to the best of my recollection, we just had e-mail exchanges. I don't recall actually having a conversation with them about it.

Q. In your conversations with the District Attorney, District Attorney Soares, did you discuss the scheme to defraud or defrauding the government?

A. I don't -- I do not believe so.

Q. What was your conversation with District Attorney Soares concerning Senator Bruno's actions?

A. I believe it was a conversation in which I noted the
article that had come out the prior day, indicated
that we had documents and asked if he wanted those
documents, we would provide them to his office. And I
believe he indicated that he would take the documents,
and I'm sure I told him we'll have someone take them
over to him.

Q. And did you provide any of the statutory references --
A. No.

Q. -- set forth in these e-mails to the District
Attorney?
A. No.

MR. TEITELBAUM: Just so the record is
perfectly clear, was 67 provided to the District
Attorney?

THE WITNESS: I don't know.

MR. TEITELBAUM: And you never found out?

THE WITNESS: Sitting here, I don't know.

Sitting here, I don't know.

BY MS. TOOHER:

Q. When you read the --

MR. TEITELBAUM: Wait.

MS. TOOHER: I'm sorry.

MR. TEITELBAUM: There's evidence in the
record that 67 was intended for you,
Mr. Nocenti --

MR. MOSCHETTI: Which record?

MR. TEITELBAUM: The record of this Commission.

MR. MOSCHETTI: You mean in previous testimony?

MR. TEITELBAUM: Correct.

THE WITNESS: Intended for me for what purpose?

MR. TEITELBAUM: To brief you.


MR. TEITELBAUM: How about July 2nd?

THE WITNESS: I know I've seen this document, I know -- you know, I assumed, because I've seen so many documents, that I saw it in the gathering of the documents. But it also has been my assumption that it was in some way -- accompanies, although not necessarily physically accompanies, but refers to the documents that were provided, I thought, to Odato, but it could be the DA. Again, I think I saw it sometime shortly after the 1st. That's all I can say.

MR. TEITELBAUM: Is this a document that was
handed to you for your benefit?

THE WITNESS: No. I mean, I -- I don't recall anyone just like handing me this document.

MR. TEITELBAUM: Or delivering it to you?

THE WITNESS: Or delivering it to me. I think you indicated earlier that, perhaps, this was in the documents that Paul provided to the DA or provided to me as a copy of what he provided to the DA. It's not drafted as a document for me; it just doesn't have that feel, it just doesn't read like, you know, that's what this would be.

MR. TEITELBAUM: 67 doesn't simply reference enclosed materials that are -- there are opinions in this document; correct?

THE WITNESS: That is correct.

MR. TEITELBAUM: And would you agree with me that the opinions seem to go towards the Senator engaging in wrongful conduct?

THE WITNESS: Yes.

MR. TEITELBAUM: Would Darren Dopp have provided this document to anybody outside the Executive Chamber without your approval?

THE WITNESS: Could have.
MR. TEITELBAUM: In the normal course, would he have sought your approval before releasing a document of this sort to somebody outside the Executive Chamber?

THE WITNESS: I guess, you know, I don't know in this matter if there is a normal course. I know I did not see this document prior to July 1st, it is not -- I'll tell you, as far as -- I can't -- I don't know who drafted this document, so I don't know what their intent was when they drafted it. It wasn't drafted at my request, and it doesn't look like a document that would be provided to brief me.

MR. TEITELBAUM: 67 has at the bottom that the author was Darren Dopp.

THE WITNESS: Okay. So assuming that Darren Dopp drafted it, it still was not done at my request and it doesn't appear to be a document, to me, for the purposes of briefing me, just, you know -- this is not how Darren would, you know, do this.

MR. TEITELBAUM: Well, the reason I'm asking about your approval of documents of this sort, and you tell me if you disagree with me, it seems
to indicate that the Majority Leader of the Senate may have committed crimes?

THE WITNESS: Correct.

MR. TEITELBAUM: Would a document from Mr. Dopp setting forth that the Senate Majority Leader may have committed crimes be released from the Executive Chamber to somebody outside without your reviewing it, according to protocol?

THE WITNESS: We certainly didn't have any protocols on documents relating to, you know, potential criminal conduct, but if, you know -- if one were to release information about potential criminal con- -- well, see, I don't know if this is before or after -- I don't know if this was released, and I don't know if it was released before or after July 1st. It starts, "For background only", which, to me, means something for a reporter.

MR. TEITELBAUM: Why do you say that?

THE WITNESS: Because that's the general term of art when you are talking to reporters about information that's provided for the record or for background only.

MR. TEITELBAUM: Have you ever seen a
document formatted as 67 is formatted with "for background only" at the top?

THE WITNESS: I know in communications with the Press Office, sometimes you have a conversation about what you are going to tell a reporter for the record and what you are going to tell them for background only, so it could well be that I've seen documents where it's, you know -- it's an e-mail document or in an e-mail says "for background only".

MR. TEITELBAUM: Did you or anybody else, to your knowledge, in the Executive Chamber inquire as to whether this document, 67, was given to Mr. Odato?

THE WITNESS: As I indicated, I know I've seen this document before. It's my understanding that it accompanied materials. Again, my assumption was it was for a reporter, so I may have -- it's possible that Darren said to me at the time, this is something that I gave to Odato; it's possible he didn't, I just don't recall.

MR. TEITELBAUM: You are drawing an absolute blank on that?

THE WITNESS: I don't recall.
BY MS. TOOHER:

Q. After the July 1 article came out, did you ever go back to Mr. Dopp and ask him why he hadn't brought these matters to your attention sooner?

A. I know that I had conversations with Darren after July 1st, I know that I told him that if he gets any FOIL requests, he should forward them to the FOIL Officer. You know, the Press Office gets media requests all the time, they respond to them, they don't check with me. But when you get a FOIL request, it's supposed go to the FOIL Officer. It wasn't necessarily just a matter that he had to bring it to my attention. You know, when the FOIL request came in, it should have gone to the FOIL Officer to respond to.

Q. My question must not have been clear.

You testified that after Commission's 85, the July 1st article came out, that there was information in here that compelled you to contact the District Attorney's Office?

A. It didn't compel us to contact the District Attorney's Office; we had a conversation as to whether we should reach out to the District Attorney's Office or not.

Q. And you did reach out to the District Attorney's
Office?

A. I did, yes.

Q. And did you reach out to any other law enforcement entities?

A. The Manhattan District Attorney's Office and the Attorney General's Office.

Q. So you did that as a consequence of the information contained in the article; is that correct?

A. Well, there was a question, again, of what do we do with this information that we have that could, upon further inquiry, be evidence of criminal conduct. So a decision was made to reach out to the entities that would have an interest in that to see if they wanted the information.

Q. But my question to you is: You hadn't heard from Darren Dopp on the issue of Senator Bruno's travels since May 17, and now there's --

A. Well, I had a conversation with someone, I don't know if it was Darren or Rich or someone else, that the article was going to be coming out. So it's quite possible that Darren actually told me that the article was going to be coming out relating to Senator Bruno's travels.

Q. And did he tell you the information that was in the

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A. Again, I don't recall if I had a conversation with Darren or with someone else. It could have been Rich that told me. I just know that I was advised that there was going to be an article about Senator Bruno's travels, and I'm sure I was told that it related to information that had been provided by us.

Q. And we're talking a relatively short window here; the FOIL came in on June 27, the article is July 1st?

A. Correct.

Q. Is this conversation that you are referring to now sometime in that window?

A. Yes. Best of my recollection was the Friday before, which I guess, 30 days in June, means it was Friday the 29th of June.

Q. It appears to me that this is a fairly big deal, that you now have information in this article that seems to indicate the Senator may have engaged in criminal activity?

A. Mm-hmm.

Q. And that Darren had this information, or at least some of this information, and provided it to the Times Union?

A. Mm-hmm.
Q. Did you ever have a conversation with Darren, or are you aware of anyone having a conversation with Darren saying, why didn't you bring this to us before you let it out there?

A. Well, he did bring it to us on May 17th.

Q. Correct.

A. It was my understanding at the time -- it was my understanding during this time period that he was responding to media inquiries. Our general rule is you provide information to the press. So I mean, I don't know that he needs to necessarily tell me, you know, all of his conversations with the press, providing information that the press has asked for.

Q. But I don't think this article is in response, and certainly the FOIL request was not separate responses, that there's one May 17, one May 24, one -- this is a compilation of information that Darren puts together and provides to the media; correct?

A. Correct.

Q. And it is information that results in a fairly serious article concerning the Senate Majority Leader; is that correct?

A. Correct, yup.

Q. Did anyone reach out to Darren after the article came
out and say, why didn't you bring this to us sooner?

A. Well, again, he had brought it to us sooner. It was my understanding that the media had inquired about the Senator's travels, and actually, the Governor's travels as well. You know, the fact that Darren is responding to a media request for information is not, you know -- not that remarkable, so I don't recall going to him -- I wouldn't have gone to him and say, why didn't you tell me before, because I know I had a meeting with him in March about this.

Q. In mid May?

A. Sorry. Mid May.

MR. TEITELBAUM: Let me see if I can be helpful here.

I think what we're trying to find out is: You testified something changed between May 17th and the appearance of the article on July 1st which caused members of the Executive Chamber to conclude that it was appropriate to send these materials to the District Attorney's Office in Albany; correct?

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: And you testified that what had occurred between May 17th and the appearance
of the article is that further information came out in the article?

THE WITNESS: Yeah.

MR. TEITELBAUM: More detail?

THE WITNESS: Yeah.

MR. TEITELBAUM: And Darren Dopp had the information that contained that detail before July 1st; correct?

THE WITNESS: Yes.

MR. TEITELBAUM: In retrospect, at least, members of the Executive Chamber knew that Dopp was collecting materials purportedly to respond to the press inquiry?

THE WITNESS: I knew -- it was my understanding that he was responding to a press inquiry when I had the conversations on May 17th. Frankly, I didn't know whether he had already, you know -- I don't know what he had provided or when.

MR. TEITELBAUM: This is what I think we're trying to get to. At a point earlier than July 1st and at a point earlier than Friday, June 29th, Dopp had the information that you say caused the Executive Chamber to believe that it
was appropriate to provide documentation to the District Attorney. Did anybody say to Dopp, why didn't you come to us with this information as to possible criminal conduct on the part of the Majority Leader earlier, since we have oversight responsibilities with respect to the aircraft?

THE WITNESS: I can just say that I did not.

MR. TEITELBAUM: Take a break for a minute.

(A break was taken in the proceedings.)

BY MS. TOOHER:

Q. Mr. Nocenti, I'm going to draw your attention to Commission's Exhibit 67, again.

A. Mm-hmm.

Q. And as I read this document, it's a fairly detailed description of a number of events and facts. And the second page of this document indicates that this document was created on June 25th at 1:42?

A. Mm-hmm.

Q. And last printed on June 27, 2007?

A. Mm-hmm.

Q. And that the total editing time on this is six hours and fifty-six minutes?

A. Mm-hmm.

Q. So would it be fair to say that it appears that a fair
amount of work was put into this document?

A. I don't know how they get total editing time. If I have a document that's up on my screen, I don't know if it counts each edit I make or just how long it's on the screen. So obviously, enough effort had to be made to put this together, so I mean --

Q. If I can direct your attention to the bottom of Page 1, it says Revision Number 18?

A. Mm-hmm.

Q. So in some sense or another, there were apparently a number of revisions made to this document, and you have no recollection of ever working on this document; is that correct?

A. I absolutely never worked on this document.

Q. And do you have any knowledge of anyone besides Darren Dopp working on this document?

A. I mean, other than it says, "Author Darren Dopp", that's the only, you know, knowledge I would have. So I don't know who else would have -- I don't know if anyone else worked on this document, and if so, who it would have been.

Q. Have you ever discussed with Darren Dopp the authorship of this document?

A. I don't have a recollection of having a conversation
with Darren. Again, when I first saw this document, I thought it was a document that accompanied the documents that went to Odato. It's quite possible that Darren -- that I got that from Darren, but I don't have a recollection of having that specific conversation.

Q. So as you sit here today, is it -- your best understanding of this document was that it accompanied documents to Mr. Odato?

A. By accompanied, I mean not necessarily physically accompanied. You know, you ask me what my understanding is, my mental impression is that this was a document that accompanied documents that went to Mr. Odato. It could also be something that went to the DA. I don't know, but my initial reaction was that this was somehow related to the documents that were provided to Jim Odato, and if you have those documents, I could compare them and that would help refresh my recollection.

MR. TEITELBAUM: Let's get the documents.

(Commission's Exhibit 126 was marked for identification.)

BY MS. TOOHER:

Q. I'm going to apologize that I don't have multiple
copies.

A. That's all right, we can look on with each other.

Q. This is Exhibit 126. I'll give you an opportunity to look at that.

The first page is an e-mail from Sean Maloney, and I believe it's to Ellen Biben of the Attorney General's Office identifying the documents that were provided in response to Mr. Odato's FOIL request and identifying the Bates numbers of those documents, and the subsequent documents following are the Bates numbers as identified to us, June 27th. I'm sorry.

MR. TEITELBAUM: It's the June 27th FOIL request?

MS. TOOHER: Yes.

A. (Pause.)

MS. TOOHER: Just for purposes of the record, a subpoena request was made of the Executive Chamber to provide the cover letter and any cover documents that were provided to Mr. Odato in response to his June 27th FOIL request. We have not received any further response to that beyond the documents that are here as Exhibit 126.

THE WITNESS: I'm sorry. Could you say that
again?

MS. TOOHER: A request was made for any cover letter that was provided to Mr. Odato with the response to the FOIL request and the documents that were provided to him, and we have received nothing in addition to the information that has now been marked.

THE WITNESS: Okay.

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

QUESTION: "So as you sit here today, is it -- your best understanding of this document was that it accompanied documents to Mr. Odato?"

ANSWER: "By accompanied, I mean not necessarily physically accompanied. You know, you ask me what my understanding is, my mental impression is that this was a document that accompanied documents that went to Mr. Odato. It could also be something that went to the DA. I don't know, but my initial reaction was that this was somehow related to the documents that were provided to Jim Odato, and if you have those documents, I could compare them and that would help refresh my recollection.")
THE WITNESS: Okay, but just going through Commission's 67 -- I haven't had an opportunity to look through them closely enough to count, but there are certainly documents relating to the use of State aircraft by the Senate Majority Letter and by the Governor and by the Lieutenant Governor.

There seem to be itineraries and manifests which are referred to as File A and File B. There do not appear to be, in my quick glance, and you can correct me if I missed something, invites or contribution information, which would be File C and File D. There does seem to be requests for use of State aircraft, which would be File E. And there does not appear to be Bruno comments on Hevesi, which is File F. And I haven't had a chance to see specifically if there is this April 10th document which is File G.

So it appears that this document does not accompany the documents provided to Jim Odato, at least to the extent that I am aware of the documents provided to Jim Odato.

BY MS. TOOHER:

Q. And if I can just be clear for purposes of the record.
The cover e-mail, 126, from Sean Maloney to Ellen Biben identifies these documents as follows: "To the best of our knowledge, the materials relating to the Governor and Senator Bruno were produced to the Times Union on June 28, 2007. Materials relating to Lieutenant Governor Patterson and the document entitled 'Aviation Procedures' were produced on June 29. We believe that those documents appear in the production as follows", and it lists the Bates numbers. The e-mail does not indicate that this is in toto what was produced to James Odato.

And those are the documents we have provided to you are just as represented in the e-mail.

A. Yeah.

Q. Is it your understanding that Mr. Maloney is representing this is the entire FOIL package?

A. Yes. Yes.

Q. And did he discuss that with you at the time he was producing these documents to the Attorney General's Office?

A. I had many, many conversations with Sean Maloney during this time period. The AG's Office had requested the documents provided to Jim Odato. My assumption would be that he would have gotten all the
documents provided to Jim Odato and would have
provided them. So, again, it would appear that
Commission's 67 is not a document that accompanied the
documents provided to Jim Odato.

Q. But if I can draw your attention to Commission's 67
and back to Commission's 85, and if we look in the
first column of Commission's 85, "According to flight
documents, State Police Aviation Unit request forms
obtained through a request under the Freedom of
Information Law, Bruno and his top aides used the
State air fleet 11 times in the first five months of
the year, compared with 19 flights by Spitzer during
the same period." If we compare that with the first
sentence of Commission's 67, "The enclosed materials
show that the Senate Majority Leader used State
aircraft 11 times during the first five months of the
year and the Governor used State aircraft 19 times
during the same period." Would you conceded that
there is certainly similarity in the information
contained therein?

A. Yes, there are.

Q. And if we continue in Commission's 67, "With regard to
the Majority Leader" -- this is the second
paragraph -- "the record shows that he and his senior
staff routinely used the State helicopter for transportation to New York City, the Bruno manifests, where on at least four occasions they attended political events." And the article refers to the May 3rd, May 17th and May 24 events, those would be reflected in the Bruno itineraries which are Commission's 1, 2 and 3?

A. Yes. And it also appears to be OAG 218, 219 and 220. Q. Which were provided to Mr. Odato in response to the FOIL request?

A. Yes.

Q. And then it -- the Commission's 67 goes on to indicate that, "This situation may be similar to the Hevesi scandal", and details the incident, "The former Comptroller claimed there was a security threat that warranted having a staffer assigned to his wife. Upon closer examination, it was revealed that there was no threat and the staffer was acting as a companion", and that the article also references, in the third column, "Disclosure last fall of Hevesi's use of State personnel to chauffeur his wife, who he claimed needed security, led to the end of Hevesi's three decade career in government." And the Commission's 67, in that same paragraph, "Majority Leader was quick to
denounce the former Comptroller and called on others
to do so", File F, Bruno's comments on Hevesi, the
next comment on column three on page two of
Commission's 85, "Last fall Bruno forcefully called
for Hevesi to resign and reimburse the State for using
a staffer as his wife's driver before prosecutors
completed investigation. He also declared it wasn't
an appropriate question to ask him if he had ever used
drivers too."

That also seems to parallel the information
provided with Commission's 67; would that be accurate?
A. Yeah, I mean, there's certainly -- these are two
documents; one is a newspaper article, one is a
separate document, that talk about the same issues,
basically.
Q. Would it be fair to say that the article somewhat
parallels Commission's 67?
A. Again, it has, you know -- it seems to have similar
information in it. I don't know what you mean by
"parallels". But yeah, I mean, they're both talking
about Senator Bruno's use of aircraft, the Hevesi
situation, political activities.
Q. Well, it also talks about the Governor's use of State
aircraft?
A. Mm-hmm.

Q. And "With one exception, there were no political events on the schedule on days when State aircraft was used to transport the Governor. The only possible exception is April 10th when the Governor was speaker at an event sponsored by the Monroe Democratic Committee. His drop by was part of a full day of public events and meetings with local officials in Binghamton and Rochester." And in the fourth column of Commission's 85, page two, "Spitzer and Patterson provided daily itineraries for the days they used public planes during a day of stops in Binghamton and Rochester on April 10th. The State Police Aviation Unit brought Spitzer and four aides to the Monroe Democratic Committee dinner the records show."

A. Mm-hmm.

Q. So it would appear that all of the information contained in Commission's 67 is paralleled in the article; is that correct?

MR. MOSCHETTI: What's the purpose of the question? That's really a legal conclusion or conclusion someone can make. You guys can sit there and -- there's no real question to David here that is specific to him.
MS. TOOHER: I'm just asking for his observations of what's contained in 67.

MR. MOSCHETTI: You are asking for opinions about whether or not they're parallel or not. I don't -- what's the relevance of that?

MS. TOOHER: I understand your -- is that an objection you are noting for the record?

MR. MOSCHETTI: Yes.

A. The -- yeah, these are two documents that contain similar information.

MR. TEITELBAUM: Let me ask you a question concerning 85, which is the article. Getting back to the aftermath of the article appearing on July 1st and the response of the Executive Chamber. It says in the article, in the second column, as you look at the second page, in the next to the last paragraph in that column, "Senator Bruno uses the transportation services provided to him in his role as Majority Leader for State purposes" -- quoting a man named Mark Hansen, H-A-N-S-E-N, who at least the article describes as a Bruno spokesman, he goes on to say -- "As he has and continues to receive death threats and other threats to his safety, based on
what people read in the Times Union and other
negative reports, he is provided with State
Police protection when traveling" -- and some of
this, of course, deals with who's driving him
around, and some of that quote, I think you'll
agree, deals with whether he's performing State
business; correct?

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: So if you were to read this
article and you see that essentially there's a
statement from Bruno's office that he was using
the State aircraft for State purposes; right? Is
that how you read what I've just put into the
record?

THE WITNESS: The quote is that Senator
Bruno uses the transportation services in his
role as Majority Leader. That's what it says.

MR. TEITELBAUM: Right. So having seen
this, did it occur to you or to anybody else, to
your knowledge, in the Executive Chamber that you
got the Senate Majority Leader essentially
saying, through his spokesman, that he's in
compliance; correct?

THE WITNESS: In compliance with what?
MR. TEITELBAUM: In compliance with the policy with respect to the use of the State aircraft; he's saying he's using it for State purposes?

THE WITNESS: Yeah.

MR. TEITELBAUM: That's compliance, isn't it?

THE WITNESS: Again, it depends on where you are on the mixed-use continuum. If you take it for, you know, a trip that's 95 percent political and 2 percent -- or 5 percent governmental, you are, presumably, getting close to the line of what's in compliance or not. And of course, that's his spokesperson. I think his spokesperson is also talking about death threats, and I think there was some e-mail traffic that the State Police is not aware of the death threats, so --

MR. TEITELBAUM: If I told you that there's evidence in the record in this investigation from the State Police that they disagreed with a proposal that Senator Bruno's risk assessment, I guess it's called, was not low.

THE WITNESS: Okay.
MR. TEITELBAUM: So notwithstanding whatever e-mail traffic you may be referring to --

THE WITNESS: When was the risk assessment done?

MR. TEITELBAUM: It was a -- I can tell you this, there was an inquiry made to the State Police as to whether Senator Bruno -- whether there was risk with regard to Senator Bruno.

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: I don't know what a risk assessment really is, quite frankly, I don't think it's been done more than once by the State Police.

But my question to you is: Having seen this denial from whomever it comes from on behalf of the Senate Majority Leader, why didn't somebody inquire as to what was meant by he was using it for State purposes before going to the District Attorney?

THE WITNESS: Again, this is a statement from his spokesperson. The documents and the article appear to indicate that the plane is being used, at least predominantly, for political purposes. A discussion was had internally, what

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do we do with these documents, it is potentially illegal, it follows on the Hevesi investigation, which District Attorney Soares had handled, so there was a discussion as to whether we should just hold onto the documents and see if anybody asks for them or whether we should reach out and see if anybody wants them. If they didn't want them, that would be closed. If they did want them, we would provide them. Or we could have just, you know, waited to see if they asked. Those are, basically, the options. So a decision was made to allow a criminal investigatory entity determine whether a crime had occurred.

MR. TEITELBAUM: Let me ask you this about providing documents: With regard to the Manhattan District Attorney's Office, was there a conversation -- did you call the Manhattan DA?

THE WITNESS: I did.

MR. TEITELBAUM: Did you speak to --

THE WITNESS: Dan Castleman.

MR. TEITELBAUM: Dan Castleman. And how long did that conversation take place?

THE WITNESS: Again, it was a short conversation, just like the Soares conversation.
1. MR. TEITELBAUM: When was that?
2. THE WITNESS: July 2nd.
3. MR. TEITELBAUM: Did that conversation take place before or after the Soares conversation?
5. MR. TEITELBAUM: Was it the intention of the Executive Chamber to refer this -- strike refer -- to provide information to both the Manhattan District Attorney's Office and the Albany District Attorney's Office?
6. THE WITNESS: We would have provided information to whichever entity wanted information. We were advising three offices that we had these documents. And if they wanted them, we would provide them to them.
7. MR. TEITELBAUM: What was said during your conversation with Mr. Castleman?
8. THE WITNESS: Again, in sum and substance, I don't remember specific words, I referred to the article, told him that we had documents, indicated that if this was something that they would want to look at, we would provide those documents to him. He indicated that as a general matter, they don't, you know, reach out and
request documents, it would have to be more of a
formal referral. He said he would talk to the
District Attorney and get back to me.

MR. TEITELBAUM: What happened next with
regard to Mr. Castleman?

THE WITNESS: I know we did not end up
sending the documents to the Manhattan DA. I'm
presuming, although I don't have a specific
recollection, that Dan called me back and said,
no thanks.

MR. TEITELBAUM: Was the issue with the
Manhattan DA's Office in regard to the documents
as to whether they would request the documents,
as opposed to the Executive Chamber providing the
documents without a request?

THE WITNESS: I don't recall. I know that
we had internal discussions as to whether we
should simply refer the matter and send it to the
appropriate prosecutorial entities or whether we
should simply advise them that we had the
documents and see if they wanted them. And a
decision was made that we would simply advise
them and see if they wanted them. If they did
want them, we would provide them.
MR. TEITELBAUM: Putting aside the issue of a referral, which you and I know has a particularly technical meaning; correct?

THE WITNESS: Yes.

MR. TEITELBAUM: Okay. Was there a concern on the part of the Executive Chamber that if you gave the documents to a law enforcement authority without the law enforcement authority requesting the documents, it could appear that the Executive Chamber was, essentially, stirring this thing up?

THE WITNESS: I really can't answer that question. I mean, we had conversations about whether we should do a formal referral. You know, as you know, whether you do a referral in part determines how sure you are that there might be actual criminal conduct involved or whether it's just an open issue, whether, as a general rule, a DA will decide whether they have jurisdiction, particularly with the Manhattan DA, although the trips were to Manhattan, you know, there's -- there's a lot of issues go into whether there's a referral or not. My view is this didn't really rise to the level of a formal referral, so we chose not to do it as a referral.
As to whether there was any conversations of what
the appearances of that would be, I'm sure there
were, I just don't recall any specifics.

MR. TEITELBAUM: My question was: Was there
a desire on the part of the Executive Chamber to
have the law enforcement authorities request the
document -- the documentation, rather than having
the Executive Chamber just send them over so that
it would not appear as if the Executive Chamber
was initiating a review by law enforcement
authorities of the possible criminality of the
Senate Majority Leader's conduct?

THE WITNESS: I'll agree with the first part
of it. There certainly was a desire to provide
them, if it was requested. A decision was made
not to do a formal referral. There certainly
would be -- if none of them had asked -- if none
of them had formally -- if none of them had said,
yes, I would like the documents, we would not
have forwarded the documents to them.

MR. TEITELBAUM: Is that because the
Executive Chamber wanted it to be seen as being
initiated by the law enforcement authorities,
rather than the Executive Chamber?
THE WITNESS: I think that's inherent in the question of referral versus a request. There was a desire not to refer but to provide if requested. And so I don't think, you know -- certainly, did not want to be referring the matter to law enforcement. There was clearly a preference that we provide them only if requested.

MR. TEITELBAUM: Did Castleman say to you that the only circumstance under which the DA in Manhattan would review documents is in connection with a referral, but they would not review them as you just wanted them to look at them for possible criminal conduct, or words to that effect?

THE WITNESS: Well, he said, as a general rule, the DA's Office doesn't ask for documents, people refer matters to them. It's not that if we sent them to him, he wouldn't look at them. And to me, there's really either us referring the matter to them or them asking for the documents. I guess there was something in the middle where we just say, look at these documents, we're not actually referring; that was really not part of
the conversation, internally or externally. It was basically do we refer or do we see if they want to request.

MR. TEITELBAUM: And with regard to the Albany District Attorney, when you spoke to Mr. Soares and asked if he wanted to look at these documents, did you explain why he might want to look at these documents?

THE WITNESS: I believe that my conversations with all three offices were short. I think it's apparent from the article and also he, as you know, had just recently done the Hevesi matter, that the use of State aircraft and personnel, actually, is potentially criminal, so I don't recall in my mind the -- whether there was a discussion of that or whether we just both assumed that he knew about it because he had just handled the Hevesi case.

MR. TEITELBAUM: So when you asked him if he would like to see the documents, words or substance, he said --

THE WITNESS: Yeah, basically, I'm sure you saw the -- I'm going to completely rephrase the sum and substance -- I'm sure you saw the
article, we have documents, don't know if this is something you want to review or not. If you do, we can provide the documents to you. You know, and again, I don't know if I had -- I think I only had one conversation. He could have said, I'll get back to you and called me back. But I think there was just one conversation at which he said that he would take the documents.

MR. TEITELBAUM: And did Mr. Soares ever have a conversation with you after the documents were delivered to him concerning the documents?

THE WITNESS: No.

MR. TEITELBAUM: Did he have any conversations with anybody on your staff, to your knowledge?

THE WITNESS: I know that Paul Larrabee took the documents over, but I don't believe that he spoke with District Attorney Soares. You know, I know when he was doing an investigation, so to speak, he certainly -- just like we've had conversations with you, there's certainly conversations that go back and forth. But if you are talking about this time frame, because, again -- to my knowledge, no.
MR. TEITELBAUM: Documents were also made available to the Attorney General?

THE WITNESS: Correct.

MR. TEITELBAUM: When was the communication first with the Attorney General concerning these documents?

THE WITNESS: Same day, July 2nd.

MR. TEITELBAUM: In the sequencing of communications, where was the Attorney General's conversation?

THE WITNESS: I don't recall, but I know from e-mails that I had spoken with the AG and the -- I had gotten answers from the AG and the Manhattan DA before getting an answer from the Albany DA, but again, I don't recall whether that was just because the call occurred later or because he was getting back to me, but certainly -- they were all in a very short time period, essentially successive phone calls.

MR. TEITELBAUM: On July 2nd?

THE WITNESS: Correct.

MR. MOSCHETTI: May I interrupt?

MR. TEITELBAUM: Sure.

MR. MOSCHETTI: It's a little before 5:00.
I think we've gone about five hours, give or take. Do we have much more?

MR. TEITELBAUM: Much more beyond what we've done?

MR. MOSCHETTI: We're at a quarter of 5:00.

MR. TEITELBAUM: We have much more to go. I think we're going to need to break. Off the record.

(A break was taken in the proceedings.)

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

QUESTION: "In the sequencing of communications, where was the Attorney General's conversation?"

ANSWER: "I don't recall, but I know from e-mails that I had spoken with the AG and the -- I had gotten answers from the AG and the Manhattan DA before getting an answer from the Albany DA, but again, I don't recall whether that was just because the call occurred later or because he was getting back to me, but certainly -- they were all in a very short time period, essentially successive phone calls."

QUESTION: "On July 2nd?"
MR. TEITELBAUM: And the communications with the three law enforcement authorities, was that discussed and agreed upon by the people who are participating in the discussion that you described within the Executive Chamber, that there would be three people -- three law enforcement authorities contacted?

THE WITNESS: Yes.

MR. TEITELBAUM: And I know we've covered this to some extent before, but was the Governor aware that you were contacting three law enforcement authorities concerning possible criminal conduct by the Senate Majority Leader?

THE WITNESS: Again, I didn't have a conver- -- I don't recall having a conversation with the governor, I don't even know where he was on July 2nd. So I assume this is the type of matter that someone would have informed him of, it could be that Darren told me he informed him or Rich told me he informed him, but, you know, I just don't have an independent recollection.

MR. TEITELBAUM: Was it you yourself who called somebody at the Attorney General's Office?
THE WITNESS: Yes.

MR. TEITELBAUM: With whom did you speak?


MR. TEITELBAUM: How long was that conversation?

THE WITNESS: Again, it was a short conversation.

MR. TEITELBAUM: What did you say to one another?

THE WITNESS: Same sum or substance, wanted to know whether he wanted these documents. He inquired as to what the other offices -- I think I told all three offices, actually, who else I was talking to -- he wanted to know what the other offices were doing, he expressed a view that he didn't want to be the only person requesting these documents, but, essentially, said that he would be happy to receive them -- strike happy -- he would receive them.

MR. TEITELBAUM: Did he say why he didn't want to be the only person --

THE WITNESS: I don't recall.

MR. TEITELBAUM: -- office receiving the documents --
THE WITNESS: I don't recall.

MR. TEITELBAUM: -- or asking for them?

THE WITNESS: I don't recall if he did.

MR. TEITELBAUM: And what did you tell him in regard to that issue, in other words, his desire not to be the only one?

THE WITNESS: I don't know if at the time of that conversation I had heard back either from the Manhattan DA or the Albany DA, so you know -- I know by the end of the day I knew that District Attorney Soares was seeking them, and I know that we provided them to both offices, but not to the Manhattan DA's Office. So again, these are short conversations and I don't recall specifics.

MR. TEITELBAUM: Did you ever form a view as to whether Mr. Dopp fomented the Odato article?

THE WITNESS: Fomented? What was the word you used?

MR. TEITELBAUM: Initiated it? Urged it?

THE WITNESS: It was always my understanding that Darren was responding to inquiries from -- inquiry or inquiries from Jim Odato.

MR. TEITELBAUM: You'll recall that I had asked you with respect to Exhibit Number 122,
when we were discussing that, whether you agreed
with me that it appeared that -- which was
Mr. Pope's communication with you concerning his
recollection of conversations with Mr. Dopp, I
had asked you as to the nature of those
communications, particularly the reference to
Dopp asking Pope whether Bruno had engaged in
false swearing, which was a crime, and then an
inquiry from Mr. Dopp about a referral to a the
District Attorney, I had asked you whether, as
you read this, had you concluded at some point
that Dopp was out to see to it that the Senate
Majority Leader would be in some way punished,
and you didn't agree with that?

THE WITNESS: I actually don't recall
exactly what you asked me. I know I answered no
to --

MR. TEITELBAUM: Fair enough, fair enough.

What I'm getting to is: Here, in 122, there
is Pope's description of Dopp raising criminal
conduct on the part of Senator Bruno?

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: And on July 2nd, law
enforcement authorities are now engaged?
1 THE WITNESS: Mm-hmm.
2
3 MR. TEITELBAUM: Do you see any connection
4 between the conversation that was had with Pope
5 and what happened on July 2nd?
6
7 THE WITNESS: I mean, they're the same
8 topic, they relate to whether a matter relating
9 to Senator Bruno's flights should be referred to
10 a DA or an IG.
11
12 MR. TEITELBAUM: And it was referred to a
13 District Attorney? Using referral not in the
14 technical sense.
15
16 THE WITNESS: The documents were provided to
17 the District Attorney, yes.
18
19 MR. TEITELBAUM: Right. And would you agree
20 with me that prior to July 2nd and prior to the
21 appearance of the Times Union article on
22 July 1st, there was a desire on the part of, at
23 least, Mr. Dopp to have Mr. Bruno looked at by
24 the District Attorney's Office?
25
26 THE WITNESS: I can't draw that conclusion.
27
28 MR. TEITELBAUM: Okay.
29
30 THE WITNESS: Darren is asking a lawyer a
31 legal question relating to false swearing and
32 whether something is criminal and should be
referred. That's different to me from a decision
that something should be referred.

MR. TEITELBAUM: And I would -- would your
answer be the same if I just pointed out to you
that in Exhibit Number 125, which is a string of
e-mails involving yourself, Dopp and others in
which he asks for research on subjects involving
criminal conduct, that that e-mail to you is sent
at 6:06 p.m. on June 27th and Exhibit Number 67,
which has "for background only", which also
discusses criminal conduct is last -- is printed
at 12 minutes after 8:00 on that same day? Would
that change your view as to whether Mr. Dopp had,
before the appearance of the Times Union article,
a desire to have a law enforcement authority look
at Senate Majority Leader Bruno for possible
criminal conduct?

THE WITNESS: Again, I can't tell you what's
in Darren's mind. Certainly, you know, there are
discussions with reporters about whether
something the Governor has done is appropriate or
illegal or whatever, questions about the campaign
contributions, that's different from a referral.

You should ask Darren if, in his view, he
was looking to have the matter referred to a
district attorney, you know. All I can say is
that he asked me questions about whether
something might be a crime. It's possible that
you would respond by letting the press know but
without doing a criminal referral.

MR. TEITELBAUM: Okay. We are going to
adjourn.

(Whereupon, the examination of DAVID NOCENTI
in the above-entitled matter adjourned at
4:59 p.m.)

*****
STATE OF NEW YORK  ss.

COUNTY OF

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
CERTIFICATION

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
WITNESS INDEX

WITNESS: DAVID NOCENTI

BY MS. TOOHER

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COMMISSION EXHIBIT

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