STATE OF NEW YORK

COMMISSION ON PUBLIC INTEGRITY

---------------------------------------------------------

IN THE MATTER OF AN INVESTIGATION

---------------------------------------------------------

INTO THE ALLEGED MISUSE OF RESOURCES

---------------------------------------------------------

OF THE DIVISION OF STATE POLICE

---------------------------------------------------------

VOLUME II

STENOGRAPHIC MINUTES OF SWORN TESTIMONY

conducted of DAVID NOCENTI on the 14th day of
February, 2008, at the offices of the Commission
on Public Integrity, 540 Broadway, Albany, New
York, commencing at 11:02 a.m.; before SADIE L.
HERBERT, a Shorthand Reporter and Notary Public
within and for the State of New York.
1 APPEARANCES:

3

ON BEHALF OF COMMISSION:

5 NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

6 540 Broadway

7 Albany, New York 12207

8 BY: MEAVE M. TOOHER, ESQ.

9 Investigative Counsel

10 BY: HERBERT TEITELBAUM, Executive Director

11 JOAN P. SULLIVAN, Associate Counsel

12 ROBERT J. SHEA, Associate Confidential
13 Investigator

14

15 ON BEHALF OF WITNESS:

16

17 ANDERSON, MOSCHETTI & TAFFANY

18 26 Century Hill Drive

19 Suite 206

20 Latham, New York 12110

21 BY: PETER J. MOSCHETTI, JR., ESQ.
MR. TEITELBAUM: Mr. Nocenti, you understand you are still under oath?

MR. NOCENTI: Mm-hmm.

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

MR. NOCENTI: Yes, I do.

EXAMINATION

BY MS. TOOHER:

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

A. Mm-hmm.

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

MR. MOSCHETTI: Before you go on, also, David had, since he last testified, had an opportunity, I think, to sit and think about some of the questions and maybe look at some documents, and he would like to correct some -- I think two things.
THE WITNESS: One is there was a colloquy relating to whether the Governor was informed or advised with respect to referrals of the matters to the DA and to the AG. At the time I indicated I didn’t recall any conversations with him. I still don’t recall any conversations with him, but in going through some of the e-mails, I did see that there was an e-mail that I had sent to him on the morning of July 2nd noting the legalities of the referrals to the IG and the AG, so he was informed at that time. I still have no recollection of having a conversation with him. That’s something I didn’t mention when you asked the questions.

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

Q. You just referenced an e-mail that you sent to the
Governor concerning the referrals or the legality of referrals, and as you are aware, we've been provided a large number of documents in this case. I don't recall seeing that particular e-mail. Can you narrow it down with some provision?

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

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

A. It was sent to --

Q. Were other people copied on it?

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

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

A. The laurence@lausp e-mail.

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

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

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

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

THE WITNESS: Yeah.

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

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

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

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

(Conferring).
MR. MOSCHETTI: You might want to tell them that if you are fairly confident.

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

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

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

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


BY MS. TOOHER:

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

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

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

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795  1-877 NYS DEPO
(Commission's Exhibits 127 and 128 were marked for identification.)

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

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

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

A. Mm-hmm.

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

A. Shortly after we took office, among many things we were doing, we were looking to ensure that the aircraft was used for governmental purposes or predominantly governmental purposes, and we thought it...
would be appropriate just to have an additional check, you know, security or whatever, to add a certification line to the bottom that the requester would sign indicating that the aircraft was being used for official State business.

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

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

(A pause was taken in the proceedings.)

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

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

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

Q. Form 128, was that the form that was being used by the Spitzer administration?
A. Again, it seems similar to the one we're using because it has a certification on it. (Commission's Exhibit 129 was marked for identification.)

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

A. Mm-hmm.

Q. Can you identify this document?

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

Q. Used for what purpose?

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

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

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

MR. TEITELBAUM: Is there a written document that the Spitzer administration had prior to July 1st that said, in written form, "Aviation Procedures"? I mean besides what the document was entitled.
THE WITNESS: I think the answer to that is no. I believe that there may have been press requests as to what our procedure were, so there might have been like e-mails to reporters saying, you know, here's our procedures and I know certainly that occurred -- I'm fairly certain that occurred after July 1st. As far as a formalization of procedures however titled, I don't recall there being one.

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

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

BY MS. TOOHER:

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

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

Q. But it does not refresh your recollection --

A. No.

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

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

Q. During the period around July 1st of 2007, did you
have discussions with anyone in the Executive Chamber concerning the aircraft policy as it was in existence?

A. Certainly after the article came out, there were a lot of discussions, a lot of press interest, a lot of inquiries. So yes, there was a large number of discussions about aircraft policy.

Q. And at any time did you consult Commission's 129 concerning the aircraft policy?

A. I don't believe I did.

Q. Are you aware of anyone else in the Executive Chamber consulting Commission's 129?

A. I believe that -- I don't know. I don't believe that I actually -- I knew this document existed, I don't believe I ever pulled it out and looked at it.

Q. But did anyone else in the Executive Chamber ever discuss it with you?

A. You know, there were discussions that there was a document like this, I just don't have a recollection of anyone pointing me to this or discussing this document in particular.

Q. In discussing the aircraft policy within the Executive Chamber in the July 1st time frame, who did you have those discussions with?

A. I would have had them, probably, with Rich, Darren.
Q. Rich?
A. Baum, Darren Dopp, you know, other press officers. There was a lot of questions that were coming in at the time, so...

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

Q. When you say there was some issue about Richard's participation in the formation of the policy while he was with the Ethics Commission; what was that issue?
A. I believe when he was the Executive Director of the Ethics Commission he had had communications with the, then, Counsel to the Governor, who was Jim McGuire
regarding the permissible use of the aircraft, and I believe it was his opinion, based on the Ethics Law and the other laws, that as long as there was a governmental use of the aircraft, it was permissible to use the aircraft for -- permissible to use the aircraft as long as there was a governmental use.

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

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

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

A. I mean, I'm sure -- again, I'm sure I had conversations with Richard prior to July 1st, just because he was the ethics person. I can't recall any
particular conversation. And I'm sure I had conversations with him after July 1st. In a particular -- I believe there was at least one e-mail where he was reminding people of his -- the fact that he had sort of been the one that had set that policy. I don't remember when on July 1st -- when after July 1st that was.

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

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

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

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

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

A. Yes.

Q. Are you aware of any other earlier e-mails from Richard Rifkin concerning the aircraft policy to you?
1   A.   I don't recall.
2   Q.   And did you have conversations with Richard prior
3        to -- Richard Rifkin prior to this e-mail concerning
4        the aircraft policy?
5   A.   Again, are you asking did I have any or do I have a
6        recollection of it?
7   Q.   Did you have any conversations with Richard concerning
8        the aircraft policy?
9                  MR. MOSCHETTI:  I think he just testified
10             that he had.
11   A.   I believe I had conversations after July 1st and
12        before July 13th with Richard Rifkin regarding the
13        aircraft policy.  Sitting here, I can't, you know,
14        remember the conversations or the sum and substance of
15        them.
16   Q.   Did you discuss with Richard Rifkin Senator Bruno's
17        use of the aircraft and the aircraft policy?
18   A.   Again, you are asking me to give you specifics of a
19        conversation I don't recall.
20   Q.   Prior to this e-mail?
21   A.   I believe that after July 1st and before July 13th, I
22        had conversations with Richard Rifkin.  This was all
23        in the aftermath of the article coming out, so -- but
24        I don't have a specific recollection of a
conversation, so I can't say for certain as to
whether, you know -- I would just have to be guessing
as to what the conversation included.

Q. In your experience with Richard Rifkin in the
Executive Chamber, would he be the person you would go
to on ethics issues?

A. On many ethics issues, yes.

Q. Who is the Ethics Officer for the Executive Chamber?

A. Richard Rifkin is.

Q. And the issue of the misuse of the aircraft, would
that come under the area of ethics as far as the
Executive Chamber?

A. He was the Ethics Officer with respect to ethics
issues for Executive Chamber employees, but, frankly,
that was sort of a -- you know, there are many people
who -- not many, but there were other people,
including myself, who would deal with ethics issues as
they arose. If there's an issue that came up that I
felt the need to consult with him on, I would consult
with him on it.

Q. Is it generally known within the Executive Chamber
that Richard is the Ethics Officer?

A. Yes.

Q. Do you know what generated Commission's 130?
A. I do not.

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

A. I don't recall.

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

A. Again, I don't recall.

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

A. I don't recall that either.

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

A. I don't recall.

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

A. I don't know.

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

MS. TOOHER: 130.

MR. TEITELBAUM: -- 130?
THE WITNESS: I don't believe I did.

MR. TEITELBAUM: Why?

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

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

THE WITNESS: (Pause.)

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

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795    1-877 NYS DEPO
THE WITNESS: I have to answer it the same way I answered it before, which is it depends on how much the State functions are and how much the governmental work is. There certainly is a line that would be drawn, in my view, when you would cross the line and have too much political work, and therefore, make the use of the aircraft illegal.

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

THE WITNESS: That is fair to say.

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

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

MR. TEITELBAUM: Did you share with them the notion that there was a continuum?
THE WITNESS: There was no discussion at all, to my recollection, of where the line -- what the legal standard would be.

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

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

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

THE WITNESS: I understand that this was Richard Rifkin's opinion, you know, in probably the late 1990s. In the -- obviously, in the fall of 2006, there was a case involving Alan Hevesi and the use of a State driver and car for his wife, including a report including an inquiry by the Ethics Commission relating to those uses. I believe I actually expressed the continuum theory to Ben Lawsky as to what would be legal or
illegal. And actually, I had been led to believe that the report might indicate that, you know, any use of the aircraft for governmental purposes would make it legal, and I expressed surprise at that.

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

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

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

THE WITNESS: It would not.

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

THE WITNESS: I mean, I know I had discussions after we took office as to how we were going to handle the use of the aircraft. The Governor uses the aircraft much, much more
than anybody else, and we decided to have a
policy that there would have to be predominant,
which I believe to mean well over 50 percent, of
governmental work before he would use the State
aircraft.

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

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

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

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

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

THE WITNESS: I will agree that there was no
mathematical precision to what predominant was.
But we certainly wanted the primary purpose to be governmental before we let the aircraft be used.

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

THE WITNESS: I don't --

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

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

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

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

THE WITNESS: I do not know. I do not know.
But we would know where the Lieutenant Governor was going and what he was doing, so we would easily be able to assess that.

BY MS. TOOHER:

Q. Who was responsible for assessing that?

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

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

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

Q. What documentation was provided to her?

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

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

A. I know that she has come to me in the past on use by the Governor or Lieutenant Governor, so I don't know.
if I was the only person that she would consult on these issues.

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

A. I don't recall.

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

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

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

A. I do not know.

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

A. Not to my knowledge.

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

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

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

A. I know that they were all party to discussions early on in the administrations as to how we were going to
be utilizing the State aircraft and what rules we were going to use for the Governor.

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

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

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

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

Q. What about Senator Bruno?

A. We simply required Senator Bruno to provide specification of what the aircraft was being used for and to certify to that. My understanding is that they would just provide the information necessary for the
Q. Now, Senator Bruno has been in his position with the majority prior to the Spitzer administration; is that correct?
A. That is correct.
Q. And he had been using the State aircraft prior to the Spitzer administration; is that correct?
A. That is also correct.
Q. And the policy that Richard Rifkin articulated had been in place prior to the Spitzer administration; is that correct?
A. I mean, I know Richard Rifkin provided an opinion to Jim McGuire regarding what, you know -- what was the permissible use under the Ethics Law. I do not know what policy the Pataki administration actually used. There is, as you know, these written procedures, which says, the aircraft is to be utilized only if the official's trip is related to State business; it doesn't say how much. So I don't know from this document or from other sources what their actual policy was with respect to allowing the Governor, former Governor to use the aircraft.
Q. But as far as Senator Bruno's experience with the aircraft, there was no new written policy to guide him
from the Executive Chamber?

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

(Conferring.)

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

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

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

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

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

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

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

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

THE WITNESS: No.

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

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

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

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

MR. TEITELBAUM: Marlene Turner was aware of the predominant use policy?
THE WITNESS: Yes.

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

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

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

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

MR. TEITELBAUM: And she was told that?

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

BY MS. TOOHER:

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

A. Correct.

Q. Did it apply to him as well?

A. We never asked for a minute-by-minute specification of how the Senator was using the aircraft. You know, we, basically, made a determination that we weren't going to be using the aircraft as a -- you know, that if he came and said he needed the aircraft for governmental
purposes and he filled out the form and was laying out governmental purposes, we would allow him to use the aircraft. We did not ask for an hour-by-hour determination to figure out whether he was across the line or not across the line. That's a matter for him and his counsel to resolve.

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

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

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

THE WITNESS: Correct.

MR. TEITELBAUM: What law are you referring to?

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

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

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

AMF REPORTING/CRITCHER VIDEO (518) 452-1795 1-877 NYS DEPO
Commission -- I'm sorry -- the Public Integrity Commission has laid out as the rules, but, you know, I think that your opinion lays out the applicable law.

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

THE WITNESS: Correct.

MR. TEITELBAUM: And what was that based on?

THE WITNESS: The aircraft had been used for as long as the State has had aircraft. I'm not aware that there was ever reimbursements or any questions about reimbursements in the past. It was only, you know, more recently where the issue arose. But I know that in the Cuomo administration, that there was not a, you know, daily determination of percentage of use or reimbursement. I wasn't in the Pataki administration, but no one ever advised me that they had started to do daily or whatever reimbursement based upon use of the aircraft. And we decided to only use the aircraft for
predominantly governmental purposes, and I
actually don't see at that -- I don't necessarily
believe at the time that such reimbursement was
legally required.

BY MS. TOOHER:

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

A. There was.

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

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

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

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

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

MR. TEITELBAUM: You mean that if you use
the State aircraft for purely political purposes, your understanding was, prior to the issuance of our first two opinions, that that would be permissible if there would be reimbursement?

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

MR. TEITELBAUM: Regardless of reimbursement?

THE WITNESS: Regardless of reimbursement.

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

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

MR. TEITELBAUM: 75 percent. 25 percent, if there were a 75 percent situation, purely for,
let's say, political purposes, would not be reimbursable?

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

BY MS. TOOHER:

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

A. Not to my knowledge.

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

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

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

THE WITNESS: Can you repeat the question.

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

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

MR. MOSCHETTI: I believe that was in his
testimony. You are repeating the same
questions -- let me finish, please. Can I put it
on the record?

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

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

MR. MOSCHETTI: Why would you be repeating
the same questions now? You concede, it's the
same question you asked the last time we were
here, and in fact I think it was asked more than once. So now we are here on the separate date asking the same exact questions. I think there's no doubt about that the record will bear that out.

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

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

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

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

(A discussion was held off the record.)

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

MR. MOSCHETTI: I'm very clear.

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

MR. MOSCHETTI: If you have the transcript
with you, I assume that it would take seconds.

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

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

THE WITNESS: Should we take a break?

MR. TEITELBAUM: Take a break.

(A break was taken in the proceedings.)

MR. MOSCHETTI: The reason that I am
concerned about the nature of the repetitive
questions is that the last time we were here at
the conclusion of Mr. Nocenti's testimony, I
believe we were told that we had completed the
questions running from January to July 1st and
the release of the article by the Times Union and
at the next session we would be going into the
issue concerning the 20th, 21st and 22nd of July.
And so I do note that there's been an hour of questioning and we're not anywhere near that area. Now, I think the next question poses an area that we've already been through and that's why I think these questions are repetitive.

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

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

MR. TEITELBAUM: I didn't say punishment.

MR. MOSCHETTI: No, in your little statement, that no good deed goes unpunished. The point is -- and it's not a question of one or
two or a few questions, it's an hour now of
questioning.

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

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

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

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

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

(A discussion was held off the record.)

BY MS. TOOHER:

Q. Was there a point at which you were requested by the
   Attorney General's Office or the Inspector General's
   Office to inquire of the Chamber as to prior FOIL
   requests concerning Senator Bruno's use of the
aircraft?
A. Yes.
Q. And what was the circumstances of that?
A. I believe one of those two offices -- you said Senator Bruno's use, I believe that one of those two offices asked me for any FOIL requests relating to use of the aircraft.
Q. And what did you do in response to that request?
A. I believe I sought to gather any FOIL requests and provide them to whichever investigatory entity had asked for them.
Q. And did you find any FOIL requests?
A. I did.
Q. What was it that you had located?
A. I don't recall.

(Commission's Exhibit 131 was marked for identification.)
Q. I'm showing you what's been marked as Commission's 131 and ask if you can identify this document?
A. This is an e-mail that I sent to Kris Hamann sending her six FOIL requests for flight manifest records.
Q. And I believe in the first line of the e-mail, it indicates they start with the Odato request on 6/27 and the rest come thereafter?
A. Correct.

Q. Is that a reflection that you could not find any before the 6/27 date?

A. That is correct.

Q. And have you ever discovered in the records of the Executive Chamber a FOIL request prior to the 6/27 Odato request concerning aircraft records?

A. I don't believe I have.

Q. And did you ever discuss with Darren Dopp whether or not there were FOIL requests prior to the 6/27 Odato FOIL request?

A. I'm sure I've had conversations with Darren about that during this time period.

Q. And did he indicate if he had a different understanding than that?

A. He never advised me that there was a formal written FOIL request prior to the Odato request.

Q. And did you ever inquire of Richard Baum if he was aware of a prior FOIL request?

A. I don't recall asking Rich Baum that.

Q. And did you ever speak to Bill Howard about whether or not he was able to locate a prior written FOIL request?

A. I don't know that Bill Howard was looking for them,
and I don't recall having a conversation with him about it.

Q. What did you do in terms of responding to Kristine Hamann's request?

A. I believe I went to our FOIL Officer and asked for any FOIL requests, and I may have asked Darren as well, because he may have gotten requests from reporters.

Q. And did you speak to anyone else?

A. I don't recall.

Q. And do you know when the Governor became aware of the materials that were released prior to the -- or in response to the June 27 Odato FOIL request?

A. What do you mean by "became aware of the materials"?

Q. The materials that were being released to or had been released to Mr. Odato?

A. I believe that prior to July 1st, he was aware that documents were being provided to Mr. Odato. As to whether, you know -- I believe prior to July 1st he was aware that documents were being provided to Mr. Odato.

Q. And what was that knowledge based on?

A. I believe the Governor actually said it publicly that he knew that information was being provided in response to the media requests.
Q. Do you know when he saw the documents that were provided?

A. Personally, I don't know if he ever saw the documents.

Q. But you know he was aware of the information?

A. I don't know what you mean by the information.

Q. The --

A. I know that he -- he said publicly that he had been -- that he believed that Darren was responding to media requests, that documents were going to be provided and that there was going to be a story. So he certainly knew that documents were being provided prior to July 1st.

Q. Did you have conversations with the Governor in this regard?

A. I didn't have any conversations with him about this prior to July 1st, other than, to the best of my recollection, the May 17th conference call, which I believe took place in Rich Baum's office.

Q. At a certain point in time there was a subsequent FOIL request from Mr. Odato, were you aware of that request?

A. Yes.

Q. And can you tell me what you know about the circumstances of how that request arose?
A. I believe that Darren sent me an e-mail indicating that Jim Odato was looking for additional documents and asked me what he should do. And I believe I told him to have Odato send in a FOIL request.

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

A. I actually do not recall.

(Question: You have in front of you Commission's -- what's been marked as Commission's 132. Can you identify this document?)

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

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

A. My understanding is contained in Darren's e-mail to me. He says that Jim Odato stopped by to ask for records for the month of June, informed me that he had...
obtained records from January to May and asked me how
to proceed. He asked whether the fact that there are
ongoing reviews effects our ability to respond, and so
I told him that if he -- essentially, if he wanted
more documents, he should FOIL them.

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

A. No.

Q. -- prior to making this recommendation?

A. No.

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

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

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

A. It would have, but I don't -- we would treat a FOIL
request as covering any documents we have up to the
receipt of the FOIL requests, so that would be
June 27th.

Q. And as of the July 10th date, had you had an
opportunity to review the response to the FOIL
request?

A. I'm sure I -- I know I received them, I'm sure I at
least looked through them, looked at them, so yes.

Q. And were any records for the month of June included in
that FOIL request at that time?

A. I don't recall.

Q. And did you ever discuss the July 10 FOIL request with
anyone else? You indicated you discussed it with
Darren and with Mariya?

A. Are you talking about -- because there was,
subsequently, a July 10th FOIL request. I don't
recall. I don't know if it was sent to me at that
time or whether it was just sent to Mariya.

Q. Did Mariya Treisman ever discuss the July 10th FOIL
request with you?

A. I don't recall.

Q. And during negotiations with the Attorney General's
Office, was there discussions concerning the July 10th
FOIL request with anyone?

A. Again, I don't recall.
Q. Did you reach out to either Sean Maloney or Peter Pope concerning the July 10 FOIL request?

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

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

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

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

A. I don't recall.

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

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

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

Q. Sure.

A. (Pause.)

It's an e-mail from me to Sean Maloney and Peter Pope on July 22nd asking Sean to forward to the AG's
Office an -- to Linda Lacewell in the AG's Office an
e-mail that I believe he had sent to other people in
the AG's Office on the 21st and -- you know, telling
her we would respond to her third question at our,
then scheduled, 11:00 o'clock call and indicating that
it would be helpful to know the genesis of Jim Odato's
second FOIL request.

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

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

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

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

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

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

Q. And after the exchange with Darren on the 10th, there
was a subsequent FOIL request from Mr. Odato?
A. There was a subsequent FOIL request from Mr. Odato.
Q. And did Darren ever advise you that he had told
Mr. Odato that you or counsel or lawyers in the
Chamber had requested the second FOIL request?
A. I don't recall if he told me that or not.
Q. Did you ever become aware that he had relayed that
information to Mr. Odato?
A. I believe that I've seen an e-mail from Darren to
Mr. Odato indicating that the lawyers thought a second
request was necessary.
Q. And in Commission's 133 there's a request for making
dopp and Baum available for interviews, it appears to
come from Linda Lacewell in the Attorney General's
Office?
A. Mm-hmm.
Q. Can you identify who Linda Lacewell is?
A. I believe she's an attorney in the Attorney General's
Office.
Q. What was her role in the investigation?
A. She was one of the attorneys who was working on the
investigation for the Attorney General's Office.
Q. And was this the first request that you had received
concerning the interview of Mr. Dopp and Mr. Baum?
A. I believe that the first request was on the 21st.
Q. And who did that come from?
A. Somebody in the AG's Office. I don't recall who.
Q. Was that request made of you?
A. I don't recall who.

(Conferring.)

A. Just to correct, it was either the 20th or the 21st. It might have been the 20th. The 21st was a Saturday, so I believe it was Friday the 20th, was the first request.

Q. Was that request made of you?
A. I don't recall who they made the request to.

Q. Who was in contact with the Attorney General's Office at that juncture, on the 20th, from the Executive Chamber?
A. Sean, Peter and I were all in contact with the Attorney General's Office during the general time period.

Q. Was anyone else from the Executive Chamber?
A. Not to my knowledge.

Q. And when that request was relayed to the Chamber on the 20th, who was advised as to the request?
A. I know that Sean, Peter and I knew of it, and I believe that we advised Lloyd Constantine. I don't specifically recall when we advised the Governor.
Q. And did you advise Mr. Baum and Mr. Dopp?
A. I don't personally remember advising them. I know at some point they were advised of that. So when you say "did you advise", I mean, they were advised by one or the other of us. I just don't recall who had specific conversations.

Q. Do you know when they were first told of the request for interviews?
A. I do not.

Q. Do you know if they were told on that Friday, the 20th?
A. I know the request came in late. I can't say for certain whether we told them on the 20th or the 21st.

Q. And did either Mr. Baum or Mr. Dopp ever indicate a desire to testify before the Attorney General?
A. Mr. Dopp certainly did.

Q. When did you have conversations with Mr. Baum?
A. Either on the 20th or the 21st. Probably the 22nd as well.

Q. And what was the sum and substance of those conversations?
A. Sum and substance was that it was our recommendation that he not testify and that we submit sworn statements instead.

Q. And did Mr. Baum have an opinion in that regard?
A. I know that he felt that at a minimum he wanted to do a sworn statement. I don't recall his view as to whether he wanted to testify or not.

Q. And did he discuss this with you directly?
A. Yes.

Q. That he wanted to provide a sworn statement?
A. Yes.

Q. And did he discuss it with anyone else in the Executive Chamber, to your knowledge?
A. I don't know who else he discussed it with.

Q. And was there a reason that you felt Mr. Baum should not be testifying?
A. Prior to receiving the request for Darren Dopp and Rich Baum to testify, the AG's Office had informed us that they had essentially concluded that there was no criminal conduct and no illegal, you know, violations of law involved. There were -- we were in discussions with respect to how the matter was going to be concluded. It was a unique situation as it was. The Attorney General's Office is the lawyers for the
State, they represent the State in numerous matters, they represent the Governor, even in his individual capacity, so having authorized our own lawyers to do an investigation and having been concluded that there was no illegal conduct, no violations of law, it was my view at that point that it would be preferable simply to give them statements that addressed the central issue of -- that they were looking at, specifically the surveillance issue, but not to have them go ahead and testify.

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

THE WITNESS: I believe I had a conversation with the Attorney General in which he indicated that -- there was a parallel investigation going on with the Inspector General, the Inspector General had asked for Darren's testimony. I think they had indicated that they wanted to be interviewing the people the IG would be interviewing, and so I know that -- Darren certainly, and then towards the end of that time
period, we provided them with a couple of
e-mails, I believe between Bill Howard and Rich
and/or Darren, and I think that also -- I believe
they indicated that also played a role in their
desire to have them testify.

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: Yes.

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

THE WITNESS: No.

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

THE WITNESS: Mr. Baum had also not
tested.

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

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

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

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

THE WITNESS: I do not recall.

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

THE WITNESS: Yes.

BY MS. TOOHER:

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

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

Q. And do you know approximately when that was?
A. I do not know when he did that first draft.

Q. And was Mr. Baum provided with a copy of his
statement?

A. Of Mr. Baum's statement?

Q. Yes.

A. Yes. He was shown a draft as well.

Q. Did he participate in the initial drafting?

A. I don't believe he participated in the initial
drafting, no.

Q. Did he participate in revising the statement?

A. I know that there were a couple of drafts. There was
at least one draft in a file. I don't know if there
were intermediary drafts. I'm sure I had
conversations with him. I don't recall whether I was
proposing changes that he was okay with or he was
proposing changes to me to suggest to change the
draft.

(Commission's Exhibit 134 was marked for
identification.)

Q. You've been provided what's been marked as
Commission's Exhibit 134. Can you identify this
document?

A. This is an e-mail that I sent to Rich Baum on the 22nd
sending him a draft statement.
Q. Was this the first communication you had had with Mr. Baum concerning the draft statement?
A. No. I'm sure I talked to him about the fact that we wanted to do a statement in advance of sending him a draft.
Q. Was this the first version of the statement that you had forwarded to Mr. Baum?
A. To the best of my recollection, this is the first written version that I had sent to him.
Q. And did you have conversations with him about the statement at that time?
A. I believe that I did.
Q. And what was the sum and substance of those conversations?
A. I believe I sent him the draft and talked to him about, you know, what he thought of it.
Q. And what was Mr. Baum's reaction to the draft?
A. I don't recall. I don't recall. I know there was a later draft. I don't specifically recall what he said one way or the other on this.
(Commission's Exhibit 135 was marked for identification.)
Q. You've been provided a copy of what's been marked as Commission's 135 and I'll ask you if you can identify
1 this?
2 A. The e-mail that I sent to Rich Baum also on the 22nd
3 entitled, "New version".
4 Q. And 134 was sent at 11:06 a.m.?
5 A. Mm-hmm.
6 Q. And 135 was sent at 11:07 a.m.?
7 MR. TEITELBAUM: 11:17.
9 A. Mm-hmm.
10 Q. It's a fairly short period of time?
11 A. Mm-hmm.
12 Q. What were the conversations that you had with Mr. Baum
13 that generated this second e-mail?
14 A. I actually don't recall if there was a conversation
15 in-between. It's -- you know, it's possible that I
16 sent him something and then, you know, decided to add
17 something and sent him a new version. Again, I know I
18 had conversations with him about drafts. I can't say
19 for certain that I spoke with him between 11:07 and
20 11:17, but it is certainly possible that I did so and
21 discussed the 11:06 e-mail.
22 Q. Were you having conversations with other members of
23 the Executive Chamber about this statement during that
24 time?
A. Yes. I was speaking with Sean Maloney and Peter Pope.

Q. And do you recall the sum and substance of those conversations?

A. The sum and substance was that we wanted to provide statements to the AG's Office relating to the, you know, core allegations that they were looking into, and so we were drafting up something to do that.

Q. And as I look at 134 versus 135, the last sentence, "I believed at the time that regularly prepared and maintained itineraries, what I believed to be historical documents were being collected and summarized in response to the media request" --

A. To a media request.

Q. -- "to a media request". Did you make that addition to the statement?

A. I know I e-mailed it, so I definitely typed it in. I don't recall what the genesis of adding that sentence was.

Q. As you sit here today, what's your understanding as to the meaning of that sentence?

A. The meaning is that Rich Baum believed, during the May, June time period, that what is described as regularly prepared and maintained documents were being provided in response to the media requests. I believe
that is in contrast to some that might be created or
recreated.

Q. And is that an accurate recitation of what occurred
with those records?
A. This is, I believe, an accurate recitation of Rich
Baum's beliefs.

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

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

Q. You've been handed what's been marked Commission's
Exhibit 136. Can you identify that document?
A. This is an e-mail that I sent to Rich Baum at
1:04 p.m. on the 22nd.

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

Q. Now, as I look at 136 compared to 135, the statement
caring the historical documents being collected
and summarized is no longer contained in the
statement?
A. Mm-hmm.
Q. Did you have any discussion with Rich Baum concerning taking that statement out?

A. Again, I was talking to Rich Baum at the time, we were talking about what the statement should say, so I presume we discussed, you know, what should be in or out of the statement.

Q. Who was making recommendations in terms of the content of the statement?

A. I know I was talking to Rich and Sean and Peter.

Q. All about the content of the statement?

A. Yeah.

Q. And did Mr. Baum make any recommendations concerning removing content from the statement?

A. I mean, this is a revision. I'm not so sure I would characterize it as removing content.

Q. Removing that sentence?

A. I don't recall whether we said to him, you know, there's another version, whether -- I just don't recall the specific back and forth that would have occurred.

Q. And was Mr. Baum given final say over the content of his statement?

A. He was.

Q. And was that reviewed by anyone else?
A. I don't know who else might have reviewed the statement, other than me, Sean and Peter.

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

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

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

THE WITNESS: We made a determination that because they were going to be -- we knew they were going to be doing a report, they were going to be -- you know, certainly, Mr. Dopp would be referred to in the report, we didn't know at this time whether Mr. Baum would be referred to in the report or not, they were two high level members of the administration, the core questions at that time that we were aware of were the surveillance question and, you know, essentially, you know, what I'll describe is as either the recreation of
documents or whatever their standard operating procedures were, and we felt it was appropriate to give them sworn statements setting forth -- you know, basically, indicating that they had not directed any surveillance of the Senator, which was the core allegation. I mean, basically, this whole thing started because Senator Bruno had publicly stated that he had -- that surveillance had occurred, the AG's Office told us they concluded that it had not occurred; we were completing the record by providing statements.

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

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

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

THE WITNESS: If you are following them around and tracking where they're going, I would
think that that's surveillance.

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

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

MR. TEITELBAUM: What was their reaction?

THE WITNESS: They accepted the statements.

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

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

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

THE WITNESS: Asked which question?
MR. TEITELBAUM: Could I have Mr. Nocenti's last answer read back.

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

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

MR. TEITELBAUM: Who asked the question?

THE WITNESS: It was a pending question.

MR. TEITELBAUM: Who posed it?

THE WITNESS: I don't think there was a who. For example, Commission's Exhibit 133, there's an e-mail from Linda Lacewell that went to me, to Ben Lawsky, to Ellen Biben, cc'ing Peter Pope and Sean Maloney asking some, quote, "pending questions", unquote, including whether you are making available Dopp and Baum for interviews. I know that I had conversations with Ben Lawsky.
about it, so, you know, it was just one of the
outstanding issues that was being closed down.

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

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

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

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

MR. TEITELBAUM: For their purposes?

THE WITNESS: It was my understanding that
they had a preference for testimony, but they
accepted the statements and concluded their
report.

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

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

BY MS. TOOHER:

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

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

Q. And how was that relayed to you?

A. Again, I believe that we informed them on the call on
the 22nd, the conference call at 2:00 o'clock. I may
have had prior conversations with Ben Lawsky about it. Again, they did not indicate to us that that was not acceptable. So I don't recall whether there was a formal, you know, "we hereby acknowledge", type of statement.

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

Q. Mr. Nocenti, you've been provided a document marked Commission's 137. Can you identify this document? A. It's an e-mail from Sean Maloney to Terry Kindlon, subject, "Statement", 5:33 on the 22nd.

Q. Who is Terry Kindlon?

A. He was Darren Dopp's lawyer.

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

A. Mm-hmm.

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

A. Mm-hmm.

Q. Do you know, in relation to the 5:33 p.m., on the 22nd, time when Mr. Maloney had received word that the statements were going to be acceptable?
Again, there was a conference call that began at 2:00 o'clock, it went for, you know, a significant period of time. I don't know exactly how long. I don't recall whether there was a subsequent conversation with respect to confirmation or whether he's referring to the discussions on that call.

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

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

Q. Did Richard Baum participate --

A. No.

Q. -- in that telephone call?

What about Lloyd Constantine?

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

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

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

(Question continues without further transcription.)
Commission's 138. Can you identify this document?

A. It's an e-mail that Rich sent to the Governor on July 28th.

Q. And did you receive a copy of this e-mail?

A. I did.

Q. And can you tell me in sum and substance what the subject matter of this e-mail is?

A. The subject matter of this e-mail is a discussion was had with respect to the possibility that Rich Baum would be moved from being Secretary to the Governor to some other position.

Q. I want to draw your attention to Paragraph 4, which indicates, "When David called me into the office last Saturday", and the date of this e-mail is Saturday the 28th?

A. Mm-hmm.

Q. So the prior Saturday. Would that have been you, David Nocenti?

A. Yes, that would be me.

Q. And "to lay out the plan going forward"; what was that plan?

A. The plan was to -- that the AG's Office was going to be issuing a report, that we would be taking -- you know, potentially taking some disciplinary actions
against individuals, the IG's Office would be closing its investigation as well, and, basically, how this matter was going to be concluded.

Q. And the e-mail goes on, "I said that I had nothing for fear from testifying, that I was willing to do so and that my failure to testify would make my position untenable". Did Mr. Baum relay that to you at the Saturday meeting?

A. I believe that he did.

Q. That he wanted to testify?

A. That he was willing to testify.

Q. And he continues, "Everyone there pushed me very hard to go along with the path that was being laid out"?

A. Mm-hmm.

Q. Who is "everyone"?

A. I don't recall who -- I actually don't recall the Saturday meeting, I don't recall who was in the meeting. I know this refers to Lloyd being in a meeting on the 21st, so I'm sure I was at the meeting. I don't recall -- I can't picture even where the meeting was.

Q. When Mr. Baum relays "pushed me very hard", what do you think he's referring to?

A. Look, there's a couple of ways this matter could have
been concluded; one would have been to have him testify, another would have been to have him not testify. It was my view, and I'm sure I expressed it to Rich that the AG having concluded and the IG having concluded that there was no illegal conduct, it would be better just to have them conclude the matter without testifying.

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

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

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

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

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

THE WITNESS: Again, I don't recall this meeting in particular. He felt that he -- he was certainly willing to testify. He absolutely felt that he wanted to do a sworn statement of some sort, so, you know, like any time you are in a
meeting where people are expressing different views, he, you know -- we were laying out a view and he was expressing his view about it.

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

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

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

THE WITNESS: It does not.

BY MS. TOOHER:

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

A. I know that we were having discussions -- look, there
were a lot of meetings that weekend, a lot of discussions that weekend and the week leading up to it. I believe I was at a meeting when Lloyd had expressed the view that to the extent we needed to talk about Rich, we should talk about Rich without Rich in the office. I just -- I, frankly, don't remember this Saturday meeting.

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

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

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

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

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

A. He did not.

Q. You are being provided a copy of what's been previously marked Commission's Exhibit 57. Can you identify this document?
A. This is Rich Baum's statement.
Q. This is his final statement as submitted to the Attorney General's Office?
A. Yes, it is.
Q. And you notarized this statement for him?
A. I did.
Q. And that was done on the 22nd?
A. It was.
Q. And where was this statement notarized?
A. I believe it was notarized in Rich's office.
Q. And was anyone else present when you notarized the statement?
A. I don't believe so.
Q. And there were other -- there was another statement provided to the Attorney General's Office from the Executive Chamber; is that correct?
A. That is correct.
Q. And who provided that statement?
A. I think I simultaneously e-mailed both statements to the AG's Office.
Q. And who executed the other statement?
A. Darren Dopp.
Q. And how was the determination made that Mr. Dopp would provide a statement?
A. It was, again, all in the same discussions that we were having on Friday the 20th. They had asked for them to testify, we decided to offer sworn statements in lieu of testimony, so that's what we ended up offering.

Q. And had Mr. Dopp indicated a desire to testify?
A. Mr. Dopp did indicate a desire to testify.

Q. And did you discuss that issue with Mr. Dopp?
A. I did, yes.

Q. What were those discussions?
A. Well, the only discussion that I recall with Darren on that issue was a meeting in my office with Darren, Peter Pope, Sean Maloney and Terry Kindlon.

Q. And what was the sum and substance of that conversation?
A. I had sent Terry Kindlon a draft statement for Rich, he -- for his review, he sent back the final version, which was changed in some -- to some extent. I put that on letterhead, and I believe that he was asked at some point to -- actually, I think it was Commission's Exhibit 137, Sean Maloney indicated that we needed to have it executed that evening and asked them to come to my office.

Q. And was that the first meeting that you had where they
came in to execute it, or was there a prior meeting?
I'm just confused.

A. I don't -- I think that was the first time I had
actually met Terry Kindlon. I know that there were
discussions that Sean and Peter had had with Darren
and Terry, but I was not a party to those
conversations.

Q. Had Mr. Dopp relayed to you directly, prior to your
meeting with Mr. Kindlon, his desire to testify before
the Attorney General?

A. He may well have, I just don't recall it.

Q. Were you aware of Mr. Dopp's personal relationship
with the Attorney General?

A. Yes.

Q. And had he discussed that with you in terms of his
testimony?

A. I don't recall that. I don't recall that.

Q. You don't recall having a conversation with him in
that regard?

A. You know, I know I had been talking to Darren during
this time period. I don't recall having a
conversation with him about his personal relationship
with the Attorney General. It even could have come up
in the meeting with Terry, I just don't -- you know, I
don't recall -- I don't recall actual words that were said in that meeting, you know, so -- but, you know, I'm aware of Darren's relationship, I just don't remember talking to him about it at this time.

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

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

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

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

A. We just had a, you know, hour and half, I don't know how long it was, conversation where they had laid out their -- the AG's belief that there was no surveillance, there was no violations of law, but proper practices weren't used. They felt that the -- they surmised that the FOIL request may have been a pretext -- I know that that's a word that they used -- I know that they made recommendations with respect to
use of the State aircraft. I don't believe we knew
exactly what the report was going to say, something
about, I believe, we should consider whether
disciplinary action should be taken, so my guess is
that he was aware of the sum and substance of what the
report was going to say.

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

Q. And when was the determination made that Mr. Dopp was
not going to testify?
A. It was sort of a simultaneous, you know -- Dopp, as
opposed to Baum, I think it occurred essentially at
the same time. We discussed it internally, a
determination was made that we would offer the sworn
statements instead, the AG's Office didn't object to
that, and that's -- you know, not necessarily a
particular point in time.

Q. And when was that relayed to Mr. Dopp?
A. I don't know. Again, Sean and Peter were doing most
of the conversations with Darren and his lawyer, so,
you know, my guess is it would have been -- final
determination would have been sometime after the
conclusion of the conference call with the AG's
Office.

Q. I'm going to show you what's been previously marked as
Commission's 114 and ask you if you can identify this
document?

A. It's an e-mail that Sean sent to me and to Peter on
the 21st.

Q. And the first chain in the e-mail at 10:23 p.m. on the
20th from Peter Pope to you and Mr. Maloney, "Do we
need to discuss this with DD's lawyer? I think we do.
DD cannot just read in the report that we declined to
produce him."

A. Right.

Q. DD would refer to Darren Dopp?

A. That's correct.

Q. It appears from this e-mail that there was a
determination Friday evening, the evening of the 20th
that Mr. Dopp was not going to testify?

A. Well, when we received the request, we had internal
discussions about it. It was our view that he -- that
it would be better not to have these individuals
testify. There were certainly conversations that
were -- you know, that transpired thereafter about
this issue, so there was no final determination, but I
know that my immediate reaction upon receiving the
request for the testimony was that there was -- it was
better not to have them testify, but this was not a
final determination by 10:23 p.m. on the 20th of July.

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

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

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

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

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

A. I don't know. I know that Sean and Peter were having
conversations with either Terry alone or Terry and
Darren together. I just, you know...

Q. Do you know if they were discussing the issue of Darren testifying before the Attorney General?

A. I know that they were discussing the issue of Darren testifying, I just don't know who said what to whom.

Q. Do you know if Mr. Kindlon was ever directly in contact with the Attorney General's Office?

A. I do not know.

Q. Do you know if Darren Dopp was ever directly in contact with the Attorney General's Office during the 20th to the 22nd?

A. I don't know that either.

Q. I'm providing you what's previously been marked Exhibit 115 and ask you if you can identify this document?

A. This is a draft statement that I sent to Terry Kindlon at 1:00 o'clock on the 22nd.

(Commission's Exhibit 139 was marked for identification.)

Q. You've been provided what's been marked as Commission's 139. I'm going to ask if you can identify this document?

A. This is an e-mail that Terry Kindlon sent to me on the 22nd, sending me, basically, Darren's final statement.
Q. And this is at 1:43 p.m.?
A. Correct.
Q. Did you have conversations with Mr. Kindlon during this time frame concerning the content of the statement?
A. I don't believe I did.
Q. Do you know if he was discussing the contents of the statement with anyone else at the Executive Chamber?
A. I do not know.
Q. And were you aware of the revisions that Mr. Kindlon was making in terms of the content of the statement?
A. I know that the final version differed from the version that I had sent to him.
Q. And what was your understanding as to what those differences were?
A. You know, I would have to go line by line and read them.
Q. Well, in sum and substance, did anyone relate to you what Mr. Kindlon was trying to achieve in making these changes?
A. No.
Q. If we compare Commission's 115 with Commission's 139, the second paragraph on Commission's 139 commences, "I received requests for information relating to the use
of State aircraft by public officials from members of the media."

A. Mm-hmm.

Q. Did Mr. Kindlon insert that language?

A. You mean, as opposed to Darren or as opposed to --

Q. Well, the changes that are provided by Mr. Kindlon in his statement --

A. Yeah.

Q. -- those were changes that he relayed to you?

A. I sent him an e-mail with a particular version; he sent back an e-mail that had a different version, so any changes would have been made, you know, by him or whoever he was talking to at the time.

Q. And the change that he had "received requests for information", was there ever any discussion concerning that change to the statement?

A. I don't recall having any discussions with Terry regarding the statement, you know, the changes to the statement. He sent me an e-mail that was different from what I had sent to him, it said "final", so I accepted that as the final version.

Q. Did you have discussions with anyone else in the Executive Chamber about the changes?

A. I mean, I may have talked to Peter and Sean about the
fact that it was different, but I don't recall, you
know, parsing the words.

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

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

Q. Did you forward these changes to the Governor?

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

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

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795  1-877 NYS DEPO
Commission's Exhibit 140 and I ask you if you can identify this document?

A. This is an e-mail from the Governor to me responding to an e-mail that I sent to him forwarding Darren's final statement.

Q. And the e-mail that you sent to the Governor is at 10:49 on July 22nd, and his response to you is at 1:52 p.m. on July 22nd, but the language in the statement you provide is the language that's set forth in the 1:43 version from Mr. Kindlon. Can you explain that?

A. Yes. I do not believe that I sent this to the Governor at 10:49 a.m. Eastern Standard Time.

Q. Can you explain why it would indicate --

A. For whatever reason, sometimes on e-mails, it has Greenwich Mean Time and sometimes it has other times. The time on the e-mail is not necessarily always Eastern Standard Time.

Q. And so the time that he responds to you, the 1:52 p.m. which correlates more with the e-mails that go back and forth --

A. Mm-hmm. I have to assume that that was 1:52 p.m. Eastern Standard Time.

Q. Do you know when you sent the revised statement in
accordance with the response that you got?

A. After I received it from Terry Kindlon.

Q. So sometime after the 1:43 time frame?

A. Yes.

Q. And had you had prior discussions with the Governor concerning Darren's statements?

A. I mean, I had had conversations with him during the day. I don't recall having conversations about exactly, you know, what his statement -- the words in the statement used, other than that we were -- he was putting in a statement indicating that he had never, you know, directed a surveillance program, or whatever, you know, was in the various versions.

Q. Well, this is -- the subject matter on your e-mail to him was a "New revised DD statement"?

A. Mm-hmm.

Q. Had you sent him prior versions of the statement?

A. I don't recall.

Q. And had the Governor ever indicated that he thought Darren might have some misgivings about giving a statement?

A. Not to me.

Q. And did you provide the statements to anyone else?

A. Which statements? I have a lot of statements in front
Q. Did you provide the final statements of Darren Dopp and Richard Baum to anyone else in the Executive Chamber?

A. I may have given them to Lloyd Constantine. I don't recall.

Q. Did you have any conversations about the content of this statement at that time?

A. This is at 1:43 and 1:52. We were going to have a 2:00 o'clock conference call with the Attorney General's Office, so I just -- you know, we were doing a lot getting ready for that call, so I just, you know, don't recall at that time. I don't think we sent it to anybody else.

Q. At the 2:00 o'clock conference call, did you relay to the Attorney General's Office that you were providing the statements?

A. I believe that we did.

Q. Were they provided copies of the statements in advance?

A. No.

Q. Were they provided the statement during the day on the 22nd?

A. Yes.
Q. The final executed statements or a draft of them?
A. I believe we gave them the final executed statements.

Q. And that was on the 22nd?
A. Yes, it was.

(A discussion was held off the record.)

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

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

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

ANSWER: "I believe that we did."

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

ANSWER: "No."

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

ANSWER: "Yes."

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

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

QUESTION: "And that was on the 22nd?"
BY MS. TOOHER:

Q. Mr. Nocenti, I'm going to provide you with what's already been marked Commission's Exhibit 74 and ask you to identify this document?

A. This is the statement of Darren Dopp.

Q. And that was the final statement that Mr. Dopp provided to --

A. Yes.

Q. -- to you and then to the Attorney General's Office?

A. Yes.

Q. And that statement was executed by Mr. Dopp in front of you?

A. It was.

Q. And at the time that this statement was executed, did Mr. Dopp indicate that he had any misgivings about signing this statement?

A. Not the contents of the statement. During the meeting that we had, again, it was his view that he wanted to go and testify, but -- and he went out and spoke with his lawyer and went back in and he signed the statement.

Q. When you say he went out and spoke with his lawyer, where did this meeting take place?
A. It took place in my office.

Q. And who else was present?

A. It was me, Sean Maloney, Peter Pope, Darren Dopp and Terry Kindlon.

Q. And that was the total number in attendance at the meeting?

A. Yes.

Q. And you said that Darren wanted and expressed that he wanted to testify. Did anyone from the Executive Chamber speak to him directly on that issue at the meeting?

A. There was a conversation among the five of us during that meeting.

Q. And Mr. Kindlon was present during these conversations?

A. Yes.

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

A. I mean, actually, I thought Darren was coming over just to sign the statement and to have it notarized. When they got there, I don't know who initiated it, but I presume either Darren or Terry initiated the -- wondering whether this was the right course of action, submitting a signed statement as opposed to having him
go in and testify, and he was of the view that he wanted to go in and testify.

Q. "He" being Darren Dopp?
A. He being Darren Dopp.

Q. What did he say in that regard?
A. I don't recall anyone's words. Sum and substance, I think that he was expressing that he thought he could just go in and explain it. Again, I believe that he knew in sum and substance what the report was going to be saying, and I believe that he wanted to go in and just, you know, tell his story, is the best way to describe it.

Q. Who did he want to speak with, was it anyone in particular?
A. It was my understanding that he wanted to go and, you know, testify, so I don't exactly know who was taking testimony.

Q. Did he indicate any desire to speak to the Attorney General directly himself?
A. I actually do not recall if that was mentioned or not.

Q. And did anyone indicate to Darren at that time that the Attorney General's Office had a desire to prosecute him?
A. No.
Q. Did the subject of potential prosecution come up during the meeting at the time that Darren executed this statement?

A. Again, I don't recall specifics. It was my view at the time, it remains my view, that Darren's activities, you know, couldn't lead to prosecution, that there was -- the AG's Office was being very aggressive in their interviewing of witnesses. They had indicated to us that there were differences of testimony between Bill Howard and Preston Felton. I know that Bill Howard actually needed to correct something in his testimony or wanted to correct something in his testimony with the AG's Office. They had indicated to us that, you know, any time you have inconsistent testimony, there is always the potential for perjury or a perjury charge, as opposed to just, you know, innocent differences of recollection. We were specifically told that the AG's Office was not doing a perjury investigation, but I believe there may have been some discussion during the meeting of, you know, the practical foibles of going in and testifying.

Q. And what was your understanding as to what those foibles were as they related to Darren?
A. Well, any -- I mean, any time you go in to testify, as I'm doing right now, somebody else could say something different and it could lead to an investigation, you know, of the differences in the opinion. So you know, as a general rule, you know, I have come to the conclusion that since they had already concluded there was no illegal conduct and that there was no wrongdoing but they were going to make recommendations for changes, there was no need for the testimony. But I believe that there was a discussion at that time about the aggressiveness of the AG's Office and that was something he should consider in deciding whether he wanted to testify or not.

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

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

MR. TEITELBAUM: Let me ask this question,
Mr. Nocenti: Was the subject of a possible criminal prosecution of Dopp raised at the meeting that we're talking about because of the actions that he took --

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

MR. MOSCHETTI: Let him finish his question.

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

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

MR. TEITELBAUM: Yes.

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

MR. TEITELBAUM: Let me reformulate the question.

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

THE WITNESS: No.

MR. TEITELBAUM: And was Dopp told by
anybody at that meeting, in your presence or to your knowledge, that the submission of a statement would avoid any potential prosecution of him, in words or substance?

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

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

THE WITNESS: No.

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

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

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

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

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

THE WITNESS: I don't recall.

MR. TEITELBAUM: In words or substance?

THE WITNESS: I don't recall.

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

THE WITNESS: Absolutely not.

MR. TEITELBAUM: Okay.
Q. Did Mr. Dopp discuss with his attorney in your presence his desire not to sign the statement in the form that it -- in the final form?

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

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

A. I have no recollection of him saying that. If he had said that, I would have asked him, you know, why.

Because my understanding was this was his statement that he and his lawyer had, you know, redrafted.

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

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

MR. TEITELBAUM: I understand.

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

MR. TEITELBAUM: We're all lawyers, and we
understand the statement between --

THE WITNESS: Right.

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

THE WITNESS: Let me answer it this way.

There's no way I would have had Darren sign a statement that I felt that he felt was not truthful.

BY MS. TOOHER:

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

A. Not with me.

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

A. I am not.

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

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

MR. TEITELBAUM: And once Terry Kindlon came
on the scene, which I believe was the 20th?

THE WITNESS: I believe it was the 20th.

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

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

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

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

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

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

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

MR. TEITELBAUM: What's your understanding?

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

MR. TEITELBAUM: Disciplinary action towards him?

THE WITNESS: Correct.

MR. TEITELBAUM: By the Executive Chamber?

THE WITNESS: Correct.

MR. TEITELBAUM: When was he told that?

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

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

THE WITNESS: I mean, it was something that
was discussed from the 20th to, basically, the 22nd. The possibility of discipline and the decision of discipline are two different things.

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

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

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

THE WITNESS: Well, the AG's Office informed me that they were -- they had found no criminality -- or informed us that they had found no criminality prior to the 20th. There
was initial conversations about -- with the AG's Office about how this matter could then be resolved going forward. So it was before the 20th that there was a discussion of the possibility of some disciplinary action with respect to unnamed individuals, which was discussed internally. I just don't recall when exactly we had internal discussions.

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

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

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

THE WITNESS: I do not.

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

THE WITNESS: I do not recall that being said.

MR. TEITELBAUM: In words or substance?

THE WITNESS: Yeah. I can't say that it
BY MS. TOOHER:

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

A. Not that I recall.

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

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

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

A. I do not recall.

(Question continued.)

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

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

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

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

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

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

Q. That's sufficient.

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

A. Mm-hmm.

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

A. I don't recall.
Q. Beyond these notes?

A. I don't recall.

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

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

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

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

MR. TEITELBAUM: Was it conveyed to you on the 22nd by Maloney that he was informed that Dopp would accept disciplinary action?
THE WITNESS: I mean, I don't know what you mean by "accept".

MR. TEITELBAUM: Would not contest it.

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

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

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

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

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

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

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

A. This is somebody else's notes. I actually don't
Q. If I told you that they were identified to us as Peter Pope's notes, would that refresh your recollection as to whose handwriting it might be?

A. It doesn't -- I mean, I don't know Peter's handwriting well enough, but he's the only other person that I know of that was talking to Terry Kindlon on July 22nd, so that would not surprise me.

Q. And I would just note that these notes also contain the similar statement, concerning, "if he has to take the hit, he will". Did Mr. Pope at any time relay that concept to you?

A. Peter and Sean were keeping me informed of their conversations with Kindlon. I just don't recall whether they used those words in the way they kept me informed. I just, you know, don't know.

Q. What about that concept, that Darren would, in effect, be the person to bear the brunt of the Attorney General's investigation; was that discussed?

A. I don't know that "be the person to bear the brunt" is an accurate representation of what occurred. A determination was made that he and Bill Howard had clear lapses in judgment and a decision was made to take disciplinary action against them. A decision was
not to take any disciplinary action against Preston
Felton and those were all the -- those were the three
people that were being looked at for disciplinary
action.

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

A. Mm-hmm.

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

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

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

A. Darren Dopp was disciplined for his lapses in
Judgment. I don't know what you mean by "take a hit".

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

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

Q. And what were those consequences?

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

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

A. I have.

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

A. He certainly expressed to me his view that he suffered undue consequences for his conduct. Again, I -- you
know, "take the hit" makes it sound like you are
taking a hit for somebody else, like you are stepping
in -- I don't recall him saying -- using those words
to me.

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

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

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

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

THE WITNESS: Thank you.

BY MS. TOOHER:

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

A. After I read the report.

Q. And when did you first read the report?
A. I know that I quickly read a draft of it on the morning of the 23rd, and then I know that I read it in the -- you know, more closely, whether it was that day or the next day, it was shortly thereafter.

Q. And was there negotiations with the Attorney General's Office as to including the statements as part of the report?

A. There weren't negotiations. It was obviously their decision as to whether to put it into the report or not. They had led me to believe that they weren't going to be, I believe the word that I used was either, parsed or dissected or both, in the report. They were accepting the statements, but it wasn't going to be a focal point of their report.

Q. Were there issues that were negotiated as part of the report?

A. I don't know what you mean by "negotiated". We basically -- they told us they were going to be issuing a report, they were looking for us to do a statement; not a Darren Dopp or Rich Baum statement, but a statement from the Governor. They wanted to know how the Governor was going to react to the report. We wanted to know essentially what the contents of the report was going to be in order to
figure out what our reaction was going to be, so there
was the -- there was a lot of discussions back and
forth in the last couple days leading up to the actual
release of the report.

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

THE WITNESS: Could you read the question,
again.

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

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

A. That's a hard question to answer. They certainly
wanted to know what we were going to say about the
report. There was some discussion about how they were
going to -- whether they were going to characterize
our cooperation and how they were going to
characterize it. We strongly objected to any
implication which we thought would be false, that we
had not cooperated with the investigation. They told
us they were contemplating putting such a section in.
We strongly objected to the inclusion of that, and there was discussion with respect to how -- you know, whether that was going to be in or whether it was not going to be in, and that was connected in some ways to how we were responding to the report.

Q. I want to draw your attention back to 141, Mr. Maloney's notes.
A. Mm-hmm.

Q. And on the bottom section where he refers to "David's call with Lawsky"?
A. Mm-hmm.

Q. David would be you, David Nocenti?
A. Yes.

Q. And Lawsky would be whom?
A. Ben Lawsky.

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

Q. And then B: "We're offering sworn statements from Baum and Dopp denying the allegations, and in Darren's
case, expressing some contrition. We think that will be helpful." Were these ongoing negotiations that you were having with the Attorney General's Office?

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

Q. Discussions?

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

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

THE WITNESS: Yes.

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

THE WITNESS: I don't know what you mean by "positive". Basically, what was discussed was
that they wanted us to accept the findings and, you know -- yeah, I would say positive. Accept the findings, take whatever actions we were going to take, you know, not question the manner in which they had conducted the investigation or, you know, the conclusions that were reached.

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

THE WITNESS: No.

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

THE WITNESS: Which item again?

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: 3-A.

MR. TEITELBAUM: Was that requested?

THE WITNESS: We asked them during the call to tell us what they would be saying about cooperation.
MR. TEITELBAUM: And the Executive Chamber was proposing that they be silent?

THE WITNESS: Correct.

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

THE WITNESS: Correct.

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

THE WITNESS: Mm-hmm.

MR. TEITELBAUM: Is that correct?

THE WITNESS: Yes.

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

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

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

THE WITNESS: Yes.

MR. TEITELBAUM: In addition to proposing Dopp and Baum statements, wasn't the Executive Chamber also proposing a positive statement by the Governor?
THE WITNESS: Correct.

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

THE WITNESS: No.

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

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

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

THE WITNESS: I do not --

MR. TEITELBAUM: -- the offering of the statements were raised as part of the same
discussion in which the Executive Chamber was
asking for a representation about what the
Attorney General's people would be saying about
cooperation?

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

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

THE WITNESS: It was.

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

THE WITNESS: Correct.

MR. TEITELBAUM: And was there a draft that
you, the Executive Chamber would received from
the Attorney General which had in it a statement
THE WITNESS: No.

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

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

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

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

BY MS. TOOHER:

Q. Mr. Nocenti, I've provided you with a copy of what's been marked Commission's Exhibit 143 and ask you if you can identify that document?
A. An E-mail that I sent to Ben Lawsky at 8:19 p.m. on July 22nd.

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

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

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

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

THE WITNESS: Sure.

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

BY MS. TOOHER:

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

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

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

A. I don't believe it's the final, but these are drafts of the final.
Q. And were these drafts shared with representatives of the Attorney General's Office, to your knowledge?
A. I know that at least one of them was. I don't recall if these were or not.
Q. Can you identify which of those were shared with the Attorney General's Office?
A. You know, I'm not sure I can. I can tell you 145 was not because it's dated July 21st and it appears to be an earlier draft, again -- withdrawn.
   Since I don't know if they got an earlier draft, I'm looking at Commission Exhibit 143 which attaches a statement, so I believe that the one dated July 21st is not the statement that was attached.
Q. To Commission's 143?
A. To Commission's 143, that is correct.
   I cannot tell you -- I can tell you -- give me a moment.  (Pause.)
   The best of my recollection 170 and -- 1170 and 1171 were the attachments.
Q. So that's 144, Commission's 144?
A. Correct.
Q. Is what was attached to Commission's 143?
A. Mm-hmm.
Q. And my review of the difference between 145 and 144 is
there's a couple of additions. My --

A. Are you comparing 145 and 144?

Q. Yes.

A. Or 146 and 144?

Q. 145 and 144. The reason I'm doing this is because 143 refers to the addition of a sentence, so I would infer from that that it's an addition of a sentence to the Governor's statement.

A. Right, but --

Q. Do you know what that reference pertains to?

A. Again, I don't know if they had seen a prior draft. They may have. I don't know if 145 would have been the draft that they had seen, so I just don't recall -- I had numerous discussions with Ben over those few days, so I can't say for certain.

Q. You can't say for certain what that references to?

A. No. I know that they wanted the statement to say, basically, that the report was accurate and fair, and I know that I had discussions with Ben about it, but I don't know if there might have been some other sentence in here.

Q. So your understanding of the statement that the Attorney General's Office was looking for, as referenced in 143, was a statement of the fairness of
the account?

A. Well, it says, "The revised draft of the Governor's statement is attached". They certainly wanted to know what the Governor's overall statement was going to be. I knew that they did not want our statement to be critical of their report, and I know that they wanted us to essentially not question the findings of the report. So there was a discussion of those issues. And so when it says in 143, "The revised draft of the Governor's statement" -- this whole thing is the Governor's statement. When it says, "with the sentence you requested is attached", again, I know there were discussions of them specifically wanting a sentence -- specifically wanting a statement to say it was accurate and fair. I just -- I mean, I could have had a conversation with him two minutes earlier where he was mentioning something else, so I just can't say for certain.

Q. But there is a statement on the second page of Commission's 144 --

A. Correct.

Q. -- concerning Attorney General's --

A. Correct.

Q. -- report?
A. And they certainly had asked us to have the Governor's statement say that.

Q. Say, "I want to thank the Attorney General's Office and the State Inspector General's Office for their efforts and for issuing an expeditious, thorough, professional and fair report"?

A. Yes.

Q. In sum and substance, that was a request from the Attorney General's Office?

A. Sum and substance, that was the request from the Attorney General's Office, with the possible exception of the thanking of the State Inspector General's Office.

Q. They had not requested a thank you for the State Inspector General's Office?

A. Not as far as I recall.

Q. In Commission's Exhibit 146, which is Draft Number 2, on Page 2 in italics there is a discussion concerning Preston Felton, the Acting Superintendent of the State Police?

A. Mm-hmm.

Q. Did you have discussions with the Attorney General's Office concerning the discipline in this matter?

A. Yeah, we had discussions about who we might be taking
actions against and Darren, Bill and Preston Felton
were the ones that were being discussed, yes.

Q. Was there discussion specifically concerning Preston
Felton?

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

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

A. I know I discussed with them what we were
contemplating. I believe I had a conversation with
them where, you know, there was a discussion of, you
know, suspensions or demotions. So I don't know what
you mean by "input". I had conversations with them
about what we expected would be a range of options, I
guess is the best way to put it.

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

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

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

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

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

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

MR. TEITELBAUM: Were the representatives of the Executive Chamber told by representatives of the Attorney General's Office that, at least at a
point in time, they were intending to include that there was initial cooperation on the part of the Executive Chamber, at a certain point in time, but that after Felton and Howard testified, they had interviews scheduled with others and found out that the State Police had been notified that the interviews had been canceled?

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

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

THE WITNESS: I believe that is correct.

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

THE WITNESS: Yes.

MR. TEITELBAUM: And that there were certain
e-mail requests that were declined by the Executive Chamber?

THE WITNESS: I believe they also said that.

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

THE WITNESS: I actually don't know.

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

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

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

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

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: That would be my assumption, yes.

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

THE WITNESS: Mm-hmm.

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

THE WITNESS: Our office or their office.

(Commission's Exhibit 147 was marked for identification.)

BY MS. TOOHER:

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

A. I have.

Q. Can you identify it further?

A. I really can't.
Q. The document seems to indicate on the top, "We cooperated", and then on the bottom, the disciplinary actions, two out of three of which occurred; "30 days without pay, out of the Executive Chamber and no" -- I read that as -- "nomination". 30 days without pay appear to be referencing Darren Dopp. Out of the Executive Chamber is what occurred with Bill Howard. And the nomination would appear to refer to Mr. Felton. Did Peter Pope ever discuss with you the concept of exchanging a statement in cooperation for disciplinary action?

A. No.

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

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

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

THE WITNESS: The short answer is yes.

BY MS. TOOHER:

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

Q. We just have a separate area of inquiry.

MR. TEITELBAUM: Off the record.

(A discussion was held off the record.)

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

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

ANSWER: "The short answer is yes.")

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

MR. MOSCHETTI: He does.

THE WITNESS: I do.

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

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795 1-877 NYS DEPO
MR. TEITELBAUM: What's your understanding of the untenable position that Preston Felton was put in?

THE WITNESS: Excuse me?

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

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

MR. TEITELBAUM: Why is that untenable?

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

BY MS. TOOHER:

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

Q. -- the AG report. I'd like to ask you about the referral process itself.

A. Mm-hmm.

Q. As I understand it, there was a determination made to reach out to law enforcement entities concerning the underlying facts and circumstances of the Times Union article; correct?

A. Correct.

Q. Is that correct?

A. That is correct.

Q. Who do you recall as being the person to initiate those conversations?

A. I initiated the conversations.

Q. And who did you initiate those conversations with?

A. I called the Attorney General, the Albany District Attorney and Dan Castleman in the Manhattan DA's Office.

Q. I'm not clear.

MR. MOSCHETTI: I don't think that's what she's asking you.

Q. Not the conversations with law enforcement, but who initiated the concept of reaching out to law enforcement?
A. I don't know if anybody initiated it. I know that I had conversations, you know, or communications, I think it started by e-mail, with respect to what do we do with the report having come out indicating that Senator Bruno may have been using the plane for illegal purposes.

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

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

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

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

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

A. The sum and substance was what are we going to do with this information that we have; should we do a formal referral letter, should we contact them and see if they want it, should we do nothing and see if they ask for it, do we do nothing. There was, basically, a discussion of, the report comes out, we have information of potentially illegal conduct, what do we do with it.
(A discussion was held off the record.)

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

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

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

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

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

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

A. Subject matter of this e-mail is, you know, do we or do we not do a, you know, formal referral or something
else with respect to the information that we had.

Q. And the first thread in the e-mail, Darren's e-mail to
you, "Rich thinks a DA referral is too dramatic,
prefers AG." Can you explain that?

A. I can only --

Q. Rich is Rich Baum?

A. Rich is Rich Baum, DA is District Attorney, AG is
Attorney General.

Q. Had you discussed prior to 3:40 p.m. on July 1st the
concept of referring the matter to the DA?

A. I believe there were communications. I think July 1st
was a Sunday, I don't know if I had oral
communications. I believe that there was e-mail
before 3:40, and it was basically discussing, do we
refer and who do we refer it to.

Q. And the second portion of the e-mail from you to
Mr. Dopp and Mr. Baum, can you explain that?

A. Yes. It was me expressing my view to the two of them
with respect to where this matter might be referred.
I did not believe it should go to the Inspector
General because the Inspector General doesn't have
jurisdiction over the legislature. If we wanted to do
a criminal referral, we could send it to the DA -- a
DA, and there were two likely candidates. And it was
knowing that the AG doesn't have criminal authority, although we could grant it to them, and expressing my view at that time that I didn't think we needed to do anything because, presumably, somebody would ask us for the documents.

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

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

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

A. Again, we'll get back to the discussion of the continuum, but certainly, using State aircraft and State Police drivers and personnel for purely political purposes would be criminal. Comptroller Hevesi had been prosecuted for having a driver and car used for personal purposes the prior fall. Didn't know enough of the facts or the circumstances under which the usage was arranged to make a determination,
but there was no judicial determination at that point as to how much usage would make it criminal. It's potentially criminal, so referring it to an investigatory body is a logical option.

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

A. Correct.

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

A. Correct.

Q. Why is that?

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

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

A. I do not believe I did.
Mr. Pope had been the head of the Criminal Division in the Attorney General's Office; isn't that correct?

That is correct.

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

I don't believe I did.

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

That is correct.

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

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

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

Did you discuss it with Richard Rifkin at that time?

Not on the 1st.

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

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

(Commission's Exhibit 149 was marked for value:340)
Q. Mr. Nocenti, you've been provided what's been marked as Commission's 149, which is an e-mail string from 7/1. I would direct your attention to the top line on the e-mail, which is different from Commission's 148. And it's an e-mail from Mr. Baum to you indicating, "Couldn't we call around to the DA, AG today or in the morning so we're in a position to say 'x' has asked us for materials and we're cooperating. That way we're not instigating or deciding if criminal." What did you take that to mean?

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

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

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

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

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

THE WITNESS: Correct.

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

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

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

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

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

THE WITNESS: Correct.

MR. TEITELBAUM: And by providing them to them upon request, you would be cooperating;
correct? You would be giving them to them. They
would be asking for them and you would be giving
them; is that right?

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

MR. TEITELBAUM: Yes.

THE WITNESS: Could you repeat it.

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

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

MR. TEITELBAUM: You'd cooperate.

THE WITNESS: -- we would cooperate.

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

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

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

THE WITNESS: Again, can you repeat the
question.
MR. TEITELBAUM: Can you repeat the question.

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

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

THE WITNESS: Is that a statement or a question?

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

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

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

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

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

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

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

BY MS. TOOHER:

Q. Mr. Nocenti, you've been provided a copy of what's
been marked as Commission's 150. Can you identify this document?

A. It's an e-mail that I sent to Rich Baum and Darren Dopp at 12:30 p.m. on July 2nd.

Q. And this document refers to your conduct in regards to reaching out to various law enforcement entities; is that correct?

A. Correct.

Q. And Mr. Dopp, at the bottom of the e-mail chain, writes to you and to Rich Baum, "doing a news conference at 1:30, need to release a statement before that"?

A. Correct.

Q. Was this response that you gave Mr. Dopp for purposes of the statement?

A. I don't know what you mean by "for purposes of the statement". He wanted to release a statement, I was giving him the status of the communications with the offices.

Q. Well, you indicate at the bottom, "I know that's not helpful, but that's where we are"?

A. Yes.

Q. What were you being helpful or not helpful with?

A. I know that one of the things that we were being asked
by the press was what are we doing, are we referring
it, who are we referring it to. I know that he wanted
to release a statement on that issue. It was up in
the air at that point, what exactly we would be doing
because we had not yet heard back from the three
offices.

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

A. I believe at that time that he had.

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

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

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

THE WITNESS: No. I know that I told
Castleman that we had these documents, that there
was a story, and I wanted to know if he wanted
the documents. I know there was a discussion of,
you know, whether they would request. He said to
me, people usually refer things to them, and he
said he needed to talk to District Attorney
Morgenthau.

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

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

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

THE WITNESS: Could have.

BY MS. TOOHER:
Q. And what contact did you make with Attorney General Cuomo in this regard?

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

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

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

Q. Did he indicate why?

A. I don't recall.

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

A. I don't recall.

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

THE WITNESS: I don't recall. It was a
short conversation with all three offices.

BY MS. TOOHER:

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

A. Correct.

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

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

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

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

A. I know he sent me the e-mail, I know I sent a responding e-mail. I think I may have had a subsequent conversation with him with respect to him responding to these inquiries. I think that he
expressed the view that it was -- given his position as the Director of Communications, it was difficult for him to not respond to the press, and there were too many questions coming in and what I proposed wasn't really workable.

Q. Were you in constant contact with Darren Dopp concerning his responses in this area?
A. I wouldn't say constant. I would say frequent.

Q. Did he consult with you before giving responses in this area at this time?
A. Many times he did, yes.

Q. Do you know if he gave any responses without consulting you first?
A. I can't say for sure. I presume that he did.

Q. Are you aware of anyone that he spoke to in the press?
A. I don't know who specifically. I know he was talking to a lot of reporters. I don't know who specifically he was talking to.

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

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

THE WITNESS: He was asking me if I had
contacted a law enforcement agency before the
story ran in the Times Union, and I believe I
responded, "We've already publically stated that
there is no truth to the allegations." We didn't
contact the law enforcement agency before the
story ran in the Times Union, and he knew that.

BY MS. TOOHER:

Q. You've been provided with what's been marked
Commission's 152. I ask if you can identify this
document?
A. It's a string of e-mail beginning with my e-mail to --
I believe it's more than a one page document, but it
starts with -- the bottom of this one page that you've
given to me is an e-mail from me to Darren on the 8th,
that is the same as the second portion of Exhibit 151,
and Exhibit 152 ends with an e-mail from me to Rich
Baum at 11:42 a.m.

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

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

A. That is correct.

Q. And in your response to Mr. Baum you indicate that "one can argue that we should have sent it to a law enforcement agency". Can you explain why you didn't?

A. I believe we did this before, but at the time, ie: May 17th, it was my assumption that particularly following the Hevesi prosecution that the aircraft and drivers would be used essentially for governmental purposes. As it turns out, you read the Times Union article and the documents that were provided, it appeared that Senator Bruno was using the aircraft for what would appear to be predominantly political purposes.

Q. But if I may, prior to the Times Union article, no one contacted law enforcement?

A. Correct.

Q. And yet, the documents were in the possession of the Chamber prior to the Times Union article; is that correct?

A. Darren was gathering documents and then providing them to Odato. I don't know when he actually physically got them all.

Q. So someone in the Chamber had possession of these
documents and this information prior to the Times Union article?

A. Correct.

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

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

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

THE WITNESS: I can only answer from my personal knowledge. As of the 17th, it was my assumption that the aircraft would be used
predominantly for governmental purposes. If you read the article and look at the documents, it appears it was being used predominantly for political purposes. I don't know where the line is on that, but certainly, it's something that a criminal prosecuting office may want to look at.

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

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

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

THE WITNESS: Again, Darren was collecting documents. He provided those documents to the Times Union. The issue of referring the matter first came to my attention after the article came out. Just to give you an example, the State Police had documents as well. The fact that they're in the collective possession of the
Executive Chamber, I don't know when we actually got them, I don't know if we immediately sent them over to them on the 27th and the 28th or the 28th to the 29th.

MR. TEITELBAUM: 28th.

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

BY MS. TOOHER:

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

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

Q. What would that entail?

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

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

A. I would.

Q. And who would you discuss it with?
A. That's a -- I mean, it's a -- it depends on what the facts are.

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

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

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

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

Q. The itineraries, the schedules, the manifests?

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

(Question by counsel)

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

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

A. It's an e-mail that I sent to Christine Anderson with several cc's responding to an e-mail that Christine sent to me asking me whether she should provide
Q. And Mr. Odato asks you, concerning certain items on
the Governor's flights, which were provided to him in
response to his FOIL request and this was the
June 26th FOIL -- 27th FOIL request, I believe -- he's
asking Christine Anderson for more information
controlling the use of the helicopter?
A. Mm-hmm.
Q. Concerning who these people are, who attended the
private meetings, were they private meetings,
fundraising or related to fundraising; is that
correct?
A. Mm-hmm.
Q. And Christine forwards this with, "see questions
below. Should I work with Marlene to pull up these
schedules?" And your response is "yes"?
A. Mm-hmm.
Q. When you received the information concerning Senator
Bruno's schedules, was any attempt made to garner more
information?
A. Which information regarding Senator Bruno?
Q. On Senator Bruno's -- these are -- it was
Commission's 1, 2 and 3, I believe. I don't know if
you have those in front of you.
A. I don't think I have those.

Q. (Proffering).

A. Okay.

Q. These are the itineraries for Senator Bruno?

A. Mm-hmm.

Q. Was any attempt made to garner more information concerning Senator Bruno's activities on these dates?

A. Not by me, no.

Q. Prior to contacting law enforcement personnel, did you reach out to Senator Bruno's office concerning his activities on these dates?

A. I did not.

Q. Did anyone in the Executive Chamber reach out to Senator Bruno's office?

A. I don't believe so.

Q. So no attempt was made to verify whether or not Senator Bruno had engaged in other activities on these dates, to your knowledge?

A. Again, I don't know what communications Bill Howard had with the State Police on this issue.

Q. But he didn't communicate anything to you after the Times Union Article broke concerning Senator Bruno's activities on these dates?

A. No.
MR. TEITELBAUM: Somebody looking at the schedule on 153 and 154 at the bottom, trips on April 4th, 5th, 10th and 24th, without further information, just looking at these descriptions, one might conclude, and tell me if you agree with me, that all of these trips were political, non-State business; true?

THE WITNESS: (Pause.)

MR. TEITELBAUM: There's no way of knowing?

THE WITNESS: The difference between a trip and an event, there's no question that the Governor has days when he does governmental stuff and days in which he does a mixed use of governmental and political. Inquiring as to whether the private meetings, what was the nature of the private meetings, you would have to look at his entire schedule to see everything he was doing that day to determine what else he was doing on that day.

MR. TEITELBAUM: But on the face of the document, 153, there's no way of knowing on the face of the document whether the Governor was engaged in predominantly State-related business or non-State-related business; correct?
THE WITNESS: Not from the face of this document, no.

MR. TEITELBAUM: You would have to look behind it?

THE WITNESS: You would have to look at the schedules.

MR. TEITELBAUM: You would have to look at the schedules, you would have to see what the purposes were for the meetings; correct?

THE WITNESS: That's correct.

MR. TEITELBAUM: Who he was meeting with; correct?

THE WITNESS: That is correct.

BY MS. TOOHER:

Q. Are you aware of Darren Dopp reaching out to Peter Pope concerning the activities of Senator Bruno and use of the helicopter?

A. I believe last time I was here, you showed me an e-mail relating to a conversation between Peter Pope and Darren.

Q. There is such an e-mail, and I will show it to you.

(Commission's Exhibit 154 was marked for identification.)

Q. I am showing you what's been marked as Commission's
154 --

MR. TEITELBAUM: 155.

MS. TOOHER: I'm sorry, I apologize.

THE WITNESS: Should I give you 154 back or do you want to --

MR. TEITELBAUM: It's in the record already, isn't it?

MS. TOOHER: Yes.

THE WITNESS: So 154 --

MR. TEITELBAUM: Why don't we just stipulate to withdraw --

MS. TOOHER: Withdraw 154?

MR. TEITELBAUM: Yeah. We don't need to stipulate, just withdraw.

THE WITNESS: Why don't we just say that both of the documents are identical.

MS. TOOHER: Fine.

MR. TEITELBAUM: That's fine.

THE WITNESS: So I have Exhibit 122 and Exhibit 154 are both an e-mail from Peter to me and to Sean.

BY MS. TOOHER:

Q. Mr. Pope's conversations with Mr. Dopp, did you ever discuss with him after July 1st whether he felt the
1        conduct was criminal?
2   A.   "With him", you mean with Peter Pope?
3   Q.   With Peter Pope?
4   A.   I could easily have.  I just don't recall a
5        conversation right now.
6   Q.   And Mr. Pope's e-mail to you indicates that he did not
7        believe it was a crime and should be referred to the
8        DA.  When you were having your conversations with
9        Darren Dopp, your e-mails with Darren Dopp, did he
10       relay to you at all that he had previously spoken to
11       Peter Pope and he had indicated this matter should not
12       be referred to the DA?
13   A.   Give me a second to reread the document.
14   Q.   Sure.
15   A.   (Pause.)
16       Okay.  What was the question, again?
17   Q.   Mr. Pope's e-mail to you indicates that he had told
18       Darren Dopp that he did not believe Mr. Bruno's
19       conduct constituted a crime and should be referred to
20       the DA?
21   A.   I think he says it would be difficult to -- very
22       difficult to make out a crime under the existing case
23       law.
24   Q.   "In speaking of his second conversation in another, he
asked me my view of referral to a DA. I believe that
I reminded him of our prior conversation, that I did
not believe it was a crime”?
A. Yes.
Q. When you were having your e-mail communications with
Mr. Dopp concerning referring this matter out to
either the DA, the AG or the IG, did he relay to you
his prior conversations with Peter Pope?
A. Not that I recall.
Q. Did he relay to you in sum or substance that he had
discussed this with anyone in the Executive Chamber?
A. Not that I recall.

MR. TEITELBAUM: Did he tell you that he had
received an opinion from somebody within the
Executive Chamber that Senator Bruno's conduct
did not constitute a crime?
THE WITNESS: Well, I don't know when this
conversation took place and whether -- what
information Darren had with respect to Senator
Bruno's use of the aircraft at that time. And I
don't recall him saying to me that he had spoken
with Peter Pope regarding the referral to the DA.
I think he had said that Peter Pope thought it
should be referred to the IG.
MR. TEITELBAUM: But my question was anybody, did he ever tell you that he had a conversation with anybody in the Executive Chamber with respect to the fact that whoever he spoke to indicated that that person didn't believe that Senator Bruno committed a crime?

THE WITNESS: On the 1st?

MR. TEITELBAUM: No, at any time.

THE WITNESS: I believe that after the 1st, Darren did mention this conversation -- mentioned to me this conversation with Peter, but, again, I don't know what facts that opinion was based on.

MR. TEITELBAUM: Did you ask Peter?

THE WITNESS: I don't believe I asked Peter.

MR. TEITELBAUM: Why?

THE WITNESS: This was after the 1st, you know, again, I -- you know, I don't recall having had a conversation with Peter about his conversation with Darren. I received this e-mail laying that out.

MR. TEITELBAUM: You mean 155?

THE WITNESS: 155 -- 154 or 122.

MR. TEITELBAUM: Right.

THE WITNESS: I know I received that e-mail,
he was informing me of these conversations. I don't know if this was before or after Darren had told me something similar, but it was all after the 1st.

MR. TEITELBAUM: To this day, have you had a conversation with Mr. Pope as to his opinion as to the criminality of the Senator's conduct?

THE WITNESS: In the course of the past eight months, it's quite possible that I've had that conversation, I just don't recall it sitting here today.

BY MS. TOOHER:

Q. When did you first discuss the issue of the referral or the passage of documents to the DA, AG, IG with Peter Pope?

A. Sometime after -- you know, sometime after the 1st of July.

Q. And did he bring up that he had already discussed that issue?

A. Again, I don't recall. I know that he sent me an e-mail. It starts off, "As I've discussed with one or both of you". I actually don't recall if he actually discussed it with me. He says at this time he apparently didn't recall either, so I just don't
Q. Do you know what generated this e-mail?
A. I do not.
Q. Were you surprised when you received this e-mail?
A. I don't recall whether I was surprised, if he had discussed it with me. He may have simply wanted to memorialize it. I just don't have a recollection of what I was thinking when I received this e-mail.

(Commission's Exhibit 155 was marked for identification.)

Q. You've been handed what's been marked as Commission's 155. Can you identify this document?
A. Just give me a second to read it.
Q. Sure.
A. (Pause.)

Yes, I remember this document.

Q. Can you tell me what it is?
A. It's an e-mail that I sent to Christine, to Rich and to Darren in response to an e-mail that she had sent to us, which were some draft talking points, Q's and A's.

Q. And your response to Christine indicates, "I wouldn't say that the decision to pursue the investigation" --

I'm sorry. "I wouldn't say that the decision to
pursue the investigation was theirs”, quoting Christine Anderson, "There really isn't a clear answer to the did they ask us for documents or did we just send the documents to them question.” Can you explain that?

A. I believe she was getting questions from the press as to did we send them to them or did they request them. I think there was an issue with respect to something that District Attorney Soares’ office had said, early on, the 2nd or the 3rd. I know there's been additional questions about that. This is a draft Q and A. And again, there really isn't a clear question to the, did they ask us for documents or did we just send the documents to them.

MR. TEITELBAUM: You say "clear question", you mean clear answer?

THE WITNESS: Clear answer.

BY MS. TOOHER:

Q. Was there a reason you couldn't say you had reached out to these offices to see if they had any interest in the matter?

A. I believe that we actually were saying that.

Q. That you were saying what?

A. I believe that we had said that we had reached out to
the law enforcement offices to determine -- I believe
that we had said that we were reaching out to law
enforcement offices. There was a question of how you
actually word it. I had some conversation with her as
to, you know, what the factually correct wording would
be, that's the best answer I can give you, trying to
make sure that the questions and answers conform with
the facts.

Q. And you indicate, "There's nothing wrong with us
talking to these other offices after the story broke."
Why is it after the story broke?

A. That's when the questions arose. When the story
broke, there were questions of what were we going to
do with the documents, there were questions of who was
asking -- were they asking or were we sending. And I
was just reminding her that there's nothing wrong with
us talking to other offices about information that we
may have relating to a story that could involve
potential illegal conduct.

MR. TEITELBAUM: And it was the press that
was asking the questions?

THE WITNESS: The press was asking the
questions.

BY MS. TOOHER:
Q. Would there have been anything wrong with you talking to these offices before the story broke?

A. Again, in my view, if I have evidence of potential illegal conduct, there can't possibly be anything wrong with talking to a criminal prosecutor about that.

(Question regarding the marked document as an E-mail sent to Christine Anderson on July 9th.

Q. Mr. Nocenti, you've been handed what's been marked as Commission's Exhibit 156. Can you identify this document?

A. An E-mail that I sent to Christine Anderson, cc to Rich Baum on July 9th.

Q. And as of July 9th, you indicate, "The AG/DA inquiries relate to Senator Bruno, not to Darren or Rich or to any ES/IB dispute." When did the AG/DA inquiries shift their focus to include Darren and/or Rich?

A. I don't know that the AG ever shifted its inquiry to Darren or to Rich. And as far as the DA, I believe it was only after what I'm told is a referral that your office made to the DA.

Q. Well, the AG and the IG inquiry, which culminated in the AG's report, certainly addressed the conduct of Darren Dopp?

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795 1-877 NYS DEPO
Yes.

So it would -- I think it would be fair to say that they relate to Darren Dopp?

You have to go back to the question that Fred Dicker was asking. It says, "Hi, Christine, I've been told that Rich Baum and/or Darren Dopp have or are about to hire outside counsel to advise them during the AG/DA/IG inquiries/investigations of the ongoing ES/JB dispute, and wonder if that's true". I was pointing out to Christine that he was conflating inquiries that we had referred to the IG, the allegation of surveillance, that the AG also was looking into that surveillance issue, that the DA -- and to Senator Bruno's use of the aircraft -- but to my knowledge, the DA was only looking at Senator Bruno's use of the aircraft.

But there did come a time where the AG was looking at Mr. Dopp and he did retain outside counsel; is that correct?

That is correct.

When were you first aware that the AG was looking at Mr. Dopp?

Well, again, I don't believe the -- the AG was looking into two things; Senator Bruno's use of the -- to my
knowledge, the AG was looking into two things: Senator Bruno's use of the aircraft and the allegations of surveillance. Mr. Dopp obtained outside counsel at the time that we, the Executive Chamber, began to consider whether we wanted to take disciplinary action against him.

Q. But the issue of surveillance certainly involved Mr. Dopp; is that correct?

A. At this time, on July 9th, I didn't know -- I mean, this was very early on, the referral was only the 5th. I don't think any of us ever believed that there was any surveillance, so no, I didn't have any reason to believe that Darren had ordered surveillance.

Q. I understand that, and it's fairly clear that on July 9th, you do not believe the AG inquiry relates to Darren Dopp?

A. Correct, or Rich Baum.

Q. But at some point, the AG inquiry does shift and relate to Mr. Dopp, as indicated in the report of the AG?

A. Well, again, when you are talking about people getting outside counsel to respond to outside investigatory entities, I, you know, did not believe that there had been any -- to my knowledge, there was never any
surveillance, I had no reason to believe that anybody had ordered any surveillance, at this time there was no reason to believe that they were at risk of any sort of adverse action by any of these three entities with respect to them, so I was trying to express to Christine that Fred Dicker was conflating a number of matters -- at least two different inquiries and implying that all three entities were looking into, what he describes as, the ES/JB dispute, which was just a conflation of the inquiries and the offices.

Q. But getting past this e-mail --

A. Yes.

Q. -- sometime after July 9th, the AG inquiry included Mr. Dopp and Mr. Baum in the scope of their inquiry, not necessarily as targets at that particular time -- I don't even know if that's an appropriate word in terms of their inquiry -- but certainly as it related to their activities?

A. Again, they were doing an investigation of the allegation of surveillance. So again, I don't know that that was the target against any one in particular. They were finding facts. They issued a report that mentions Darren Dopp, mentions Rich Baum, mentions Bill Howard, mentions Preston Felton.
Q. Let me try a different tact.
A. I don't think I understand your question.
Q. That's clear and I'll try and be clearer.

When the Executive Chamber reached out to the
Attorney General's Office --
A. Yes.
Q. -- when you reached out to the Attorney General's
Office, the DA's offices --
A. Correct.
Q. -- it was for purposes of looking at Senator Bruno's
activities with the helicopter; is that correct?
A. Correct.
Q. At some point in time, the scope of the AG's inquiry
grew to include the activities of gathering
information about Senator Bruno?
A. I believe that the -- it expanded to include an
inquiry as to whether or not there was surveillance of
Senator Bruno.
Q. When did that occur?
A. I believe that on or about July 5th or 6th, Senator
Bruno's counsel wrote a letter to the Attorney General
asking that he look into an allegation that Senator
Bruno had been surveilled.
Q. So are you saying on July 5th, the inquiry included
the activities of the Executive Chamber?

A. On July 5th or July 6th, he was asked to look into an inquiry as to whether or not Senator Bruno was being surveilled. You know, again, because I didn't believe he was surveilled, I don't believe anybody ordered him to be surveilled, you know, it's -- the scope of the inquiry is up to the AG.

Q. And in terms of the District Attorney's Office, District Attorney Soares, when you reached out to his office, initially -- this is on or about July 1st or 2nd?

A. July 2nd.

Q. What happened as a consequence of that communication?

A. We ended up sending the documents over to him.

Q. And did you have any further conversations with the District Attorney's Office?

A. I did not.

Q. Did the District Attorney's Office communicate with the Executive Chamber at all?

A. I do not know.

Q. Following the issuance --

MR. TEITELBAUM: Pardon me.

Did you ever receive information from anybody in the Executive Chamber that there was
communication with the District Attorney's Office
after the documents were sent to him?

THE WITNESS: We've obviously had a lot of
communications, including up to, you know,
currently. But if you are talking about the time
period from July 5th to July 23rd --

MR. TEITELBAUM: July 5th --

THE WITNESS: 2nd.

MR. TEITELBAUM: 2nd to the time his report
was issued.

THE WITNESS: Sure, well, once he -- after
the AG's report was issued and he indicated that
he was going to look into the propriety of the
conduct from May and June, sure, there were
definitely communications, just like there's
communications between our offices today.

MR. TEITELBAUM: Any communication with the
District Attorney's Office as to what his report
would say?

THE WITNESS: I know that I didn't have any
conversations with the District Attorney's
Office. Peter Pope was the primary person that
was dealing with the District Attorney's Office
with respect to the DA's September report.
MR. TEITELBAUM: Did Mr. Pope indicate to you that he had communications with the District Attorney's Office with regard to what the report would say before it came out.

THE WITNESS: I believe that he did, yes.

MR. TEITELBAUM: When did he start receiving that information?

THE WITNESS: I don't recall.

MR. TEITELBAUM: Was it a day before or more than a day before?

THE WITNESS: I do not recall.

MR. TEITELBAUM: Can you tell us what the nature of those communications were?

THE WITNESS: I think it was similar to our communications with the AG's Office prior to -- you know, several days prior to the 23rd, we had a general idea of what the report was going to say, we got a full briefing on the 22nd, the report came out on the 23rd.

MR. TEITELBAUM: I'm talking about the District Attorney's report.

THE WITNESS: Yeah, I know. I'm talking about the AG's report.

MR. TEITELBAUM: You had --
THE WITNESS: The best of my recollection, that we similarly were advised, prior to the report coming out, what it was going to say, but I can't tell you dates. I did not have any direct conversations.

MR. TEITELBAUM: Did Mr. Pope, as far as you know, give commentary to the District Attorney with respect to the report that was going to come out, that he was receiving information about what the report would say?

THE WITNESS: I don't know. I believe we -- I don't know.

MR. TEITELBAUM: Did you have conversations with Mr. Pope in which he indicated to you that he was giving commentary to the District Attorney's Office concerning what the report would say before it came out?

THE WITNESS: I believe we actually sent a letter to the DA on the issue of whether it was -- the activities would constitute a crime or not, but I don't know whether there was what you would describe as commentary on the report itself.

MR. TEITELBAUM: Was that letter sent to the
District Attorney in connection with Mr. Pope or anybody else in the Executive Chamber receiving information as to what the District Attorney was going to conclude in his report?

THE WITNESS: I believe it was prior to the conclusions being reached. I believe it was a statement of our view of the law.

MR. TEITELBAUM: Did the District Attorney's report adopt any of those perspectives that were provided to him by the Executive Chamber in that letter?

THE WITNESS: I know it was our view that it can't be official misconduct to provide truthful information to the press about potential illegal conduct. I believe that is the conclusion that the AG, the IG and the DA all reached.

MR. TEITELBAUM: And who authored the letter that was sent to the District Attorney?

THE WITNESS: I don't recall.

MR. TEITELBAUM: Was it Richard Rifkin?

THE WITNESS: I don't recall.

MR. TEITELBAUM: Who was the person at the District Attorney's Office who was in conversation with Peter Pope, do you know?
THE WITNESS: I had no communications other -- to my knowledge, I had no communications, other than July 2nd. I believe Peter had conversations with the District Attorney himself. I don't know who else he was talking to.

MR. TEITELBAUM: Concerning the report?

THE WITNESS: Concerning the report or anything else.

MR. TEITELBAUM: Before it came out?

THE WITNESS: Before it came out.

(Commission's Exhibit 157 was marked for identification.)

Q. Mr. Nocenti, you have been provided with the document marked Commission's 157. I'm going to ask if you can identify this document?

A. It's an e-mail that I sent to Christine and others on July 22nd at 3:15 p.m.

Q. Can you tell me the facts and circumstances that generated this e-mail?

A. Christine had forwarded to me and others a draft proposed statement by the District Attorney and asked if we were, quote, "okay with it", and I expressed my view that we should just tell them that they should...
feel free to issue whatever release they wish to release.

Q. Were you aware of the District Attorney sending other press releases to your office for approval?

A. I don't know this was sent to us for approval, but, you know, this was the only matter that I was aware of that involved an interrelationship between the Executive Chamber and the District Attorney's Office.

(Commission's Exhibit 158 was marked for identification.)

Q. You've been provided a document marked Exhibit 158?

A. Mm-hmm.

Q. Can you identify this document?

A. I can tell you what it appears to be. It appears to be an e-mail from Peter Pope to Christine Anderson.

Q. Have you seen this document before?

A. I have.

Q. And what do you understand Mr. Pope to be relaying to Ms. Anderson?

A. I can just read to you what it says. It says, "Would they add re govs office, but the report shows no evidence of a crime", unquote.

Q. And is it your understanding that Mr. Pope was referring to the DA's press release?
A. Yes.

Q. Or the proposed statement?

A. Yes.

(Commission's Exhibit 159 was marked for identification.)

Q. You've been handed Commission's 159. And again, I'll ask you if you can identify this document?

A. I can only tell you what it appears to be. It appears to be an e-mail from Sean Maloney to Christine Anderson and others.

Q. And the substance of the e-mail, "Not great, why are they leaving the door open with respect to us?" Is he referring to the District Attorney's Office?

A. He appears to be referring to the District Attorney's Office statement.

Q. And his following statement, "How about they concur with the OAG's conclusions about the absence of law breaking." Did you ever have any discussions in the Executive Chamber concerning that issue?

A. No.

Q. And did you discuss with Mr. Maloney or Mr. Pope the statement being issued by the District Attorney's Office on the 23rd?

A. I don't believe I did.
Q. Were you aware that the statement was ever issued?
A. I believe it was.
Q. And did they make reference to the requests as stated by Mr. Maloney and Mr. Pope?
A. I don't know.
Q. The information contained in those reports?
A. I don't know that those requests were ever relayed to the District Attorney's Office.

MR. TEITELBAUM: Just a few questions about the subpoena that we served on the Executive Chamber. But before we get to that, Mr. Nocenti, were you at a meeting with Mr. Kindlon in Peter Pope's apartment?
THE WITNESS: Yes.
MR. TEITELBAUM: When was that?
THE WITNESS: I don't recall.
MR. TEITELBAUM: When was that in relation to July 22nd; was it before or after?
THE WITNESS: I don't recall. I think it was after.
MR. TEITELBAUM: How was that meeting initiated?
THE WITNESS: I know that Peter said that he had set up a meeting with Terry Kindlon, he was
going to have it at -- Terry at his apartment,
and he asked me if I would join him.

MR. TEITELBAUM: Did Mr. Pope tell you what
the purpose of that meeting was going to be?

THE WITNESS: I'm sure he did. Frankly, I
don't really recall the substance of that
meeting. I know that we had it and that Terry
was concerned about coming -- I believe he was
concerned about coming into the Executive Chamber
or being seen, so we did it at Peter Pope's
apartment.

MR. TEITELBAUM: What was discussed there?

THE WITNESS: You know, I do not recall.

MR. TEITELBAUM: You are drawing an absolute
blank as to anything that was discussed at that
meeting?

THE WITNESS: I haven't thought about that
meeting in months. I am sure that my
recolletion -- my guess is that my recollection
might be able to be refreshed, but I do not
recall the substance of that meeting.

MR. TEITELBAUM: How long did the meeting
take place?

THE WITNESS: I don't know, maybe half an
hour.

MR. TEITELBAUM: And was anything decided at that meeting?

THE WITNESS: I don't recall the substance of that meeting.

MR. TEITELBAUM: Have you ever held a meeting of that sort in the personal residence of a member of the Executive Chamber?

THE WITNESS: I don't know what you mean by "a meeting of that sort".

MR. TEITELBAUM: Well, with a lawyer representing a member of the Executive Chamber?

THE WITNESS: My recollection --

MR. TEITELBAUM: On business, on business?

THE WITNESS: My recollection is this was an accommodation to Terry Kindlon.

MR. TEITELBAUM: And were you aware that Darren Dopp was seeking employment outside the Executive Chamber before he got his job with Ms. Lynch?

THE WITNESS: Yes.

MR. TEITELBAUM: And were there any phone calls made to Ms. Lynch's office by any member of the Executive Chamber, to your knowledge?
THE WITNESS: Not to my knowledge.

MR. TEITELBAUM: Any communication with her office concerning his job?

THE WITNESS: Not to my knowledge.

BY MS. TOOHER:

Q. Mr. Nocenti, I know that you are aware that there's an outstanding subpoena from the Commission to the Executive Chamber and that numerous documents have been provided in response to that subpoena?

A. Mm-hmm.

Q. Is it your understanding at this time that the Chamber is in full compliance with the subpoena of the Commission?

A. That is my understanding.

(Commission's Exhibit 160 was marked for identification.)

Q. I'm going to show you what's been marked as Exhibit 160 and ask you if you can identify this document.

A. It's an e-mail that Sean Maloney sent to me on July 16th.

Q. And in this document, it specifically refers to private e-mails of Darren Dopp and others. Were those e-mails ever reviewed by the Executive Chamber?
A. Any e-mails on our servers that went to or from a private e-mail account were reviewed, and to the extent they were responsive and relevant, they were provided.

Q. But what about e-mails that went between private accounts?

MR. TEITELBAUM: Just a second. Are you testifying that if a document was responsive to the review of the Executive Chamber, but was not relevant, it would not be turned over to us?

THE WITNESS: No.

MR. TEITELBAUM: You were not -- the Executive Chamber was not applying a standard of relevance to the compliance with the subpoena?

THE WITNESS: Well, we had, I think -- I believe that there were conversations back and forth.

MR. TEITELBAUM: There were.

THE WITNESS: And letters as to the narrowing of the subpoena.

MR. TEITELBAUM: Correct. But the subpoena, as adjusted by agreement --

THE WITNESS: Right.

MR. TEITELBAUM: And let's define that as
the subpoena, the subpoena as adjusted.

THE WITNESS: Okay.

MR. TEITELBAUM: Would the Executive Chamber apply its view of relevance and withhold documents that was responsive to the subpoena as adjusted if in the view of the Executive Chamber the document wasn't relevant?

THE WITNESS: No.

BY MS. TOOHER:

Q. This e-mail from Sean Maloney to Peter Pope and then forwarded to you indicates, "If the investigators get smart, they ask for Darren's private e-mails and then others, that will be a rich source of info now that I think about it." Did you review those private e-mails in private accounts?

A. Did not.

Q. Did the Executive Chamber review those private e-mails between private accounts?

A. We did not ask employees to give us access to all their private e-mail so that we could determine whether they had any that would be responsive to the subpoenas of the Commission. We were responding on behalf of the Chamber to the documents that we had.

Q. But I'm speaking now of the e-mails as referenced in
Commission's Exhibit 160. Did the Executive Chamber review those private e-mails?

A. If an e-mail was in our possession that went to or from a private account, we reviewed it, and if it was responsive, we provided it.

Q. So did this review take place that is discussed in Mr. Maloney's e-mail?

A. I don't know what you mean by "this review"?

Q. We may want to get them so that --

A. Let me answer the question.

Q. -- we know what they said.

A. We received a request for documents. We searched all of our e-mails, I spent dozens of hours looking at e-mails. If we had an e-mail that was responsive, we provided it regardless of whether or not it was to or from a private person's -- a private e-mail account.

We did not go into people's homes or ask them to give us their passwords or look at their private e-mails or e-mail that went from somebody's private account to somebody else's private account that never touched the Executive Chamber, we never reviewed them, we didn't have possession of them.

Q. But this e-mail seems to refer to just those types of documents and gives the example of Darren's private...
e-mail to Dicker's private e-mail.

MR. MOSCHETTI: So what's the question?

MR. TEITELBAUM: Were those reviewed?

That's the question.

A. No. I don't think it says that. It says, "On July 5th, Darren e-mails to himself an e-mail to Dicker from the day before." I think that that is referring to an e-mail that was on the Chamber's servers that Darren e-mailed from the Chamber's servers to himself, meaning to his private account, so it was on our system. My guess would be, you have that document.

MS. TOOHER: I think we're done.

(Whereupon, the examination of DAVID NOCENTI in the above-entitled matter adjourned at 4:22 p.m.)

*****
STATE OF NEW YORK       )
COUNTY OF               ) ss.

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

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795     1-877 NYS DEPO
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 15, 2008
WITNESS INDEX

WITNESS: DAVID NOCENTI

BY MS. TOOHER..................................PAGE 198

EXHIBIT INDEX

<table>
<thead>
<tr>
<th>IDN</th>
<th>COMMISSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>127</td>
<td>Flight Request Information Form</td>
</tr>
<tr>
<td>203</td>
<td>Flight Request Information Form w/certification</td>
</tr>
<tr>
<td>203</td>
<td>Aviation Procedures, as of 1/19/99, 4 pages</td>
</tr>
<tr>
<td>205</td>
<td>E-mail, Rifkin to Dopp and others, 7/13/07</td>
</tr>
<tr>
<td>211</td>
<td>5:28 p.m.</td>
</tr>
<tr>
<td>239</td>
<td>E-mail, Nocenti to Hamann, 7/11/07, 12:30 p.m.</td>
</tr>
<tr>
<td>243</td>
<td>E-mail chain, starting Dopp to Nocenti and others, 7/10/07, 12:18 p.m., ending Nocenti to Dopp and others, 7/10/07, 12:53 p.m.</td>
</tr>
<tr>
<td>246</td>
<td>E-mail chain, starting Lacewell to Nocenti and others, 7/22/07, 6:17 a.m., ending Nocenti to Maloney and others, 7/22/07, 7:29 a.m.</td>
</tr>
<tr>
<td>255</td>
<td>E-mail, Nocenti to Baum, 7/22/07, 11:06 a.m.</td>
</tr>
<tr>
<td>256</td>
<td>E-mail, Nocenti to Baum, 7/22/07, 11:17 a.m.</td>
</tr>
<tr>
<td>259</td>
<td>E-mail, Nocenti to Baum, 7/22/07, 1:04 p.m.</td>
</tr>
<tr>
<td>267</td>
<td>E-mail, Maloney to Kindlon and others, 7/22/07, 5:33 p.m.</td>
</tr>
<tr>
<td>#</td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>E-mail, Baum to &quot;Laurence&quot;, 7/28/07, 8:26 a.m.</td>
</tr>
<tr>
<td>2</td>
<td>E-mail, Kindlon to Nocenti, 7/22/07, 1:43 p.m.</td>
</tr>
<tr>
<td>3</td>
<td>E-mail chain, starting Nocenti to &quot;Laurence&quot;, 7/22/07, 10:49</td>
</tr>
<tr>
<td>4</td>
<td>E-mail chain, ending to Nocenti, 7/22/07, 1:52 p.m.</td>
</tr>
<tr>
<td>5</td>
<td>Handwritten notes, 7/22, 6 pages</td>
</tr>
<tr>
<td>6</td>
<td>Handwritten notes, 7/22/07</td>
</tr>
<tr>
<td>7</td>
<td>E-mail chain, starting Lawsky to Nocenti, 7/22/07, 7:52 p.m.</td>
</tr>
<tr>
<td>8</td>
<td>Ending Nocenti to Lawsky, 7/22/07, 8:19 p.m.</td>
</tr>
<tr>
<td>9</td>
<td>Statement of Governor Spitzer re: AG's report, Draft, 7/22/07, 2 pages</td>
</tr>
<tr>
<td>10</td>
<td>Statement of Governor Spitzer re: AG's report, Draft, 7/21/07, 2 pages</td>
</tr>
<tr>
<td>11</td>
<td>Statement of Governor Spitzer re: AG's report, Draft #2, 7/22/07, 2 pages</td>
</tr>
<tr>
<td>12</td>
<td>Handwritten notes, undated</td>
</tr>
<tr>
<td>13</td>
<td>E-mail chain, starting Dopp to Nocenti, 7/1/07, 3:40 p.m., ending</td>
</tr>
<tr>
<td>14</td>
<td>Baum to Nocenti, 7/1/07, 4:23 p.m.</td>
</tr>
<tr>
<td>15</td>
<td>E-mail chain, starting Dopp to Nocenti, 7/1/07, 3:40 p.m., ending</td>
</tr>
<tr>
<td>16</td>
<td>Baum to Nocenti, 7/1/07, 4:24 p.m.</td>
</tr>
<tr>
<td>17</td>
<td>E-mail chain, starting Dopp to Nocenti, 7/2/07, 12:20 p.m., ending Nocenti to</td>
</tr>
<tr>
<td>18</td>
<td>Baum, 7/2/07, 12:30 p.m.</td>
</tr>
<tr>
<td>19</td>
<td>E-mail chain, starting Dopp to Nocenti, 7/8/07, 11:09 a.m., ending Nocenti to</td>
</tr>
<tr>
<td>20</td>
<td>Baum, 7/8/07, 11:24 a.m.</td>
</tr>
<tr>
<td>21</td>
<td>E-mail chain, starting Nocenti to Dopp, 7/8/07, 11:23 a.m., ending Nocenti to</td>
</tr>
<tr>
<td>22</td>
<td>Baum, 7/8/07, 11:42 a.m.</td>
</tr>
</tbody>
</table>

AMF REPORTING/CRITCHER VIDEO
(518) 452-1795    1-877 NYS DEPO
<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>153</td>
<td>E-mail chain, starting Odato to Anderson, 7/11/07 3:36 p.m., ending Nocenti to Anderson and others, 7/11/07, 5:35 p.m.</td>
</tr>
<tr>
<td>154</td>
<td>Same as previously marked Commission's Ex. 122</td>
</tr>
<tr>
<td>155</td>
<td>E-mail chain, starting Anderson to Baum and others, 7/9/07, 9:35 a.m., ending Nocenti to Anderson and others, 7/9/07, 9:49 a.m.</td>
</tr>
<tr>
<td>156</td>
<td>E-mail chain, Dicker to Anderson and others, 7/9/07, 12:53 p.m., ending Nocenti to Anderson and others, 7/9/07, 1:04 p.m.</td>
</tr>
<tr>
<td>157</td>
<td>E-mail chain, ending Nocenti to Anderson and others, 7/23/07, 3:12 p.m., w/attachments, 4 pages</td>
</tr>
<tr>
<td>158</td>
<td>E-mail chain, ending Pope to Anderson, 7/23/07 3:17 p.m., w/attachments, 2 pages</td>
</tr>
<tr>
<td>159</td>
<td>E-mail chain, ending Maloney to Anderson, 7/23/07 3:24 p.m., w/attachments, 2 pages</td>
</tr>
<tr>
<td>160</td>
<td>E-mail chain, starting Maloney to Pope, 7/16/07 12:12 a.m., ending Maloney to Nocenti, 7/16/07 12:35 a.m.</td>
</tr>
</tbody>
</table>