STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

In the Matter of the Investigation
into the Alleged Misuse of Resources
of the Division of State Police

123 William Street
New York, New York

May 9, 2008
10:10 o'clock a.m.
PRESENT:

HERBERT TEITELBAUM
Executive Director
Commission on Public Integrity

MEAVE TOOHER, ESQ.
Investigative Counsel

ROBERT J. SHEA
Associate Confidential Investigator

LAWRENCE J. MURELLO
Associate Confidential Investigator

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
Attorneys for Eliot Spitzer
1285 Avenue of the Americas
New York, New York 10019-6064

BY:  MICHELE HIRSHMAN, ESQ.
     ANNE S. RAISH, ESQ.
     ROBIN FEINMAN, ESQ.
     JAMES L. BROCHIN, ESQ.

* * *
<table>
<thead>
<tr>
<th>EXHIBITS</th>
<th>COMMISSION'S DESCRIPTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>173</td>
<td>E-mail</td>
<td>95</td>
</tr>
<tr>
<td>174</td>
<td>E-mail</td>
<td>98</td>
</tr>
<tr>
<td>175</td>
<td>DA's report</td>
<td>121</td>
</tr>
<tr>
<td>176</td>
<td>Document</td>
<td>139</td>
</tr>
<tr>
<td>177</td>
<td>E-mail chain</td>
<td>181</td>
</tr>
<tr>
<td>178</td>
<td>E-mail chain</td>
<td>181</td>
</tr>
<tr>
<td>179</td>
<td>E-mail</td>
<td>267</td>
</tr>
<tr>
<td>180</td>
<td>E-mail Chain</td>
<td>270</td>
</tr>
</tbody>
</table>
ELIOT LAWRENCE SPIZTER, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MS. TOOHER:

Q      Would you please state your full name for the record.
A      Eliot Laurence Spitzer.
Q      And Mr. Spitzer, you are here today pursuant to subpoena?
A      I'm here because I wish to testify.
Q      But there is a subpoena issued?
A      That's what I've been told. I've offered to testify since the initiation of this inquiry.
Q      And, Mr. Spitzer, where are you presently employed?
A      Family businesses.
Q      And what was your previous position?
A      Governor of the State of New York.
Q      And how long were you in that
position?
A Fourteen-and-a-half months or so.
Q And during your time frame in that position, were you familiar with Darren Dopp?
A Absolutely.
Q Can you tell me who Mr. Dopp is.
A I think his title was either Press Secretary or Communications Director during my tenure as Attorney General, and then he was Communications Director during my tenure as Governor.
Q And what were Mr. Dopp's duties?
A To be the individual who would deal with media requests, and craft a communication policy.
Q And did he report directly to you?
A No. He would report through the Secretary to the Governor. Although on org chart, virtually everybody reported to the Secretary of the Governor. It was not as formal as the old chart was.
Q And who was the Secretary to Governor?
Q And when you say it was not as formal as that, regarding Mr. Dopp, what was your relationship in terms of him coming to you concerning official duties?

A I would have conversations with Darren, I would say over the course of my tenure as Attorney General, and as Governor, multiple times.

Q And how long had you known Mr. Dopp?

A I think I met him when I was running for Attorney General, and he was employed by Mike Bradman, I believe. And I then hired him to work when I was elected Attorney General. That's when I began to know him, to work with him.

Q And when was that?

A It would have been January 1st of 1999 as an employment date. I met him prior to that.

Q And he served in what capacity with you as the Attorney General?

A As I said, I think he was
either -- I'm not sure if the title was Communications Director or Press Secretary, but the function was that.

Q And when you were elected Governor, he continued in a similar capacity with you?

A His title became Communications Director, Director of Communications.

Q And did Mr. Dopp come to you with media issues ever?

A Ever? Sure.

Q While you were Governor?

A Absolutely.

Q What type of issues would he come to you with?

A It's almost too broad a question to answer, but there would be how do we respond to this particular issue? Do we want to generate and float this concept in the State of the State? Do we want to appear on this TV program today?

It could be anything from a micro to a macro issue.

Q But I assume he wouldn't come to you with day-to-day communications issues?
A: Sometimes he would, sometimes it would depend upon the context.

Q: Were there particular high priority issues that he would come to you with?

A: Yes.

Q: What types of issues would that be?

A: In the midst of budget negotiations, then, obviously, how we respond to media inquiries about the budget. That would be a high priority issue.

The nature of the priorities would vary, based upon the rhythm of the cycles, all through the tenure as Attorney General, obviously different cases, different efforts, different priorities would generate different types of contact.

Q: So in the Attorney General's office it might be a high priority case, a case that was getting a great deal of media attention, or had large-scale ramifications for the citizens of the state, things like that.
As Governor, were there particular types of issues that Mr. Dopp would bring to you?
A      Yes.
Q      Can you give me some examples.
A      Budget negotiations, discussions about substantive issues that were at a particular moment high priority from a media perspective.

Obviously, as negotiations on any issue reached a critical point, and the media focused on them, that becomes something that generates greater conversation.

Q      And would Mr. Dopp discuss press releases with you before they went out?
A      Not ordinarily, no.
Q      Were there times when he would discuss press releases with you before they went out?
A      Again, the question is -- I'm trying to give you a precise answer.

I don't think I ever read a press release in draft form to participate just in editing it for syntax, or perhaps tone.

Occasionally I would see a press release
before it went out, but ordinarily not.

MS. HIRSHMAN: The time period in
the Governor's Office?

MS. TOOHER: Yes.

MS. HIRSHMAN: Okay.

A In the Governor's Office, I don't think so. I was thinking over the nine-year tenure.

In the Attorney General's office, I occasionally would, when it related to settlement or initiation of a major case in the Governor's office, I don't believe I ever saw a press release in the sense of do you want to edit this, or anything more than information, this is what's going to go out.

Q So it was not his habit to go to you with press releases --

A No.

Q -- prior to it going out while you were in the Governor's office?

A That is correct.

Q Did he ever come to you in the Governor's office with a press release, not for editing, but to demonstrate to you, or to show you, this is what is going out on a
particular issue?

A There were certainly times when
the issue would have been what statement
should we issue in response to this question,
or dynamic, sure.

Again, I don't know if it was
formulated as a press release, or there would
be a discussion about what the nature of the
statement should be in response to any given
set of circumstances.

Q And when Darren Dopp would come
to you on issues, would he come to you
directly, or would it be a senior staff type
meeting?

A There was no set structure. It
would depend on many variables, where I was,
where he was, was it a phone call with
multiple parties, was I in the Capitol?

And so, if nobody else was there,
he'd walk in and say we should talk about
this.

But there was no set process.

Q Would it be fair to say that
Darren Dopp had fairly free access to you?

A Sure.
For nine years there was free access for senior officials within the administration. That was the case in the AG's office, it was the case as Governor.

Q And Mr. Dopp would have been considered one of your senior officials?
A Yes, that is correct.

Q And who were your other senior officials?
A During what time frame?
Q During the Governorship.

Unless I specify otherwise, I'm talking about during the Governorship.

A It would have been my counsel, David Nocenti; it would have been the Secretary, Rich Baum; it would have been the Director of State Operations, Olivia Golden; and Paul Francis.

It would have been any of the Deputy Secretaries. It would have been my Chief of Staff.

Anybody who worked within the Executive Chamber, Drew Warshaw, to anybody in the counsel's office.

Marty Mack to Mike Shaw.
There was Lloyd Constantine, who was a Special Advisor.

There was a rather large circle of individuals whom I would discuss issues with.

Q Would it be fair to say that that was your practice as Governor to keep a fairly open flow of communication with senior staff?

A Yes. Although I had a schedule such that people could not just walk in without going through Chief of Staff, or somebody would say -- I don't know how they referred to me, the Governor, is Eliot there. They could check, and if I was there, they could stop in.

Q And again, getting back to Darren Dopp, what was his authority in terms of his actions as Communications Director? And let me explain that a little bit.

A Sure.

Q In terms of a press statement, he would have authority to issue that without consulting with you?

A I was not necessary sign off on
press releases.

As press releases would be issued, he could check, how many were issued every day, or press statements, in response to, you know, by each of the agencies, by each of the press officers, by the press officers, not only in the capital, but press officers in the agencies, hundreds per week.

And I saw probably one or two, at most in the packet of materials that I would get.

So I certainly was not involved in the issuance of press releases.

Whether he had to get sign-off from the Secretary or anybody else, I don't know.

Q And what other activities was Mr. Dopp authorized to engage in besides press releases?

A Well, the entire dynamic of interfacing with the media.

There were hundreds, if not thousands, of incoming requests for information every week and month from the media.
And his responsibility was to both be responsive and to be proactive in generating an affirmative communication strategy.

Q And what about his authority in regards to communicating with other agencies?
A I'm not sure I understand the question.
Q Well, the executive branch, obviously, is involved with a number of other state agencies and responsible for them.
A Right.
Q Did Carl have authority to reach out to those agencies in his position as Communications Director?
A Of course.
The information officers at each of the agencies were part of the structure that he was in charge of.
He was responsible for the communications policies and the statements issued by everything from the Dormitory Authority, to DCJS, to budget.
So that was his responsibility.
Q Would you consider it within
Mr. Dopp's authority to conduct internal investigations?

A      You would have to define the term.

And, obviously, as a lawyer an internal investigation is going to be conducted by an IG, or the counsel's office.

And so when you phrase it that way, intuitively, I say no, he doesn't do internal investigations.

But if he is responding to inquiries, and he is gathering information in order to do so, that may be viewed by some as an internal investigation.

So the answer is no, he doesn't do internal investigations the way we, as lawyers, think of them. But he gathers information in order to respond to media inquiries, yes.

Q      During your tenure with Mr. Dopp while you were Governor, did he ever discuss anything in those words as an internal investigation?

A      Not that I recall, no.

Q      Did he ever discuss conducting
any investigatory action, and using those
words, investigation?

A I don't recall that he used those
phrases, no.

Q Senator Bruno, who was majority
leader during your tenure as Governor --

A Correct.

Q -- would Mr. Dopp come to you
concerning press issues and Senator Bruno?

A Of course.

Q And was that a subject matter
that had high priority?

A The issue that had high priority
was moving our agenda through the
Legislature.

Obviously, Senator Bruno, as has
the majority leader, was part of that
process.

Q And was there any standing
recognition that issues concerning Mr. Bruno
were issues that Mr. Dopp should bring to
you?

A No. But inevitably, if Senator
Bruno made a comment on a radio show, or to
the media that evoked inquiry to us, and a
request for a response, then that was
something that Mr. Dopp would deal with the
Secretary, or the Director of Operations, or
the Budget Director, or the appropriate
individual with respect to it in order to
craft a response.

So the reality is that when the
Speaker Silver, majority leader Bruno or I
speak publicly, it evokes, and elicits a
response from usually the other two.

And that dynamic required that he
participate in those conversations. He did,
Darren Dopp.

Q    And was it Mr. Dopp's practice,
or did Mr. Dopp have a practice, concerning
information on Senator Bruno and relaying
that to you?

A    You would have to ask him.

Q    You were not aware of any
particular behavior as far as information
concerning Senator Bruno and you?

A    Only that when Senator Bruno
would make comments when I was in Albany --
when I was not in Albany, I couldn't spoke to
it -- but when I was in Albany, and he made
comments that evoked, or stimulated media inquiry, that would become a subject of conversation; how do we respond, what should the response be.

Q      And you mentioned David Nocenti. He was your counsel as Governor?
A      That is correct.
Q      What was your working relationship with Mr. Nocenti?
A      David and I would probably speak thirty or forty times a day.
Q      And what were Mr. Nocenti's duties as counsel?
A      He was, as counsel to the Governor, the lawyer responsible for ensuring -- he had an enormous jurisdiction, everything from bill drafting, ensuring that we responded to every bill that was passed by the Legislature, which was a larger task than people appreciate, to ensuring that the budget was crafted properly, in accordance with law, and ensuring that everything we did, in his perspective, abided by the strictures of the laws and ethics that we were living up to.
Q      And what was your understanding as to Mr. Nocenti's working relationship with Darren Dopp?

A      I have none, other than that they had worked together for eight years, David was my counsel throughout my eight years in the Attorney General's office. He had been counsel to Claire Shulman; he had been had an assistant counsel to Governor Cuomo. And then I think first assistant counsel to Governor Cuomo. Had been prosecutor in the Eastern District.

So he was a stupendously experienced lawyer, who knows when and what data or information he needs to reach a conclusion, and he obviously, since he was at the very senior most levels, both when I was Attorney General and when I was Governor, knew how to speak to individuals, including Darren, to get the information he needed, or to participate in decisions to make sure things were done properly.

Q      Were you aware of any times of Darren speaking with David Nocenti concerning press issues?
A: Was I aware of any?
Q: Yes.
A: I could not give you a specific instance where I can say on this date, on that, issue they spoke, but I would, at the risk of evoking the ire of my counsel here, speculate that they spoke thousands of times about press issues, because David and Darren were at the very senior levels of decision-making, both in the eight years I was Attorney General and my tenure as Governor.
Q: And what were the types of issues that David Nocenti would bring to you directly?
A: Everything from judicial appointments, to conversations about whether I should sign or veto a particular bill, Budget conversations, judicial policies, legal arguments.
    It was almost impossible to cabin the range of conversations that we had. It was expansive as one might imagine.
Q: And what about Rich Baum? Rich Baum was your Secretary?
A: That is correct.
Q: And what were his duties?
A: The secretary to the Governor is by law essentially the -- other than the Lieutenant Governor, I suppose -- the primary decision maker, primary advisor, to the Governor with respect to the structuring of state policies.

So our conversations ranged from every legislative budget policy, economic development issue, to the politics and how we would succeed in effectuating the agenda that I had been elected to effectuate.

Q: And Mr. Baum reported directly to you?
A: That is correct.
Q: And are you aware of what Mr. Baum's working relationship was with Darren Dopp?
A: They worked together. I could not tell you if they had a regular 7:00 a.m. meeting, or how and precisely they communicated.

But I can tell you that they worked closely together, sure.
Q      And Mr. Baum was also obviously
1  one of your top senior staff?
2
A      Yes, that's correct.
3
Q      Marlene Turner, who is Mr. Turner?
4
A      Her title was Chief of Staff when
5  I was Governor, and prior to that, when I was
6  Attorney General, she had been a scheduler,
7  but really she ran the executive office in
8  the Attorney General's office.
9
Q      And what were her duties in that
10  capacity?
11
A      To --
12
Q      In the Governor's office.
13
A      To essentially, from my
14  perspective, ensure that the everyday
15  schedule was maintained, the flow of paper to
16  me was such that I would receive the
17  necessary briefings, the information the
18  night before the next day's events, so that I
19  was prepared, and that the paper flow was
20  handled in accordance with my needs.
21
Q      And do you know what Ms. Turner's
22  working relationship was with Darren Dopp, if
23  any?
Again, as my prior answers, we had all worked together for years when I was Attorney General, and so, it was a close relationship, where issues were discussed and matters were raised.

Q And William Howard, what capacity was Mr. Howard serving in your administration?

A Again, during the Attorney General's office, no.

Q No, in the Governor's office.

A I'm clarifying, because I've spoken to both periods.

He had been -- and I do not know his title, in fact, I'm not sure of what his precise titles were in any period of time.

He had been a senior official within the Pataki administration.

And when I was elected Governor and approached the inaugural, the concern I had was how would we ensure that we were prepared in the event of a blizzard, a natural disaster, a prison uprising, whatever, a sort of an event that would require immediate response from the National
Guard, or any other element of the state response, from the State Police on down.

And as we interacted with the Pataki administration, Bill Howard's role in that structure, and decision-making structure, became more and more apparent.

So we decided to keep him has a holdover from the Pataki administration, because he seemed to be the individual who knew what levers to push, what buttons to push, and levels the pull, who to call in the event of a disaster.

And he remained on the second floor.

His precise title, I could not give you.

Q  And do you recall who had input in that decision to keep Mr. Howard?

A  I could not give you a complete list. I know that I was part of that decision-making process.

And I know Rich Baum was part of it.

Beyond that, I could not tell you.
Others had, in a similar way, viewed him as being a useful participant in that decision-making process.

Q      And did Mr. Howard have a relationship with the State Police during his tenure in your administration?
A      Yes. Part of his responsibility was to be one of the individuals who would deal with the State Police on a multitude of issues, but I could not tell you which, and I could not tell you precisely what.

Q      And did Mr. Howard report to you during your administration?
A      Directly?
Q      Yes.
A      No.
Q      Who did he report to you, do you know?
A      He reported to the Deputy Secretary, who I guess would be Senator Balboni.

And then from the Deputy Secretary would be to, really, the Director of State Operations, and the Secretary. So really, there were several
layers between Mr. Howard and me in terms of a reporting structure.

Q  And did you have conversations with Mr. Howard during your administration?

A  Sure.

Q  Concerning what types of issues?

A  The contact with Bill was limited to two areas, as I best recall.

The first would be disasters, usually State Police-related shootings. There were several losses in State Police and hostage situations and/or floods that resulted in damage.

And Bill would be the individual who would keep me updated as those events unfolded during those periods of time.

And he would be the conduit of information to ESP or SIMO, the Emergency Management Office.

So that was the preponderance of my interaction with Bill. And it was limited to those discrete events.

Second, which is ancillary, but he is something of a historian, and he helped put together certain displays in the Red Room.
of historical memorabilia.

And I remember we spoke about that, and I think he was there when we did a press availability.

I think it was a draft of the Emancipation Proclamation, and somebody saw it.

That was the set of circumstances.

Q Did you ever have any communications with Mr. Howard concerning the State Police and the use of the airplane?

A I do not believe so.

Q Did you ever have any conversations with Mr. Howard concerning the State Police and Senator Bruno's use of the helicopter?

A I do not believe so.

Q Did you ever have any conversations with Mr. Howard concerning the State Police provision of ground transport to Senator Bruno?

A I do not believe so.

MR. TEITELBAUM: Mr. Spitzer, I just want to ask you whether Mr. Dopp used
the term "investigation."

Did he ever use the term
"monitoring" to you?

THE WITNESS: I do not recall his
using that term, no.

MR. TEITELBAUM: And was there
anybody in the Executive Chamber who viewed
the press releases prepared by the
communications people?

THE WITNESS: I'm sure there was.

MR. TEITELBAUM: Do you know who?

THE WITNESS: I do not know what
the precise review process was in the
Governor's Office.

I know that -- I don't want to
speculate, but I am quite confident that with
respect to certain types of issues, there
would be involvement from the senior staff,
meaning Rich Baum, or others who were
involved in a particular issue.

On mundane matters, I imagine
there was not.

But beyond that, I could not tell
you.

MR. TEITELBAUM: Do you know
whether Mr. Nocenti drafted press releases?

THE WITNESS: I would have no idea.

I would be surprised, but I do not know.

MR. TEITELBAUM: Why would you be surprised?

THE WITNESS: Well, because he had enough paper to read without reading press releases, and I just don't think that he David would have been called in to issuance of a press release unless it related to the appointment of a judge, or a particular subject matter that was within his domain.

MR. TEITELBAUM: Did you ever have communications with Mr. Nocenti concerning a draft press release?

THE WITNESS: Did I ever?

MR. TEITELBAUM: As best you can recall.

THE WITNESS: I don't recall ever having a conversation with David about a press release, but then again, our conversations were expansive and covered so
many topics.

For instance, again, I'm not time limited on this. When I was Attorney General --

MR. TEITELBAUM: During the Governorship.

THE WITNESS: Again since David was involved in so many issues, if there was a press release relating to the budget, and it had something to do with judicial salaries, perhaps he would have participated. I'm speculating there.

But, again, it's subject matter dependent.

MR. TEITELBAUM: I believe you gave testimony that Mr. Howard was one of the people who had responsibilities with respect to the State Police.

THE WITNESS: That is correct.

MR. TEITELBAUM: Was there anybody else on the second floor who had that responsibility?

THE WITNESS: Senator Balboni.

MR. TEITELBAUM: Was he on the second floor?
THE WITNESS: Well, by "second floor," I perhaps have a different sense of -- what I mean by the second floor is an inner decision-making group of individuals. Where the offices physically were didn't matter a lot to me, because my office was hardly ever on the second floor.

Senator Balboni, as the Deputy secretary with responsibility for law enforcement issues, was somebody who had responsibility over the State Police, as did Denise O'Donnell, Commissioner of DCS.

So there were others who had a role within that decision-making, yes.

MR. TEITELBAUM: Besides Balboni and O'Donnell, and Howard, anybody else?

THE WITNESS: Anybody?
The Secretary. If you look at the organizational chart, he clearly has the supervisory responsibility.

But in terms of direct interaction with the State Police, I think those are the individuals.

BY MS. TOOHER:

Q Was there a FOIL policy that you
established in the Governor's office?

A Yes, there was.

Q And can you describe what that policy was.

A No.

Q Did you have discussions with your staff concerning FOIL, your senior staff?

A No.

I mean, the discussions were -- I don't want to be flip. I never read the FOIL policy, I never participated in drafting it, editing it.

We had one in the AG's office. I never looked at it, never made a decision about FOIL.

It was answer FOIL requests, be transparent.

I may have signed some executive orders relating to it.

But I did read, obviously, what counsel's office would have drafted.

The effort was to be transparent, but I did not ever look at a FOIL document, or participate in decisions relating to it.
Q      What was your understanding as to what the FOIL policy was in the Executive Chamber?
A      Give the media public information.
Q      And when you say "give the media public information," how so? How did that happen?
A      They call and ask questions, you answer it.

And understand, FOIL is a threshold. It does not define the outer limit of information's flow to the media. I would say that only in a de minimus percentage of media inquiries is there a FOIL involved.

The media asks for information, and is given information if it's public, and that was the policy. FOIL is provided or served only if there is hesitancy, or if there is some other reason, I suppose.

But there is an enormous flow of information between and among the public information officers and the media.
Q And why would there be a hesitancy in responding to a media request?
A Well, because you might say it's going to take time, it's going to be burdensome.

It's a chore to gather it. Do you need it. Here is a FOIL, get it for us. Stuff like that.

Q So a FOIL request, what is your understanding of what a FOIL request is particularly? Is that a written request, or is that an oral request?
MR. BROCHIN: You're asking for a legal definition?
MS. TOOHER: No, I'm asking for his understanding.
A I'm not sure if, in fact, there is a distinction between a request that can be on a piece of tissue paper that says pursuant to the Freedom of Information Law. I'm asking for A, B and C. I believe the oral.
I'm not sure.
If somebody says FOIL, it becomes
a FOIL request. Otherwise, it's a media request. The distinction between the two, in my mind, is de minimus to the point of nonexistence, because either way we provide public information.

MR. BROCHIN: Did you routinely see FOIL requests?

THE WITNESS: I don't think I saw more than -- I'm not aware that I ever saw a FOIL request in my years as AG or Governor. Maybe one or two FOIL requests specifically related to me and the charities, some particular issue, I may have seen it, my family's charity, I may have seen it.

Q Did you ever have discussions with your staff concerning FOIL?

A Again, the word "ever" --

Q During --

A I understand. Even time limiting it to my gubernatorial tenure, the issue of FOIL compliance may have come up, and certainly on January 1st of 2007 I signed certain executive orders relating to information flow. And I don't know if those
related to FOIL in particular.

But the notion of transparency.

So there were general conversations that we were going to be transparent, and try to provide as much information as possible.

Beyond that, I do not recall.

Q You relayed the transparency issue to your senior staff?

A That is correct.

Q And did you relay that to Darren Dopp?

A Necessarily, so yes.

Q Because he was --

A Well, he was really the fulcrum of that conversation. As the Communications Director, that is really where the media interfaces with the executive.

And it came down to things as fundamental as whether the second floor would be locked, and whether there would be access to the second floor for reporters, which had been, you may recall, a point of some contention during my predecessor's tenure.

And we made a significant effort
to open up the second floor, so that reporters could actually walk onto the second floor, a portion of the second floor that's considered to be the Executive Chamber, and talk to people.

And Darren was the one who coordinated that.

Q Are you aware whether or not the Executive Chamber had a FOIL officer?

A I am sure we did.

Q Do you know who that was?

A Somebody within counsel's office.

Q But you don't know who the individual was?

A I don't know if it was one person throughout, or changed.

It might have been a sort of burdensome responsibility or duty that you rotate around. I don't know.

MR. TEITELBAUM: Mr. Spitzer, was it your understanding that there was a written FOIL policy.

THE WITNESS: I imagine there was.

MR. TEITELBAUM: Is that your
best information that you have?

THE WITNESS: Yes.

MR. TEITELBAUM: Was it written?

THE WITNESS: I've never read it, but I'm sure that it was. I presume there was.

MR. TEITELBAUM: Did somebody tell you that?

THE WITNESS: I think it's the sort of thing you just assume, and know intuitively.

There has to be some process by which FOIL's are responded to, deadlines, time frames. Like everything in government, there's got to be a rule somewhere.

MR. TEITELBAUM: What I mean by a written FOIL policy, I mean a FOIL policy in written form that was developed by your administration.

THE WITNESS: I do not know if it was developed by us, amended by us.

That I do not know.

When I was Attorney General, there was a FOIL policy that dealt obviously with how you deal with requests for
litigation documents and other documents
which you need to analyze from various
perspectives.

There must have been, I presume
there was such a policy with respect to the
executive.

Q     Did Darren Dopp ever come to you
concerning a FOIL request for Senator Bruno
information?
A     He came to me and said that there
had been information requested which would be
the subject of a FOIL, yes.

Q     When was that?
A     One such example, and it may be
the only one I can recall, it was related to
the use of the airplane, the helicopter.

Q     And do you know when that was?
A     The initial contact on that issue
I believe was in early May, but it was not a
request limited to Senator Bruno, it was for
anybody's use of the State airplane.

Q     And what was your understanding
as to where that request was coming from?
A     I do not recall. I don't know.
Q     What did Mr. Dopp say to you in
that regard?

A They are asking for information about use of the plane. And frankly, it was not Senator Bruno's use of the plane, it was my use of the plane, which had been a constant source of media input.

Q And when you say "they're asking," who's "they"?

A The media.

Q And were you aware of any particular members of the media at that time?

A No.

There had been articles in virtually every media outlet, from the New York Times to the New York Post, to the Times Union, to TV stations, about use of the airplane going back years and years and years.

This was a constant source of inquiry.

Q But in early May, what were the inquiries directed at?

A I knew only that there were inquiries about use of the airplane.

MR. BROCHIN: Did you say it was
early May?

THE WITNESS: I think it was
early May.

And let me preface this by saying
that I'm going to give you my absolute best
recollection about when events occurred. It
sometimes gets difficult to parse
recollection as I sit here today versus what
I have read in multiple reports and multiple
investigations of this issue, which have
brought to light facts that I now believe I
recall, but do not know when I actually first
recalled them.

Q Looking to the early May time
frame, and Darren relayed to you that there
were media requests concerning the plane, had
been there discussions concerning the plane
prior to that time in the chamber?

A Oh, sure.

Q And what type of discussions were
they?

A Understand that going back to
1994, the issue of Air Cuomo, which George
Pataki turned into quite a significant issue
during the gubernatorial campaign, framing
this as abuse of public assets.

Since that date, there had been an awareness that this would and could be a media issue.

During my campaign it was an issue, it didn't relate to the public plane, it was funding of airplanes.

When I was elected Governor, we changed the certification that was to be appended to request for the airplane, in order to do our best to ensure that there would be a public purpose attached to the use of the plane on a given day.

Q And when you say "we changed the certification," who is "we"?

A I use "we" because I'm not quite sure who was involved in that.

I know I at some point had raised it as an issue where I wanted us to be careful.

Q Who did you raise it with?

A I don't remember if it was with David Nocenti, Marlene Turner, Rich Baum, Darren.

I do not know with whom I raised
it, but I know I made the point, let's make sure we are careful, this is something that is often a media focus.

And we did change the certification.

I was not involved in crafting the wording, or involved beyond that.

Q What was your understanding as to what the change in the certification was?

A There was, I believe, I believe that there was an amendment that required that there be a signed statement that there be a government purpose to the trip.

I do not know what the form had been beforehand, but I believe that was added.

Q And what was the intent in making that change?

A Just to make sure that the plane, or the helicopters were used for a public purpose, rather than for a purely political purpose, or personal.

There are many other purposes for which one can imagine.

Q And did you have an understanding
at that time as to what was appropriate use of the plane?

A      According to who?
Q      According to you.
A      What I thought was appropriate, or what the law thought was appropriate?
Q      What the law thought was appropriate?
A      That's why I asked.
The law, as I understood it, was vague.
And that vagueness was what worried me, and hence I sought to add some element of clarity to it.
Q      Vague how so?
A      There was uncertainty about either the need or the proportion of public purpose that needed to attach to any given set of meetings that were being made possible by virtue of using the plane, and even to the definition of what public purpose was.
This is an area that the courts had grappled with in the Orenstein case, where I was one of the Prosecutors, and clearly, there was some ambiguity that
continued to be reflected in the guidance from the Ethics Commission; or lack of guidance.

So we were trying to say, what do we do to make sure we act properly here. Because the Executive Chamber needs, for whatever reason to sign off on others' use of the plane, as well, so we wanted to be careful.

Q And when the certification was changed, what was your understanding as to the appropriate use of the plane or helicopter at that juncture, following the change?

A Again, it was obligatory -- what was added was a statement, I believe, and the document I'm sure is before you somewhere -- a statement that there be a government purpose for the trip.

Q Could there also be another purpose for the trip?

A I believe we would have to look at the language, but I don't think it said exclusively government purpose. I believe it said a government purpose.
And again, that is the area of latitude that I believed should have been addressed, and needed to be addressed.

Q And in terms of the certification, were you a part of that?

A No.

Q Was that --

A The drafting of it?

Q Yes.

A No.

Q Was that ever discussed with you in terms of the language of the certification?

A No. I was a bit more concerned with the budget, 3,000 appointments, and $125 billion, and how we would spend it.

Q And was it ever relayed to you that there had been conversations with the Senate concerning the certification requirement?

A I heard at some point that the Senate was worried about a separation of powers issue, and did not want to provide some information, but I know beyond that.

Q And who did you hear that from?
A I do not recall.

Q And were there ever discussions about requiring more information in requesting use of the plane than just the certification?

A I do not know.

Q Did anyone ever relay to you the concept of using itineraries or schedules as a requirement for using the plane?

A Maybe that is the information that the Senate was hesitant to provide, but I do not know.

MR. TEITELBAUM: Mr. Spitzer, did you participate in discussions where the standard was established for the proper use of the helicopter aircraft?

THE WITNESS: No.

MR. TEITELBAUM: Do you know if there were such discussions that took place?

THE WITNESS: I have no idea.

MR. TEITELBAUM: Do you know --

THE WITNESS: Although implicit in the crafting of the certification, one might argue a certification is a standard. So if you're crafting a certification, in
1 essence, you're creating a standard.

2 MR. TEITELBAUM: And what is your
3 understanding of how the certification
4 clarified the ambiguity that you just
5 testified to?

6 THE WITNESS: I could not tell
7 you without examining the certification and
8 contrasting it to the prior form, which I
9 have not done.

10 MR. TEITELBAUM: But your
11 understanding is that certification did lend
12 clarity to the --

13 THE WITNESS: It's my
14 understanding that it was an effort to lend
15 clarity. Whether it did or didn't, I'll let
16 others determine.

17 MR. BROCHIN: He didn't testify
18 before that it lacked clarity.

19 MR. TEITELBAUM: Was it your
20 understanding that it did lend clarity?

21 THE WITNESS: It was my
22 understanding that it was designed to lend
23 clarity.

24 And we were attempting to address
25 an issue that was, dare I say, was not even
tertiary, it was probably about eighty-fifth on the priority out of eighty-four, in terms of things that I was worried about. But it was something to get done.

Q Did you discuss the certification issue with Richard Rifkin in your office?

A I don't recall doing so.

Q Were you aware that Mr. Rifkin had drafted, or had given an oral statement, of the policy concerning the aircraft previously?

A Much after the fact, I became aware, that to the extent there was a policy, it was based upon an oral statement that Richard had given when he was, I guess, Executive Director of the Ethics Commission. I don't know if that was the formal policy, if it was the informal policy. I know that became one element of the conversation.

Q But you didn't have conversations with Mr. Rifkin early in your administration concerning the use of the aircraft?

A Did I?

Q Yes.
A No. I would get on the airplane when they said we're using the airplane. I would get off when we got there.

I did not make any determinations whether I used the airplane.

Q Did you ever have discussions with anyone in the chamber concerning Senator Bruno's use of the aircraft?

A Yes.

Q And who would you have those discussions with?

A It began --

MS. HIRSHMAN: You mean who would, or who did he have those discussions with?

Q Who did?

A The first conversation, as it related to Senator Bruno's use of the plane, resulted in from my conversation with Senator Bruno during the campaign.

And I recounted that conversation to individuals who then, were not then, but would become part of the chamber staff.

But it's relevant, I believe, to your inquiry.
And this was a conversation which I'm sure you've read of, which he asked me not to deny him access to the plane. And I said I would not deny him access to the plane. It was not my toy, it was not my property, it was public property, and that he would have access to it when it was appropriately being used.

I conveyed that conversation to several individuals.

I could not tell you whether it was Rich, Marlene, at that time, because those were the individuals with whom I was dealing during the campaign.

Darren was not. He ran my campaign staff, so I dealt with him much less during that period of time.

Q And after you came into office, was there conversations with your staff concerning Senator Bruno's use of the plane?

A There were a few, very few, and I'm sure you have seen, as I have since this whole inquiry began, the various e-mails back and forth in which Marlene on occasion asked me whether we should say yes or no to a
request for the plane by Senator Bruno.

And so an event like that, obviously, it was my attention. But there were very, very few of those.

In fact, I can't remember any other than that indicated by the e-mail.

Q And that event where Marlene Turner spoke to Catesby Perrin, did Catesby come to you and relay Marlene's request?

A I imagine he did.

I'm presuming that, but if Marlene asked him to ask me something, I'm sure he did.

And then there may have been one other time, actually, when Marlene yelled out, "Senator Bruno is asking for the plane."

And I would say yes. We do not deny access to the plane, as long as they say it's for an appropriate purpose.

That was always my response.

Q And did you ever give direction to Marlene, or anyone on your staff, to keep you advised as to Senator Bruno's use of the plane?

A No, I did not.
I have no idea how often he used the plane, or when and where, other than these interactions that we have discussed.

Q    Do you know why you received the inquiry on that occasion?

A    As the events have been reconstructed, and I was not focusing on this at the time, there were moments when Senator Bruno made comments, or made public comments that were, by any standard, violative of the civil discourse that we were trying to maintain at a public level.

And I think somebody said, "You want to act the way your predecessor did and take the chopper, or the fixed wing plane," and I said no.

I told him back last summer, it was not during the summer, we found out it was in November, that I told him I wouldn't do that, I'm not going to.

Q    Who relayed that to you, "Do you want to take the plane away"?

A    Again, I don't think those were the precise words. It would have been Marlene, just by saying, "He wants the plane."
What do you want to say?"
I mean, technically, as the Governor, I could have said no, but I never id.

Q And in terms of saying yes, what was your understanding as to the basis for approving or denying the use of the plane?
A Merely that they would have to fill out the form that had been created.

So I do not know anything other than that they had to fill out a form. I don't know what they were doing with those things.

Q So in making a determination of, yes, you can use the plane, or, no, he can't use the plane, did you consider any information?
A No.

I was not saying I have examined the information, therefore, he can use the plane. I was saying I am not overriding that process by peremptorily determining, as Governor of the State of New York that he will not use the plane, and I'm grounding him, like apparent grounding a teenager.
I'm saying, "Do whatever the process requires." And if he fills out the authorization, he gets the plane. If they don't fill it out, I guess they don't get it. But I'm not doing anything other than the ordinary process requires.

Parents aren't successful with teenagers, either.

Q I have two.

MR. TEITELBAUM: Off the record.

Q Concerning the media inquiries on the use of the plane, and you testified earlier, in early May, Darren notified you that there were media inquiries.

Those inquiries also concerned your use of the plane; is that correct?

A That is correct.

Q And what was the nature of those inquiries?

A I've told you everything I know about them. The media is inquiring about your use of a plane. Fine, big deal.

Q What was your understanding as to the question concerning your use of the plane?
Well, implicit in the question always is -- and I'm not sure if it was articulated this way -- the question is are you using the plane to go to a fund-raising event, are you using the plane to go visit your parents in Florida, are you using the plane to do government work in Rochester or Washington.

It was essentially the effort to parse that public, nonpublic, divide we referred to earlier.

And was there a particular trip that the media was interested in at that time?

I do not know. There may have been, but I don't know.

Did Darren Dopp ever mention to you that they were inquiring about a California trip during that time frame?

I do not know if that was raised ever, or certainly at that point in time during my -- during the relevant time period. In the course of this investigation, it has somehow emerged that maybe that was the inquiry.
But I do not believe I was aware of that fact at that time.

Q      Did you give Darren any instruction in terms of responding to the media inquiries at that time in early May?
A      No. I mean, my recollection is I probably shrugged and said okay, next. Big deal.

Q      And did Darren have further conversations with you after early May concerning media inquiries on the use of the plane?
A      The next conversation that I recall -- and this is a conversation that, as you can see from examining the multitude of documents in this case -- we did not recall, I did not recall until more recently, was the mid-May conversation that somehow related to the draft press release, and that sequence of events, the May 17th.

Q      And what was that conversation?
A      It was a conversation in which the question was whether or not information should be released, provided to the media, about use of the plane by Senator Bruno.
Maybe others, but I recall Senator Bruno. And my perspective was that this was a nonissue, the law was remarkably porous, that I referred to the Orenstein case as the -- not by case name, I referred to it as the Orenstein -- maybe I said the Orenstein case established a very lax standard.

Who cares, this is a nonevent, and we're trying to do a lot of business with these guys. What's the point in getting involved in any of this?

Q And who participated in this conversation?

A I believe it was Rich Baum. I believe it was Darren Dopp. I believe David Nocenti may have been there. But again, this was a very brief conversation.

Q And where did this conversation take place?

A I do not recall if it was in my office, or the adjoining conference room, but it was, again, brief, because I was dismissive of the issue, and indicated that
to those involved.

Q I'm going to show you what has previously been marked as Commission's Exhibit 30.

(Witness reviewing document.)

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

A I can identify it as the draft press release that has become a subject of inquiry in this investigation, but I do not make that inquiry, because I recall seeing it at the time.

Q Were you shown this document at the time of your conversation with Darren Dopp, Mr. Baum and Mr. Nocenti?

A I do not recall seeing this document until this investigation was under way.

Q And by "this investigation," you mean the Commission on Public Integrity's investigation?

A Well, I'm not sure when you began, as opposed to the DA, the IG, and the others who have been parsing this. I did not -- let me phrase it
this way. I do not recall seeing this in the
time frame of May, June, July of 2007.

Q So you have no recollection of
Darren Dopp bringing this press release to
you in or around the May 17th time frame?

A That is correct.

And clearly, this was a topic of
conversation, but I do not recall, have any
recollection of seeing this document.

Q And during the conversation about
this press release, was a decision made
concerning the press release itself?

A I'm not sure the conversation was
about the press release.

I'll try not to quibble, but the
conversation I described was about an issue
separate and apart from the press release.

Now, the press release may have
been either the trigger, or may have been a
predicate to the conversation.

But the conversation was about
the release of information, and I was
dismissive about it, and whether that was
taken as final judgment, I guess, as the
Governor, I said, "This is a waste of time."
This is an issue who cares."
I guess others might have viewed
that as a determination, because my
understanding is this press release was not
issued.

Q What was your understanding as to
the information that was going to be
released?

A The information relating to
Senator Bruno's activities on days when he
used the plane.

Q Were you shown any documents
during this conversation?

A I do not recall seeing any
documents.

Others may have looked at
documents, but my involvement in the
conversation was brief, as I said.

MR. TEITELBAUM: Did you see
anybody looking at a press release?

THE WITNESS: I don't recall.

Q Did Mr. Dopp express any concern
at this time during this meeting about the
use of the plane by Mr. Bruno?

A Yes. The predicate to the
conversation was concern that the plane was being used for purely political purposes, as opposed to governmental. This is a divide that is perhaps hard to articulate.

My brief observation was that how are you ever going to know which is which, and what is what, and who cares.

Q Did Mr. Dopp express any concerns going forward from that date about use of the plane at this time?

A I'm not sure I understand.

Concerns about Senator Bruno's use of the plane.

Q Correct.

A I don't remember.

Q Did you give him any direction following this meeting concerning Senator Bruno's use of the plane?

A In the course of this conversation?

Q Yes.

A Not that I recall.

The conversation did not relate to use of the plane, which was not a determination that Darren would be involved
in making.

It was a question of release of information, and that is the issue I spoke to.

Q Did Darren relate to you that there were, again, media inquiries concerning use of the plane?
A Yes, that was the predicate. This was shortly after the initial conversation about inquiries, and so, it was part of that.

Q What did he say to you about the plane.

MR. BROCHIN: The same conversation?

Q In sum and substance.
A There were media inquiries. This is an issue that the media was always interested in. That was part of the backdrop to the conversation.

Q Did Darren indicate he would be doing anything in response to the media inquiry?
A I do not recall.
Q     Did you give him any instruction
concerning what he should be doing?
A     Not that I recall, no. Other
than my indicating that I thought it was
sillyish.

Q     Did you give him any direction to
continue to keep an eye on this issue?
A     Not that I recall.
Q     Did you give him any direction
concerning obtaining any records in response
to media inquiry at that time?
A     I do not believe so.
Q     Was there any discussion at the
May 17th time frame of Darren doing anything
further on Senator Bruno's use of the
airplane?
A     I do not recall.

And I'm glad you added the words "time frame," because I do not know if the
conversation was on the 16th, 17th, 18th,
19th.

There is no precision in terms of
placing the conversation.

MR. TEITELBAUM: Within this time
frame, was there any discussion with Mr.
Dopp, and the others who you mentioned, who were part of this discussion, concerning monitoring Senator Bruno's use of the aircraft?

THE WITNESS: Not that I recall, no.

MR. TEITELBAUM: Either by yourself or being mentioned by the other people involved, did anyone else mention it?

THE WITNESS: By myself, you mean whether I would monitor it?

MR. TEITELBAUM: No, of course not.

But whether you yourself --

THE WITNESS: Mentioned the word.

MR. TEITELBAUM: -- mentioned the word "monitor."

THE WITNESS: I do not recall using the word "monitor."

MR. TEITELBAUM: Did you hear anybody else use the word "monitoring" during this conversation?

THE WITNESS: I have no recollection of that, but again, as you can see, this was a brief conversation among five
hundred that day on other issues.

So I do not know.

MR. TEITELBAUM: Would you agree with me that a direction coming from yourself or from somebody else to Mr. Dopp to monitor Senator Bruno would be an important decision?

THE WITNESS: No.

I don't mean to be disagreeable, but first, I do not remember using that word, I do not believe I used that word.

But an important decision to keep an eye on things is almost sort of a perfunctory response to, you know, Senators talking about property taxes.

Keep an eye, see what he says. The word "monitor" is not a word I have any recollection of using.

MR. TEITELBAUM: When we talk about the subject, we're talking about keeping an eye on Senator Bruno's use of the State aircraft.

In words or substance, did you or anybody else in your earshot, say to Darren Dopp, in words or substance, and on a going forward basis, from that period of time that
we are talking about, mid-May, that he should
be keeping an eye on Senator Bruno's use of
the State aircraft?

THE WITNESS: I do not recall any
such directive, but again, there was an
outstanding media inquiry about it, so
obviously, this was something that continued
to require some attention. Precisely what, I
don't know.

MR. TEITELBAUM: Did somebody
during this conversation make that point?

THE WITNESS: I do not recall,
but again, the predicate to the entire
sequence was the media inquiries that were
made in early May, as they had been
throughout the months.

If you back and do a Lexus
search, you will see many inquiries, and many
articles, about this topic.

MR. TEITELBAUM: At this meeting,
did you have any suggestion that Mr. Dopp was
directly or indirectly in communication with
the State Police concerning the movements of
Senator Bruno in connection with the State
aircraft?
THE WITNESS: I have no idea.
I have no idea where the information came from, or how it was generated.

MR. TEITELBAUM: What information are you now referring to?

THE WITNESS: Whatever information there may have been about where Senator Bruno went.

MR. TEITELBAUM: Did Mr. Dopp share that information with you during this time frame?

THE WITNESS: As I said, there was a general statement that he believed he was not doing governmental work, but was doing fund-raising.

Where that information came from, I do not know.

And obviously, fund-raising events are publicized events. They're big events that generate media coverage.

How and where the information came from, I do not know.

MR. TEITELBAUM: Did he show you an itinerary of Senator Bruno?
THE WITNESS: I do not believe I saw an itinerary.

There was a reference to either the C.V. Starr or AIG conversation. But beyond that, no.

MR. TEITELBAUM: What was the reference?

THE WITNESS: A reference to his stopping at, or having a meeting at, one of those two offices.

MR. TEITELBAUM: What did Mr. Dopp say, as best you can recall?

THE WITNESS: It was known that they are contributors to the Republican Party, or to Senator Bruno.

MR. TEITELBAUM: Did you say anything in response to Mr. Dopp?

THE WITNESS: I said, "Look, they could have been discussing insurance policies," who cares.

MR. TEITELBAUM: Did anybody else who was a participant in this conversation say anything in response to Mr. Dopp conveying that information.

THE WITNESS: I have no
recollection.

And again, I don't know if it was Darren who provided this specific information.

C.V. Starr is referred to here in the draft press release. I don't know if it was C.V. Starr or AIG that was referred to. Obviously, there is a nexus between the two.

But again, my view is he could have been doing very legitimate government work, discussing a multitude of issues.

MR. TEITELBAUM: Were you aware of that time of Mr. Dopp being in possession of a Bruno itinerary?

THE WITNESS: No, I was not.

MR. TEITELBAUM: Did you see him holding any papers in his hand when you had this conversation?

THE WITNESS: I have no recollection.

MR. TEITELBAUM: Did he hand any papers to anybody else who was a participant in this conversation?

THE WITNESS: I simply don't recall.
MR. TEITELBAUM: In looking at Commission's 30, in the second paragraph, after the colon --

THE WITNESS: The second paragraph after the colon.

MR. TEITELBAUM: I'm sorry, the beginning after the colon, the words "the State plane and helicopter may be used only for official state business."

THE WITNESS: Yes.

MR. TEITELBAUM: Is that consistent with what your understanding was at that time, May 17th, as to how the State plane and helicopter may be used?

THE WITNESS: No.

MR. TEITELBAUM: What was your understanding?

THE WITNESS: Well, the rule as articulated by the Ethics Commission, as I understood it, was that there needed to be some mix of purposes, one element of which would be governmental.

Now, what those proportions were was, to a certain extent, the crux of the issue.
And hence, as we discussed earlier, the crafting of the certification as it was crafted, you can insert the word "exclusive" -- it was meant to ensure that there was some governmental purpose.

Mr. BROCHIN: Is this a good place for a break?

THE WITNESS: Are we done?

(Laughter.)

THE WITNESS: That wasn't meant to be funny.

MS. TOOHER: Yes.

(Recess had.)

BY MS. TOOHER:

Q Governor, I'm going to show you what has previously been marked as Commission's Exhibit 5.

(Witness reviewing document.)

Q I'll ask you if you've seen this document before.

A I'm not aware that I have.

Let me put it this way. I certainly don't recall seeing it in the time frame of May, June, July.

Whether I have seen it
thereafter, as these investigations have unfolded, I don't know.

Q     So you were never provided a copy of Commission's 5 during the May time frame?
A     I do not recall seeing it, no.
Q     When was the first time that you saw this document?
A     I'm not sure if I've ever seen it. But as I said earlier, there were so many documents that I saw in the course of this investigation, I may have, but I don't know.

Q     Governor, I'm showing you what has previously been marked as Commission's 42.
A     Yes.
Q     And I ask if you can identify this document.
A     Well, it appears to be an e-mail that I sent to Rich Baum.
Q     And the address, the lawrence@lausp.com, that is your e-mail address?
A     That is my Blackberry address, yes.
Q And the subject of the e-mail, "Idea about JB, I want to discuss with you."
A Yes.
Q Do you know what you were referring to there?
A No, I do not.
Q This is May 15th. This is around the time of the May 17th discussion.
A That is correct.
Q And Rich Baum at that time was serving as your Secretary; is that correct?
A As he did throughout my tenure as Governor, that's correct.
Q But you have no idea what the reference here was concerning JB?
A None whatsoever.
Q And JB would have been?
A I assume it's Joe Bruno.
Q I'm handing you what has previously been marked as Commission's Exhibit 43.
Could you take a moment to review the document.
(Witness reviewing document.)
Q I ask you if you can identify
this document.

A: It appears to be a sequence of e-mails between me and Rich Baum.

Q: And I want to draw your attention to the top line of the e-mail which indicates, "I want to punch back at him. He is making personal attacks, and I'm going to really go after him at some point."

Q: Do you know who that refers to?

A: In the context here, it was Senator Bruno, yes.

Q: And when you say, "I'm going to go after him at some point," what are you referring to?

A: Reveal the hypocrisy of what he was saying in his personal attacks against me and my wife.

Q: And Senator Bruno was making personal attacks against you and your wife during this time frame?

A: That is correct.

Q: How were you aware of this?

A: Media reports, daily.

Q: I'm sorry, you said "daily"?

A: Yes.
Q      And did you discuss this e-mail further with Mr. Baum and the concept of punching back at Senator Bruno?
A      What I discussed was the issue of the magnitude of 1199's contributions to the Republican Party, and the nexus between that and their welfare policy, as a discussion that we should have.
Q      And the date on this e-mail is May 16, 2007; is that correct?
A      It seems to be, yes.
Q      And that is around the same time you're having the conversations concerning Senator Bruno's use of the plane with Darren Dopp?
A      As I said, I don't know if those conversations were prior to or after the date of the draft press release.
Q      That date being May 17th?
A      That's correct.
Q      Were there ever conversations concerning use of the State plane, Senator Bruno's use of the helicopter, as a means of punching back at Senator Bruno?
A      Not that I recall, no.
This, as you can see, from the e-mail chain, relates to 1199.

The sequence here is that -- and again, I did not, don't want to speculate -- but the idea most likely that I was referring to on the 15th, if there is any nexus, is to this issue of highlighting the magnitude of fund-raising from various unions. And that was a topic of conversation.

Q But in the conversations that Darren brought to you about Senator Bruno's potential improper use of the helicopter, was it ever discussed as a means of getting back at Joe Bruno?

A In this May time frame, I have absolutely no recollection of that.

This conversation was separate and apart from the conversation relating to the press release.

MR. TEITELBAUM: Mr. Spitzer, just so the record is clear, how much would it have meant, the words that follow subject, why has the State PTY, the beginning of that statement.

THE WITNESS: I wanted us to
highlight the fact that, having just gone through, as you may remember, a very acrimonious budget debate, where 1199 spent upwards of $10 million advertising against our effort to get health care reform. And Joe Bruno had been essentially carrying their water during that time, I wanted it clear that 1199 and Joe Bruno had this very close relationship at many levels, and that was the context in which my effort to get both health care reform and campaign finance reform was deemed valid.

And his attacks, personal and rather vitriolic attacks against me and Silda, I thought were beyond the pale of what was appropriate, and I wanted to respond by getting this information out, which I thought was relevant to the topic of health care reform, and campaign finance reform.

MR. TEITELBAUM: In terms of the full list, what does that refer to?

THE WITNESS: Why did the State party not -- I guess it should have been "put out." The o-u-t is probably "put out a full list that it gave of Bruno fund-raising."
I'm typing this on the Blackberry. The keys are too small, and my thumbs are too big.

It referred to a desire to get out a list of the full magnitude of contributions from 1199 and others to the Republican Party during this time frame, which is the essence of campaign finance reform.

MR. TEITELBAUM: In Mr. Baum's response to you, when he says there are things he's done which we can publicize, what was your understanding of what Mr. Baum was referring to?

THE WITNESS: I don't know.

MR. TEITELBAUM: Did you ever have a conversation with him with respect to this?

THE WITNESS: I don't recall any conversation about that.

As you can see, my frustration was the nature of the personal attacks around this time, they were rather regular, and addressed not only to me, which was fine, but my wife.
Q: Did you ever have a conversation during the May 17th time frame with Darren Dopp concerning where he was getting information on Senator Bruno?

A: No, I didn't.

Q: Did he ever relate to you that he was getting information from Bill Howard?

A: I do not believe he did.

Q: At any time.

A: I do not recall his ever conveying to me or my ever asking where any of this information came from.

Q: Did he discuss with you during the May 17th time frame recommendations he had gotten from Peter Pope concerning the information that he had on Senator Bruno?

A: I do not recall ever having that conversation.

Q: Did he ever relate to you that Peter Pope made suggestions concerning the IG and Senator Bruno's use of the IG?

A: I have no recollection of that.

I became aware of that only in the subsequent publication of that information in the course of these inquiries.
Q    And following the May 1st conversation, did there come a time when Darren Dopp came back to you concerning Senator Bruno's use of the plane?

A    Came back to me with respect to media inquiries.

    So again, it's like emphasis, he did not come back and say we should discuss Senator Bruno's use of the plane. And this is a conversation at the very end of June, where he raised the issue of the media inquiries relating thereto.

Q    And between the May 17th inquiry and the end of June, did Mr. Dopp ever relate to you that there was any activity from the media concerning Senator Bruno's use of the plane?

A    I do not recall any conversations between the May conversation, 17, give or take, and the end of June, on that issue.

    That was the period, the intervening five, six, seven weeks was the period of the legislative session, during which we had a sequence of public meetings, and back and forth on many, many issues.
But I do not recall this issue ever coming up.

MR. TEITELBAUM: Mr. Spitzer, there is testimony in the record that Darren Dopp, on a continual basis, was keeping you apprised of his activities about Senator Bruno's use of the State aircraft. Did that happen?

THE WITNESS: I have no recollection of that.

This was a period, as I just said, during the middle of May, the end of June, during which time we were trying to negotiate a multitude of bills, and there was activity on many, many issues.

And I have no recollection of this issue being raised.

MR. TEITELBAUM: Just so we are clear, the testimony in the record is that he was conferring with you frequently during this period. You have no recollection of that happening, or it didn't happen?

THE WITNESS: Herb, I'm giving you my absolute best recollection, which is that I have no recollection of it happening.
MS. HIRSHMAN: Do you want to do something with this document?

MS. TOOHER: Yes.

Q You have been provided a copy of what has been marked Commission's 46. Can you take a moment and review this document.

(Witness reviewing document.)

A Okay.

Q Can you identify this document?

A It seems to be, again, an e-mail chain among several parties indicated.

Q And who is it between?

A Well, various e-mails, but I think it speaks for itself.

Q And I'm going to take you up the chain from the bottom.

There is the original message --

A And this is not the complete document. I assume that there are -- the original message, this is -- you've given us one page, and a Bates No. 803.

That header there would indicate that there is an e-mail that preceded this, as well.
1 Q The header --
2 A The very bottom of the page, Exhibit 46, there is a header from Laurence to Darren Dopp, but there's no content there. I assume that there was some content beneath this in the e-mail chain.
3 I want to clarify that this is not the entirety.
4 Q The full chain of the e-mail?
5 A Correct. My recollection is good. The CN numbers.
6 Q And the CN numbers being poll numbers?
7 A That's correct.
8 Q Going up the chain to the second entry that appears to be from you at the Laurence e-mail account, to Darren Dopp, Rich Baum and Christine Anderson, I want to draw your attention to the last sentence, which reads, "I also want to discuss a post session strategy regarding Bruno and travel generally."
9 A Yes.
10 Q Can you tell me what you're referring to there.
A Yes.

This is on May 27th, and I'm saying that we need to think ahead to how we will, in the post June 21, which had been the date, I believe, that Senator Bruno had said the Senate would conclude its legislative activities, how do we deal with Senator Bruno in terms of outstanding legislative issues, and what we want to either accomplish thereafter that remains open.

And the travel references to my effort, which had begun earlier in the year, and you can look at the itineraries from post June 21, to travel around the state, explaining what we got done, what we didn't get done, and we need to begin to formulate that effort.

The uncertainty being we obviously didn't know what would and wouldn't get done between then and June 21, but we needed to be prepared to undertake that effort.

Q So the post session strategy regarding Bruno and travel, does that have anything to do with Senator Bruno's use of
the helicopter?

A Nothing at all. It was my travel.

If you look at the itinerary, after session, you will see there was a sequence of trips that were the result of our conversation.

Q And if we continue up the e-mail chain to the top entry -- and again, I draw your attention to the last sentence, -- I'm sorry, the second to last sentence.

"I presume the Bruno story runs tomorrow."

A Yes.

Q Do you know what that reference is to?

A I have no idea. It was May 27th. I have no idea.

It obviously was something that was kicking around that people knew of that we were referring to.

Q So when you say, "The Bruno story runs tomorrow," what do you mean by that?

A I just told you, I have no idea. I don't know which story it was.
Q But "runs tomorrow" means that it's going to appear in the press?

A I would assume so, yes.

But you could go to the media on the 28th or 29th and see what story there was. I have idea what story.

Often the media asks for input on stories, so you know what they're working on, and you know what is going to be run.

Q In looking to the media following the May 27th exchange, there was a story on June 3rd concerning Senator Bruno and the Abruzesse matter.

Are you familiar with that story?

A Am I familiar with the matter?

Q Yes.

A In what way?

Only from the newspaper stories about it.

Q And you became aware of the stories on June 3rd, on or about June 3rd?

A I don't know.

I only know of the name Abruzesse, and those allegations, from the newspaper stories that have been run.
And if June 3rd was the first story, then that's the first date I knew about it. I know nothing about it beyond what's been in the media.

Q    And how did you become aware of it the Abruzessee story?
A    The press.
Q    I'm going to show you what has been marked as Commission's Exhibit 47. It's a chain of e-mails dated 6/3/2007.
A    Yes.
Q    Can you identify this document?
A    Well, I can identify the last -- well, it purports to be an e-mail chain. I am the recipient only of the last piece of this.
Q    I understand.

MS. HIRSHMAN: Reading up from the bottom, the first.
MS. TOOHER: Yes.
A    You notice, I received -- it was sent to me. I don't know where you downloaded it from. I presume I received it and read
it. But everything above the 9:10 a.m.
e-mail I was not a participant of.

Q And the bottom entry, which is
directed to you from Darren Dopp, to you and
Rich Baum, subject, ATU, do you know what ATU
refers to?

A I presume the Albany Times Union.

Q And Mr. Dopp writes, "I guess we
know why Bruno's folks have been so jumpy of
late."

Do you know what he was referring
to?

A Well, do I know as we sit here,
no.

A fair inference that there was
an article in the Times Union that morning
that he is referring to, yes.

Q And if I told you that June 3rd
was the release of the Abruzessee article in
the Times Union, would that refresh your
recollection as to which article he was
referring to?

A It would permit me to draw the
inference that that's what he is referring
to.
Again, as I said, I presume that
that's what it is.
I don't know as we sit here.
There are other articles, but I presume
that's what it was.

Q      Did you have discussions with
Darren Dopp about the Abruzessee article in
the Times Union?

A      Other than a cursory, "Yeah, it's
a problem for Joe," or something like that,
no.

I know -- as I said I know only
what has been in the papers about it, and I
have not even read most of the articles,
because I don't care about it.

MS. TOOHER: I ask you to mark
this as Exhibit 173.

(Document marked Commission's
Exhibit 173.)

MR. TEITELBAUM: Mr. Spitzer,
referring to Commission's Exhibit 47, were
there discussions around this time period,
June 3rd, concerning the possibility of Dopp
getting out a travel story concerning Senator
Bruno?
THE WITNESS: As I said, not that I'm aware of.

And as I've said, the conversations in mid-May, which I have described, was one reference point. Then there was no conversation that I recall about this issue until conversations that I presume you will talk about shortly, at the end of June.

MR. TEITELBAUM: And did you hear, were you told, that there were conversations among your staff concerning getting out a travel story about Senator Bruno at around this time?

THE WITNESS: No.

As I said, the conversation that I had in mid-May I described, and then thereafter, there was not a recurrence of this issue, as best as I can recall, until the end of June, when it did come back.

Q Showing you what has been marked as Commission's Exhibit 173.

(Witness reviewing document.)

A I know it's not my job to ask questions, but do you know what day of the
week June 3rd was? Was it a weekend, Saturday or Sunday?

Q      I should, but I don't.

I ask you if you can identify this document.

A      It purports to be the bottommost original e-mail, this is the one that we've been discussing, and above it is my, what appears to be my responsive e-mail to Darren at about 9:12 a.m.

Q      And so your response to Darren's e-mail concerning Bruno's -- having seen --

A      Well, this one I was probably Blackberrying while I was driving.

The State Troopers would let me drive my own minivan to town.

MS. TOOHER: Will you mark this as Exhibit 174.

THE WITNESS: And that's why I asked what day of the week it was.

Because I would get the papers at the apartment, without heading to town if I'm in the city, or the mansion, if I'm in Albany. If I was at the farm, I would have to drive to the stores to get the paper.
Q      So the likelihood is at the time
1 you wrote this e-mail you were not at the
2 mansion?
3 A      That's why I asked if it was the
4 weekend.
5 Q      Or in Albany?
6 A      Perhaps I was at the house in
7 Columbia County driving.
8 But not on my cell phone. I'm
9 not sure if the statute goes to
10 Blackberrying, or just the cell phone, or how
11 it defines it, but I may have pulled over.
12 MS. TOOHER: Will you mark this
13 as Exhibit 174.
14 (Document marked Commission's
15 Exhibit 174.)
16 THE WITNESS: I may have pulled
17 over and timed myself.
18 Q      Showing you what has been marked
19 as Commission's Exhibit 174 --
20 A      I think June 3rd was a weekend.
21 My sister got married on the 10th.
22 Q      I'm showing you what has been
23 marked as Commission's 174, and ask you if
24 you can identify this document.
A: Again, it purports to be an e-mail -- the original e-mail is the one we've been discussing, and above it is another e-mail I sent back to Darren and to him later that day, later that morning.

Q: And do you have any understanding why e-mail chains would break like this?

A: No, I don't.

Q: And be documented on separate pages?

A: No.

Q: And again, in response to Mr. Dopp's earlier e-mail, you respond, "Not a good day for Joe." I would take that to mean Joe Bruno?

A: Yes.

Q: "This will set off a flurry of stories. We should talk later about this."

Did you have conversations later about the Abruzzese story?

A: I have no specific recollection of our doing so, but it would seem logical that we did, but I don't recall.

Q: You don't recall having conversations with either Darren Dopp or Rich
Baum about --

A I do not recall the conversation, but I would say certainly it's probable that we did.

Understand that virtually every day we would talk about what was in the papers, and that was the nature of the Communication Director's responsibility, what Abruzessee is in the papers, what does it mean, what is the fallout.

That's what we would talk about.

Q What is your understanding as to what the Abruzessee story was about Senator Bruno?

A I know only that there is some issue about his financial relationship and business relationship with Abruzessee.

Beyond that, I don't know nothing. I really never --

Q Are you aware that there is an investigation concerning Senator Bruno and the Abruzessee matter?

A Yes, I'm aware of that.

Q Are you aware that that investigation is being conducted by the FBI?
A: I know the FBI is participating in investigations of Senator Bruno, whether that is the focus or not, whether that is it, I don't know.

I never cared about investigations.

Q: It was a fairly important story concerning Senator Bruno at that time. Would that be a fair characterization?

A: One might say so. It mattered to me only in terms of the context of the political dynamic, and what we were trying to do, what the underlying facts were.

I never bothered to pursue it.

Q: When you say the political dynamics and what you were trying to do, can you explain that?

A: Sure. An effort to negotiate legislation through the end of session. You understand this is June 3rd, and we have had weekly public meetings at which I am creating an agenda of substantive issues, where we are hoping to reach consensus, from healthy schools to DNA reform, a range of issues.
And we were trying to navigate to conclusion.

Q During this time frame, hadn't you also made public statements concerning changing the makeup of the Senate from a Republican majority to a Democrat majority?

A I don't know.

I had been very clear that I would support Democratic candidates for the Senate, intended at some point that we would be able to take the majority. That's what democracy is all about.

Senator Bruno knew that as being somehow violative of the rules of engagement in Albany, which I found somewhat hard to understand, even though it may have broken the Code of Ethics, what they considered the Code of Ethics was between governance and legislators in the past.

I said I will campaign for Democrats to pursue the agenda.

Now, your question said in this time frame. I do not know if I had made any comments about that publicly at any point relevant, or precedent, or shortly
thereafter. So I don't know if that's the case.

There had been a special election in February, where the issue had been framed.

Thereafter, I don't know if there had been any public commentary about it.

Q You mentioned earlier that there did come a time where you had a subsequent conversation with Darren Dopp about media inquiries and Senator Bruno.

A Yes.

Q Can you tell me how that came about.

A Sure.

This was at the end of June, at post session. By post session, I believe it was June 21st that the Senate publicly announced it was done with this legislative session.

Several days thereafter, Darren came into my office and indicated that there continued to be media inquiries about use of the plane, Senator Bruno's use of the plane, and that there had been or there was going to be a FOIL served. And he said, "Should we
give them the information?"

And my response was, "Sure, screw it, what choice do we have. It's public information," and I indicated that we should do so.

This was obviously not contrary to, but a marginal difference from my May statement, in which I had said, "Who cares."

This was a media request, and I said, "Answer the media request. "Give him permission to do what we need to do to answer the FOIL."

Q Had Dopp told you in May that there were media requests?

A Yes.

As I've said, the predicate to the entire conversation was that there were media requests.

That was back in early May when that had come to light.

Q Had you advised him to respond to those e-mail requests?

A The conversation in May was, remember how I described it, it was, "This is a silly issue, who cares."
This is not an area where anybody will be ultimately found to have violated the law, because the law is, unfortunately, improperly porous, but so who cares.

Q      And now in June, the conversation is framed somewhat differently?
A      My recollection is it was framed more in the context of the media is back asking for it, and hence my response was, "What choice do we have? Screw it. Answer the media."

Q      And at this time, were you advised as to what media this was?
A      No.
Q      And did he indicate to you if there was more than one media request?
A      I do not know.
Q      And did he relay to you that there had been a specific FOIL request?
A      I don't know if he said that there was going to be a FOIL, that there had been a FOIL. There was a stated intent to serve a FOIL.

But there was an understanding that there was going to be a FOIL that would
be served, or had been served.

MR. TEITELBAUM: Did Mr. Dopp
tell you what information was being sought by
the media?

THE WITNESS: No, other than the
generic information about use of the plane.

MR. TEITELBAUM: What do you mean
by that?

THE WITNESS: Precisely what I
said, information about use of the plane as
it related to government and political
purposes.

That was the very issue that had
been discussed.

That was the description given to
me.

MR. TEITELBAUM: Is that what Mr.
Dopp said to you?

THE WITNESS: That's my
recollection of the substance of what he
said.

Or he may not have even needed to
say it, because it was implicit in all the
conversations that media requests for the
plane related to, "Are you going to political
events using the State plane?" That was always the inquiry.

MR. TEITELBAUM: Did you understand the inquiry to mean that they wanted, "they" being the media, Senator Bruno's ground itinerary?

THE WITNESS: I don't know if they wanted that from us, if they already had that. I don't know.

They wanted information about use of the plane.

My schedule -- I don't know what the availability of his schedule is.

Now I've learned more about it through this investigation. Back then, I didn't know.

My schedule was made public every day.

MR. TEITELBAUM: And the time you had this conversation in the latter part of June with Mr. Dopp, did Mr. Dopp tell you to what extent, if any, he had been already gathering documents?

THE WITNESS: I do not recall having any such conversation.
MR. TEITELBAUM: Did he indicate to you at that time that Bill Howard was in communication with the State Police to have them gather documents?

THE WITNESS: No. I never had that information, or got involved in any conversation, or had any conversation about how the documents were being gathered, or information was being generated.

Now, obviously, because of the May conversation I knew the reference to C.V. Starr, I knew there was some information about where Senator Bruno had been. But I never had any conversation about where, about how that information was gathered, or from whom.

The conversation with Darren at the end of June was probably thirty seconds, at most.

MR. TEITELBAUM: You are literal about that?


At most thirty seconds.
He was walking from the conference room to my office through to the adjacent offices.

Very brief.

Q I just want to be clear.

Your understanding as to the media requests at this juncture are concerning whom?

A My understanding is that they relate to all of us, meaning anybody with access to the plane, which is primarily me, Senator Bruno. I don't think Shelly ever used the plane. The Lieutenant Governor, the Chief Judge. I don't know if Judith ever used it.

It really was me and Joe, although this conversation related to Joe. And I'm distinguishing for you between the conversation which related to Joe, and my understanding, which was that the media inquiries about the plane were about all of us.

Q So your understanding was that the media inquiries concerned everyone who was using the executive plane --
A      That's correct.
Q      -- and helicopter?
A      And that goes back to the May
initiation of this.

But in May, when this set of
circumstances began, it was what's the
Governor doing with the plane, et cetera, et
cetera.

Q      But this June conversation
between Darren Dopp and yourself concerned
Senator Bruno's use of the plane?
A      That's what I just distinguished
for you.

The conversation -- the
conversation, my recollection, it was Darren
saying the media was asking about Joe, should
we turn over that information.

Information about me I presume
was always being turned over, because
everything about me was turned over all the
time.

Q      So the conversation was
specifically concerning Senator Bruno's
information?
A      Correct.
But your question was my understanding about the media inquiries, and that was broader.

Q      That's why I'm trying to clarify.
A      Yes.

Q      Were you aware of any other inquiries from the media concerning information on Joe Bruno that came to the Executive Chamber?
A      Not specifically, no.
Q      And was there ever a discussion that they should go to someone else to get this information?
A      I'm not sure I understand. A media inquiry -- I'm not sure I understand the question.
Q      Was there ever a discussion that they should go directly to the State Police concerning Senator Bruno's use of the aircraft?
A      I'm not aware of any -- I was not a participant in any such conversation.
Q      Was there ever a discussion that they should go to Senator Bruno's office directly to obtain the information?
A: I was not a party to such conversation.

Q: Were you aware that any conversations took place?

A: I'm not aware of such conversation.

MR. TEITELBAUM: Besides Darren Dopp, Mr. Spitzer, was anybody else in communication with you during this time period at or around May 17th and this June conversation that we are now talking about concerning Senator Bruno's use of the aircraft?

THE WITNESS: I don't recall having other conversations.

I have the vaguest of recollections that somehow issue of plane use came up in a conversation with David Nocenti, but I don't know what context. I don't know if it was related to Senator Bruno or not.

MR. TEITELBAUM: And during this time period, did you see anything, any document, that would indicate to you, that did indicate to you, that Darren Dopp, directly or indirectly, was having the State
Police gather documents?

THE WITNESS: As I said earlier, I have no recollection of ever having a conversation about how, or whether, or to what mechanism he was gathering documents, or from whom.

So, as I've said, public information about use of the plane and on what day who uses it.

MR. TEITELBAUM: You didn't see anything?

THE WITNESS: No.

To this day I have not seen what was turned over pursuant to the FOIL, nor do I know how it was gathered.

Q Was anyone else present during these conversations with Darren?

A There was one, singular, but not plural.

I don't believe so.

Q So there was no one else present when Darren Dopp discussed with you the media request for Joe Bruno's use of the plane?

A As I said, he was walking from -- my recollection is that he was walking from
the conference room.

Do you know the Executive Chamber physical structure?

He was walking from the conference room through my office, to the office where Marlene Turner would sit, and that it was during that time period when he was walking through there that we had this conversation.

And the duration was simply limited by the length of time that it took to walk through.

Q      And did he tell you specifically that he had received a FOIL request at that time?

A      As I said, I do not recall whether he said he had received it, he would receive it, but there was knowledge that there was going to be a FOIL as the predicate to turning over the information.

And, as you know, I'm sure, very often the media will say we'll get you FOIL, afterwards we want this, that, the other thing. And then they'll figure out precisely how to craft the FOIL.
Q      I'm showing you what has been
marked as Commission's 66.
(Witness reviewing document.)
Q      I ask you if can identify this
document.
A      It purports to be an e-mail from
Jim Odato to Darren, a FOIL request dated
June 27th.
Q      Have you ever seen this document
before?
A      Very recently, in preparing for
this deposition.
Q      So the date of the document is
A      Right.
Q      In and about that time frame, had
you seen this document?
A      No.
Q      I have not seen -- had not seen
this document until very, very recently.
Q      So did Darren Dopp ever show you
a FOIL request concerning Senator Bruno's use
of the plane?
A      No, not that I'm aware of.
Q      Did he ever show you a FOIL
request concerning your own use of the plane?

A    No.

As I testified an hour or so ago, I'm not aware that I ever really saw any FOIL requests during my tenure as Attorney General or Governor.

We got many of them, obviously. I was not on the circulation list for FOIL requests.

Q    And did you discuss the FOIL request for use of the plane in the June, the end of June, with anyone else in the chamber?

A    No.

As I've said, the conversation was with Darren, and it was a brief conversation.

He said, "They're back, they want this information. There is a FOIL, there is going to be a FOIL," whatever it may be.

I said -- and this was a slight shift, obviously, from what I had said in May, when I was completely dismissive of it.

They said the media's asking, there's a FOIL, there's going to be a FOIL.

So I said, basically, "What
choice do you have? It's public information, who cares, screw it."

MR. TEITELBAUM: Was he asking for permission to comply with the FOIL request during this conversation?

THE WITNESS: I viewed it more as informational than permission, because it's not up to me to approve compliance with FOILs.

And that's why it was more they're back, they're going to do it. We didn't give it to them in May, they want it, it's a FOIL. Here we go.

That was the tenor of it, and how I understood it.

Q And did you have any subsequent conversation with Mr. Dopp concerning the FOIL or the response?

A Well, do you want to limit that in time?

Obviously, once the article came out, there was an explosion, shall we say, of allegations.

Sure, there were subsequent conversations.
If you mean between the conversation I've just described, when I was in my office, and when the article came out, I do not recall.

We might have.

He might have said we gave them the information.

But I do not recall, I have no recollection of the conversation.

Q Between the end of June, say, approximately June 26th or 27th, when the FOIL request came out, and July 1st, which is the date of the Albany Times Union article, did you have any conversations with Darren Dopp concerning his response to the FOIL for information on Joe Bruno and his use of the helicopter.

A I do not recall those conversations.

Q Did you have conversations with anyone else in the Executive Chamber?

A I don't recall conversations. It may have been an offhand comment by Darren or somebody else, yes, they're going to run the story on the travel stuff, but I have no
Q Are you aware whether Darren responded to the FOIL request?
A I'm aware now that he did.
Q When did you become aware of that?
A I have no idea.
Q Prior to the article being written?
A Inevitably, I knew based upon my conversation with him.
Let me rephrase that.
Can't say I knew. I guess I presumed he was going to comply with it in short order.
But as I said earlier, I have not seen the documents. To this day I haven't seen them, so I don't know when he did so, or what he turned over.
So I just presumed that he was going to turn over that information.
Q So Mr. Dopp never showed you the documents that he was providing in response to the FOIL request?
A No.
MR. TEITELBAUM: You have read the District Attorney's recent report of investigation? Have you seen that?

THE WITNESS: Yes, I have.

MR. TEITELBAUM: Did you see that there was a reference in that report to, I guess I'm quoting from Dopp, that Dopp showed you the FOIL materials that were going to be released?

THE WITNESS: Honestly, I read the report quickly. I don't remember seeing -- if it's in there, I accept your presentation, obviously.

As I just said, I to this day have not seen the information that was turned over to Jim Odato.

MS. TOOHER: Will you mark this as Commission Exhibit 175.

(Document marked Commission's Exhibit 175.)

MR. TEITELBAUM: On page 12 of Exhibit 175, there is a reference in the third full paragraph here, "Dopp stated that he 'brought the records into the Governor's conference room,' and he laid them on the
table."

A  I think that was the "maybe" he is describing in the top half of that paragraph, if I understand their recitation of his testimony properly. And obviously, I wasn't there.

And as I've said about that meeting, I did not look at records, and have no recollection of what other people did when I was not there. Obviously, I don't know about that.

But if you continue down that paragraph.

And he said another time the Governor saw the travel records.

As I said, to this day, I do not know what these travel records look like, or what form they took when they were turned over, because I have not seen the materials that were turned over.

MR. TEITELBAUM: Just so that we have a crystal clear record, Dopp's statement that he brought the records into your conference room and laid them on the table, did he, to your knowledge, ever show you
these travel records, and lay them on the table?

THE WITNESS: I don't recall looking at the records, or seeing them arrayed on the conference table there.

I recall, as I've said to you, saying that the issue was one that was maybe material, and who cares, and being dismissive.

The second meeting, the conversation, it wasn't a meeting, it was in my office, not a conference room.

And as I've said, I do not recall, and to this day have not seen the documents that were turned over or generated, produced, whatever the word may be.

MR. TEITELBAUM: It says also in that paragraph, "When asked if the Governor ever saw Bruno's itineraries, Dopp said that he did, because either he or the Governor commented that they were unremarkable."

Again, it's not clear to me whether this is the May meeting or the conversation at the end of June.

Either way, I did not look at the
As I've said, there is a reference to a meeting at C.V. Starr or AIG, I forget how it's referred to, which I said was irrelevant, because they could have been discussing insurance policies.

So that's why I didn't look at records, I was responding in May to the issue.

And in June I'm not sure if Darren says I looked documents in June or not.

MR. TEITELBAUM: What I'm focusing on now is statements that you saw, actually saw, these travel records.

THE WITNESS: As I've said, I did not look at these records. I have no recollection.

To this day, I don't know what was he turned over in response to FOIL.

I don't know if you have a copy of what was transmitted. You could show it to me.

I do not believe I've ever seen what was turned over.
MR. TEITELBAUM: It goes further. It says, "Dopp stated that it was toward "the time when the records were about to be released."

At that point Dopp, "another time when the Governor saw the travel records."

MS. HIRSHMAN: I think we just need to clarify something. Because you're referring to a series of sentences without the relevant references to the time frame, at least as they are contained in the report.

MR. TEITELBAUM: Let me clarify it.

We're now talking about a time frame around the time that the records were about to be released to the media.

THE WITNESS: End of June.

MR. TEITELBAUM: The end of June.

THE WITNESS: Okay.

MR. TEITELBAUM: I think it was the 28th, actually.

THE WITNESS: FOIL was received on the 27th, and the documents are turned over thereafter.
MS. HIRSHMAN: There's no question pending.

THE WITNESS: I'm asking you.

MR. TEITELBAUM: You have the sequence right.

THE WITNESS: Okay.

MR. TEITELBAUM: So around that time Dopp stated, apparently to the District Attorney, in connection with this investigation, as reflected in 175, that you saw the records shortly before they were to be released, which was around the 28th.

THE WITNESS: Okay.

MR. TEITELBAUM: Is that true?

THE WITNESS: I have no recollection of that fact.

And as I've just said, I don't believe I have ever seen the records that were turned over.

And if you have them, I could look at them.

But I do not know what records were turned over, or what form they took, what they looked like.

MR. TEITELBAUM: It says at that
time you directed him to release the records. Is that accurate?

That's on page 13, the first full paragraph.

THE WITNESS: What page, I'm sorry, 13?

MR. TEITELBAUM: Yes.

THE WITNESS: The very top?

MR. TEITELBAUM: Yes.

THE WITNESS: No, I don't believe -- first of all, that is not a quotation, so I think this is --

MR. TEITELBAUM: That's correct.

THE WITNESS: This is language that is chosen by whoever drafted this report.

And clearly, I do not agree that I directed him to release the records.

And I specifically, when asked by them whether I directed him to release the records, I said no, I did not. Because I did not then, and nor do I now, view the conversation I've recounted to you as being a direction, or a directive, or a command, whatever equivalent synonym you might choose,
was as you, I think said earlier, more an
acknowledgment, or permission, or was it
FOIL, you do what you've got to do, which is
separate and apart from a direction.

MR. TEITELBAUM: On page 10 of
Exhibit 175, look at the last paragraph,
beginning with the words "the end of June."

THE WITNESS: Yes.

MR. TEITELBAUM: Did you ever
have a conversation with Dopp and Baum in
which Dopp asked you and Baum what you wanted
him to do in connection with Odato's looking
for aircraft records?

THE WITNESS: We're parsing this
more carefully than it is possible.

I do not recall, as I've said,
the conversation involving three parties,
Darren, Rich and me.

I recall the conversation I told
you, in which it was Darren and me, which is
other than some of the syntax and vulgarity
essentially consistent with his recollection
that I gave him permission, he says.

The language in here, obviously,
I do not recall using, I do not believe I
used.

But the second conversation, if you view this as Darren says, Darren, Rich, Eliot, and then Darren, Eliot, I do not recall the Darren, Rich, Eliot conversation at all.

I do, as I just told you, obviously, recall the conversation with Darren in which I said, fine, there's a FOIL, or whatever, screw it, go ahead.

That was consistent with what his recitation is here, not it's being a direction, directive, an order, and not the language used, and his description of it.

But the first conversation that is referred to in the bottom of 10, I do not recall.

Q That's the conversation with Mr. Baum?
A Correct, what I refer to as three people.

Q I think -- and again this is someone else is writing it?
A Yes.
Q It appears that there was a
1 separate conversation with Mr. Baum that you
2 had that he relayed to Darren Dopp.
   A    I do not recall that.
3 Q    You don't recall a conversation
4 with Rich Baum concerning the records for
5 Senator Bruno?
6 A    No.
7 Your point is you can read this
8 to be three conversations, Rich, the
9 Governor, Dopp, Rich, the Governor, me and
10 Darren.
   I recall the one I told you
12 about, which is me to Darren, in which I said
13 we have a FOIL, whatever.
15 MR. TEITELBAUM: Going back to
16 page 9, the May conversation, it says -- and
17 this is not a quote -- there's no quotations.
18 Moving forward, Dopp said the
19 Governor just wanted to "monitor the
20 situation" and "see what happens later on."
21 Now, did you indicate in words or
22 substance during that May conversation that
23 we've been talking about earlier on that you
24 wanted Dopp to monitor the situation?
25 THE WITNESS: I think I said
earlier I do not recall saying that in sum or substance, and frankly, the word "monitor" is not one I use.

That's not a word that I use.

Now, the second, the last two lines of that paragraph, are consistent with what I had said.

MS. HIRSHMAN: Which reads that the Governor felt the issue was a distraction.

That is what I've said, my recollection of that conversation, where I said, "Forget it, who cares, move on."

Now, what is not here, this is essentially one of the two reasons that I articulated, the primary reason being the legal conclusion that I would not perhaps expect Darren to remember or focus on, this is a murky area of law, one that probably should be clarified, and to its credit, the Commission has clarified it after all of this mess came out.

But at this point in time, there was no sufficient clarity to make sense out of this.
MR. TEITELBAUM: So that the record is clear, what I believe you're saying is that beginning with the word "but," and ending with the words "legislative session," that "in fact you did express."

THE WITNESS: Yes.

That is one of the two reasons that I remember -- the primary reason -- that is the secondary reason.

The primary reason was this is silliness, because there are no sufficient rules to make sense out of when the use of the plane is proper or not.

You can go down to meet with C.V. Starr, and they may get a contribution, but they may discuss an insurance policy, and so it's fine, pursuant to the rules as currently understood.

MR. TEITELBAUM: At that time?

THE WITNESS: At that time, not thereafter. Correct.

Some good came out of all of this.

Although I don't think the checks to pay back use of the plane would cover the
cost of all this.

Q Following your conversation about the document in the FOIL request with Darren Dopp, prior to the Times Union article.

A The June conversation.

Q The June conversation?

A Yes.

Q Did you ever contact Darren Dopp, or communicate with him on the issue of when the article might be coming out?

A I don't recall.

I have no recollection of doing so, but it's certainly not inconceivable once we were discussing issues in the press, it's the sort of thing Darren and I would talk about. As I said, we spoke thirty, forty times a day. Every morning we would talk what's in the paper, what's happening.

Q So if Darren indicated that you had contacted him about when is the article coming out, that wouldn't be inconsistent with what you're saying now?

A It's not inconsistent with my having no recollection of it, but it is not something which I do recall, either.
But to be very frank, there are references in here to phone conversations. "Here" being Commission's 175?

Q      "Here" being Commission's 175?
A      Yes, that is correct, to phone calls that are recounted by Sandy, Darren's wife, which I have absolutely no recollection of.

Q      Were there times where you called Darren at odd hours of the night?
A      It depends on what views odd hours of the night.

I viewed it as fair game to call people starting pretty much at 7:00 a.m. until 10:30 or 11:00, except for Michelle. She was twenty-four hours.

Q      And at a certain point in time on or about July 1st there was an article concerning Senator Bruno's use of the aircraft?
A      That is correct.

Q      Were you advised by Darren Dopp when the article came out?
A      On the day that it was out?
Q      Yes.
A      I think there's some e-mails back
and forth, and I believe this also was a Sunday.

Am I correct?

Q Yes.

A So I think I was at also at Columbia County, at the farm, and so I think there may have been an e-mail indicating that it was -- I may be confusing e-mails.

Q I'm going to show you what has been marked as Commission's 85.

I'll give you a moment to review the document?

A Do you want me to read the article?

Q No, but I would just like you to just flip through the various pages of Commission's 85.

(Witness complying.)

A Okay.

Q And have you seen this article before?

A Just so it's clear, yes, I've seen the article. I have not seen any of the subsequent pages.

Q The article comprises the first
two pages of the exhibit.

A That is correct.

Q The next seven pages are a number

of documents.

A Yes.

Q The third page is a flight

request for May 3rd and 4th.

A The Xerox is bad. I'll take your

representation.

Q If you look closely you can
discern that.

A Okay.

Q The fourth page, the

transportation assignment for Senator Bruno

for May 3rd and 4th?

A Yes.

Q And the page after that, again,

which is a copying issue, is a 33rd annual

spring reception document.

A Yes.

Q Have you seen those three pages

before?

A No, I have not.

Q Following that, again, there is a

flight request, May 17th, May 18th?
1  A      Yes.
2  Q      And a document captioned "Trip to
3 New York City, Thursday, May 17th, and
4 Friday, May 18th."
5  A      Yes, that's correct.
6  Q      And an invitation to an annual
7 New York Republican State Committee dinner,
9 Have you seen those documents
10 before?
11  A      No.
12 I don't mean to be too technical,
13 but I think one of these was earlier marked
14 as an exhibit and shown to me about an hour
15 ago.
16 Until then, no.
17 Have I seen them other than that,
18 no.
19  Q      And then, finally we have a
20 flight request for May 24th.
21  A      I'm thinking John McCain was
22 speaking.
23  Q      A transportation assignment for
24 Senator Bruno for May 24th.
25 Again, an invitation, May 24,
2007, for a food industry reception honoring New York Senator Majority Leader Joe Bruno. Have you seen these documents before today?

A  I do not believe so, no.

I was not invited to these events.

Although I was listed in the green book in my first year as Attorney General as a Republican, so I got invited to the Republican Convention. They corrected it.

Q  I'm showing you what has previously been marked as Commission's Exhibit 67.

(Witness reviewing document.)

Q  A document that leads off, "For background only."

A  Yes.

Q  I ask you if you've seen this document before.

A  I don't believe so, no.

Was this produced somewhere?

I don't believe so.

But I want to be careful, as I've
said, I've seen many documents in the past week or two, just getting ready for this. I don't think I've seen this one as part of it. But did I see it during the period that I was Governor, no.

MS. TOOHER: Will you mark this as Commission's Exhibit 176.

(Document marked Commission's Exhibit 176.)

MR. TEITELBAUM: Did you ever learn from anybody during the period of time that you were Governor that Darren Dopp had prepared a background piece for the press concerning the subject of Senator Bruno's use of State aircraft?

THE WITNESS: A background piece? I knew inevitably, as things unfolded from July 1 on that information had been gathered. As I've said, I don't know how, or when or where, other than what was in multiple reports about this.

A background report like this, essentially a primer, no.

This is the first I've seen this.
MR. TEITELBAUM: You didn't hear prior to July 1st that Dopp was in the process of preparing, or had prepared a background piece?

THE WITNESS: He was gathering the information.

Again, to go back to my testimony to the DA, where I was asked, "Did you direct the collection of documents?" And I said no. Obviously, I knew there were documents being collected. Did I direct their release? No. I knew that there was going to be a release.

Did I know he was doing something like this that was sort of an explanatory piece? No.

It would make sense that he would. If he's trying to say to a reporter, this is what communication directors do. They say here is why this is important, here is what this shows, here is why your article should make this point and that point.

So it doesn't surprise me that he would do it, and I did not know that he was doing it.
MR. TEITELBAUM: You're referring to 67?

THE WITNESS: That's correct.

MR. TEITELBAUM: When did you first learn that Darren Dopp was gathering documents concerning Senator Bruno's use of the State aircraft?

THE WITNESS: I have no idea.

MR. TEITELBAUM: When is the first time that you learned about it?

THE WITNESS: It must have been -- not it must have been -- it certainly could have been sometime after the early May conversation where there were media inquiries.

There was a media inquiry about stuff, somebody is going to gather information to respond to it.

So that is when it would have been almost necessary, a logical conclusion that information was going to be compiled relating to me, relating to whoever was using the plane.

Now, as I said, I didn't see it, or look at it maybe to the end of June. But...
necessarily ly it was being aggregated for
the press to respond.

MR. TEITELBAUM: And if you were
gathering documents, starting in the mid-May
period, your testimony is that you didn't
know where he was getting the documents from?

THE WITNESS: Correct.
I had no reason to ask or care.
If he was gathering documents
about my use of the plane, Joe's use of the
plane, whatever.

Q  I'm showing you what has been
marked as Commission's Exhibit 176.
(Witness reviewing document.)

A  Okay.

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

A  No.
I'm comparing it to 67. It seems
to be similar.

Q  It's quite similar, except the
first line of the document is "overview."

A  Correct.

Q  As opposed to "for background
only."
They are very similar documents, but I have not seen it until this morning.

And did you become aware at any point of anyone in the chamber creating what I'll call an overview document of the information on Senator Bruno, and the use of the plane?

No. If you're referring to this, no. These two documents, as I've said, I have not seen them before.

But were you aware that they existed?

No. I was aware that the documents had been turned over pursuant to the FOIL. But as I said earlier, I have not seen them.

And the creation of this is something I was not aware of. But it's something that a press officer would do to try to push a story.

And is it something that would also be done to turn a matter over to an investigatory entity, like the IG or the AG?

I suppose it could be.
But are you asking as a matter of ordinary course would something like this be produced?

Q Correct.

A I have no idea. I have not been involved in ever turning anything over to the IG, so I don't know what form, if there is one, that would take.

Q In the course of the follow-up to the July 1 article, were you aware of any document being created in the Executive Chamber to provide to either the IG or the AG as an overview document from the chamber?

A No. I knew that they were asked to inquire about several issues that had arisen post July 1, but I was not aware that an overview document was created for their benefit.

MR. TEITELBAUM: "They" being the IG, AG?

THE WITNESS: That's correct. Or whoever else along the way.

MS. TOOHER: We'll break now for lunch.

(Luncheon recess had.)
CONTINUED DIRECT EXAMINATION
BY MS. TOOHER:

Q       Going back to the July 1st article as a time reference.
A       Sure.

Q       Prior to that article, had you had any conversations with anyone on your staff concerning the collection of documents from the State Police?
A       No. I have no recollection of any conversations about what was turned over, or how anything relating to that issue was collected from whom, or by whom.

Q       And did you have any conversations after the article came out as to where these documents were obtained?
A       Not until it became an issue in the media.

In other words, there was a point which we can find it in the articles when the question was raised about the methodology. And at that point, inevitably, the question was how was this stuff done prior to that note.

Q       Preston Felton was the acting
Superintendent of the State Police during your administration; is that correct?

A      That's correct.

Q      And what was your relationship with Superintendent Felton?

A      It was very good, cordial relationship.

I had selected him to be the acting Superintendent, subject to Senate confirmation, and spoke to him at ceremonial events, State Police graduations, funerals. And when there was a crisis, akin to what I said about Bill Howard, when there were events such as what happened in Margaretville, or shootings, et cetera. But rarely other than that.

Q      Did you, prior to July 1, again, ever have any conversations with Superintendent Felton concerning Joe Bruno?

A      No.

I'm hesitating only because certainly not with respect to this issue. Did Joe Bruno's name come up in the context, you need to be confirmed by the Senate.

It may not be a bad idea if you
reached out to the Senate in that context
totally unrelated to this, perhaps.

But as it related to this, the
answer is no.

Q Were you aware of anyone in the
Executive Chamber having conversations with
Superintendent Felton concerning Joe Bruno's
travel?

MS. HIRSHMAN: What time frame?

Q Prior to July 1.

A No.

Q And were you aware of anyone in
the chamber having conversations with anyone
at the State Police concerning Senator
Bruno's travel prior to July 1?

A No.

Again, I'm trying to be very
careful.

There inevitably was interaction
between Marlene and the State Police as it
related to the ordinary course of approving
his use of the chopper, or the fixed plane,
which is on the theory that she would call
and say, are they available, it's the
weather, rudimentary conversations like that.
As related to collection of documents pertaining to this issue, I'm not aware of any such conversation.

Q And are you aware of any conversations between anyone in the chamber and Bill Howard concerning the collection of documents from the State Police?

A I have a sense that I knew that Darren and Bill somehow were -- obviously, I knew that Darren was the one who received the media inquiry.

I have a sense that I knew that Bill had somehow been involved in this issue in some way, shape or form.

But as I said earlier, I did not talk to Bill about it, and I don't know if anybody else did.

But I knew Bill was involved in some way, shape or form.

Q And when you say you had a sense, what do you mean by that?

A I have a sense that I remember it. I don't know if it was from Darren or from somebody else, I just don't know.

Q Would it be fair to say you had
an understanding of some sort concerning
Darren getting the records from Bill Howard?
   A Honestly, that goes beyond what
   I'm trying to suggest.
   Q Okay.
   A I don't know if he got the
records from -- as we sit here today, I don't
know if he got the records from Bill Howard,
I don't know if he got them from the State
Police, I don't know where he got them.
   So what I knew was that there was
some nexus because of Bill Howard's
relationship with the State Police.
   Q Prior to July 1, were you aware
of any communication taking place between
Preston Felton, Bill Howard and Darren Dopp
concerning the records of Senator Bruno's
travel?
   A No.
   Q Were you aware that there were
e-mail communications between Superintendent
Felton and Bill Howard?
   A No.
   Q Were you aware that there were
e-mail communications between Superintendent
Felton through Howard to Darren Dopp?

A No.

MS. HIRSHMAN: What does that mean, communications?

MS. TOOHER: Concerning --

MS. HIRSHMAN: Through Howard to Darren Dopp, what do you mean?

MS. TOOHER: That there were e-mail communications.

MS. HIRSHMAN: So you're not trying to suggest that there were direct communications between Dopp and Felton?

MS. TOOHER: Correct.

MS. HIRSHMAN: Okay. I'm sorry to interrupt. I just wanted to clarify.

MS. TOOHER: That's okay.

MR. TEITELBAUM: When you say that you have a memory of knowing before July 1st that Dopp and Howard were in communication with one another, was it a communication concerning --

MS. HIRSHMAN: It's a little strong.

MR. TEITELBAUM: Let me finish my question, and then we'll let the witness
answer it.

   If it's too strong, I'm sure
he'll know how to tell me about it.

   Concerning communications with
the State Police.

   And if my characterization of
your testimony is too strong, you'll tell me.

THE WITNESS: Well, I don't
want -- I'm trying to be very careful so as
not to suggest that I had not the slightest
idea that Howard might be involved, and maybe
that Darren mentioned Bill Howard's name at
some point in the context of one of these two
conversations that I recall, the May and the
end of June.

   That is why I have some
recollection that Bill would have been
involved.

   Preston Felton, not at all.
   Communications, what Bill was
doing, I do not know.

   I don't know if that answers your
question.

MR. TEITELBAUM: So either in the
mid-May conversation or the end of June
conversation, your recollection is that Howard's name came up?

THE WITNESS: I don't believe it was the end of June.

I don't recall his name coming up in mid-May. It may have been at the very initial conversation in terms of the media inquiry.

Remember, the whole predicate for this is the media appears in early May, says we want all this stuff about a bunch of you guys.

MR. TEITELBAUM: Yes.

THE WITNESS: At some point I had a sense, maybe it was just something that I heard, that Bill was the one who dealt with the SP.

MR. TEITELBAUM: Did your inference also contain that the communication between Dopp and Howard had something to do with Senator Bruno's use of the aircraft?

THE WITNESS: It was the issue of the use of the aircraft. I didn't know, and don't know today, other than what I've read in the reports, what Bill Howard did or
1 didn't do.

MR. TEITELBAUM: Okay.

Q Prior to July 1st, did you have any conversations with Dan Wiese concerning Senator Bruno?

A Ever?

Q During your administration.

A Yes. Just so it's clear, I worked with Dan Wiese starting in 1988, from '88 to '92. So I've known him for many years.

I knew him through my years as Attorney General. He was the individual who was in charge of executive security, hence Governor Pataki's security.

So I spoke to Dan every -- two or three times a year.

Did Senator Bruno's name come up?

Never.

Q Did you have a substantive conversation concerning Senator Bruno with Dan Wiese prior to July?

A About Senator Bruno's use of --

Q About Senator Bruno, more than just a passing conversation? Was there a
1 substantive contact with Dan Wiese concerning that?

2 A He may have made some reference to the fact that Governor Pataki and Senator Bruno hated each other.

3 Q Was there any discussion concerning Senator Bruno's activities while he was in New York with Dan Wiese?

4 A I don't believe that issue came up.

5 Let me restate.

6 There was a point in time, and I'm not sure if it was before July 1 or after July 1, when Dan Wiese said to me, Joe Bruno, and the SP, and Governor Pataki's office had a problem about his use of the SP to move around.

7 And that is when I first heard about the whole issue relating to Mike long. I do not know when that conversation occurred. I don't know if it was before the article or shortly after the article.

8 But that was the first time I had heard about that situation, whatever one
Q      And what was your understanding as to what that situation was?

A      That there had been complaints, perhaps overstates it, but, a better word -- a complaint raised by either Mike Long or his daughter about Joe Bruno's use of the State Police to go to an event that I believe Mike Long hosted as a fund-raiser for Joe Bruno. And there was some issue about people thinking that Joe Bruno was showing up with security or bodyguards. It was unclear.

But Dan mentioned that this had become an issue, and had percolated up inside the SP and the Pataki administration. And that's the totality of my knowledge of it.

Q      And did he volunteer this information, or was it in response to an inquiry?

A      He raised it with him. But an inquiry from whom? From me to him? No. I don't know if there was another inquiry, not to
Q      Was he in communication with other members of the Executive Chamber, Dan Wiese?

A      I doubt it.

MS. HIRSHMAN:  What time period?

Q      Prior to July 1, during your administration.

A      I doubt it. I had worked with Dan, from, as I said when I was in the DA's office. So we had a friendship. And he was the person who occasionally, if I needed to reach Governor Pataki quickly, when I was Attorney General, I would, and did not want ordinary communications to be seen, I would do it through Dan.

Q      And were there any conversations that you had with Dan Wiese concerning Senator Bruno after July 1?

A      This conversation may have been before July 1, it may have been after July 1. Which side of that date line it is, I don't know.
Other than this conversation, the answer is yes, one conversation which related to this.

There was a New York Times article about that complaint. There had been back and forth in the New York Post about Mike Long, and whether or not there had been a complaint raised about Joe Bruno's use of the SP.

The New York Times was going to write an article about it, or somehow they got interested in the issue, and I asked Dan, we knew the Times was trying to ferret out whether or not that story was accurate.

I asked Dan if he would talk to the New York Times. I did not talk directly to Dan, but I had somebody -- actually, I'm not sure, I may have, I don't recall whether I spoke to him, or Christine Anderson spoke to him, whether he would speak to Danny Hakim, at the New York Times, to validate that story about a complaint having been raised about Joe Bruno's use of the SP.

But somehow, the genesis of this entire issue was being challenged, and
consequently -- at which this first had become an issue within the executive at the SP was material.

Do you follow that?

Q I think so.

Were you aware of Dan Wiese's connection with Troop New York City during this time frame in your administration?

A What is that? I don't understand the question.

Q Were you aware of a relationship between Dan Wiese and members of Troop New York City of the State Police, during the time frame of your administration?

A No. I don't understand the question.

He's not in the SP anymore, so I don't know what relationship he has, if any.

Q Were you aware of him communicating with Troop New York City during that time frame?

A No.

Q Before moving away from the production of documents, or the issue of documents, and the turnover to the Times
Union, during your interview with the District Attorney's Office, you were asked -- the Albany County District Attorney's office -- you were asked fairly specifically concerning your participation in terms of the release of documents to the Times Union. Do you recall those questions?

A      I do.

Q      And in the DA's report, at page 17, Commission's 175, you were specifically asked, did you direct the gathering of any documents concerning Senator Bruno's use of state transportation at any time. And your response was no.

A      Correct.

Q      And your response is the same today; is that correct?

A      That is correct.

Q      And you were further asked, did you direct the release of any documents at any time to the media concerning Senator Bruno's use of state transportation. And your answer again is no.

And it goes on fairly extensively. I'm going to encapsulate that
by saying other than to respond to the media request. And that is your response today?

A That is correct.

And I know they view this as attention, but with Mr. Dopp's statement, but I am very clear that the word "direct" means to initiate, command, instruct somebody, pick up the phone and say, "I want you to do this," rather than his coming in and saying, "We have a media request, should wait," to which my response was the media request, what choice do we have, which is to more acquiesce, permit, or say, do what we always do about media requests, which is precisely why the gathering of documents, as well, where clearly I knew the documents were being gathered, I didn't direct it.

So my answer is yes, I did not direct either collection or release. It was something that happened in the course of responding to the media in the ordinary course of events subsequent to my late June conversation with him, where he said, "You're getting this media request.

Q When did you become aware that
Darren Dopp was gathering information in response to the media request?

A I think you asked this earlier, and I think I gave the same answer then which I'm about to give now, which is, in May, when the initial inquiry was raised, inevitably, you're going to start gathering information, how, when, where, from whom, I didn't know, I don't know, and frankly, didn't care.

And I would hope that the Governor would not waste his or her time paying attention to that.

There was a media person who was going to gather information, so I must have known as of May as it relates to these inquiries.

And since there had been inquiries throughout the year, it was one of those issues where they're always going to be gathering the documents.

Q So would it be fair to say that it was your understanding, following the May meeting, that Darren Dopp would be gathering information?

A I'm distinguishing between the
very first May conversation where there was an inquiry.

Q      Yes.
A      That after that inquiry, yes, if there's an inquiry, we're going to respond to it.

After the May, mid-May, May 17, 18, 19, whatever date, I don't know what it was, I don't know what he's doing because at that point I have said, you know, who cares, this is silly.

And so, I don't know if there is a stop to this process or not. I don't pay attention to it.

Come the end of June, when Darren comes back and says, the inquiries are here, we're getting a FOIL, obviously, when I hear that, I presume he has gathered, or is gathering, or has gathered documents.

MR. TEITELBAUM: In the 175 --
THE WITNESS: I'm sorry, 175 is the DA report?

MR. TEITELBAUM: Yes.

In the back and forth between you and Dopp, as reported in 175 -- let me
1 characterize it this way. There's a kind of
2 passionate response that's alleged in this
3 report by Dopp.
4
5 THE WITNESS: Right.
6
7 MR. TEITELBAUM: Did that happen?
8
9 THE WITNESS: To the best of my
10 recollection, it did not.
11
12 Just so it's clear, I, in my
13 private conversations, do not always use the
14 Queen's English. And I make no bones about
15 that.
16
17 In my public commentary, I think
18 you will see, if you do a complete search of
19 the entirety of my public comments as
20 Governor, you would not see me say anything
21 critical, vulgar, of Senator Bruno.
22
23 In my private conversations,
24 occasionally I was, to use your word,
25 passionate.
26
27 And that is my nature, and the
28 nature of politics.
29
30 I do not in this conversation
31 recall that, because this was not an issue
32 about which I was passionate then, or now, or
33 at any point in time.
There were other issues about which I was, but this was not one of them.

MR. TEITELBAUM: That's what I'm trying to get at.

The conversation that you had with Dopp at this time, as you seem to be characterizing it, it was kind of a very brief conversation.

THE WITNESS: Right.

MR. TEITELBAUM: It was less than thirty seconds.

THE WITNESS: Yes. I think I said less.

MR. TEITELBAUM: Thirty seconds or less.

THE WITNESS: Yes.

MR. TEITELBAUM: And it sounds to me, as you testified, he was reporting something to you concerning a FOIL request. And your testimony is you didn't direct him. Your testimony is you just acknowledged that there's a FOIL request, do what you have to do.

THE WITNESS: This is an issue which is going to emerge -- in May I said, I
said repeatedly, who cares, it's not material, it's not an area of great vulnerability for anybody, it's going to disturb our effort to get work done.

Getting work done was no longer an issue, the session was over, so who cares if it comes out now, you got a FOIL request.

Now, on other issues, yes, I was passionate in my response about Senator Bruno.

MR. TEITELBAUM: The focus of my question is not colorful language that is alleged to have been used. The focus of my question is that the way in which Dopp apparently characterized the conversation as reflected in 175 is at variance, it appears, as to how you are characterizing it.

THE WITNESS: We are now -- you're asking me under oath to characterize a DA's report which characterizes something.

MR. TEITELBAUM: No.

THE WITNESS: Certainly there's a different tenor if one accepts his recitation of my commentary.

That recitation would be more
appropriate about other conversations I had about Senator Bruno, where he had acted, and he was publicly critical of my wife.

As one of the e-mails you showed me earlier said I want to punch back when he was publicly critical of my wife. I was upset about that.

When he was using invective to describe me, as he often did on air, and in print. I was upset.

I did not think that was the appropriate way to deal publicly.

And indeed, publicly, I never did comment about him that way.

In private, as a consequence, I did, as one might say, vent. I never expected those private conversations would become the subject of multiple public reports. I thought an executive's private conversations with senior staff might, in fact, remain private.

But I never said anything publicly critical of him in that regard, and do not remember this conversation as one where the emotion was more -- because this
was not an issue about which I felt that passionate.

Q You had testified earlier a bit about conversations that are relayed again in the DA's report, Commission's 175, with Darren Dopp following the turnover of documents on or about June 28th, and prior to the article, July 1.

Were you calling Darren Dopp on a daily basis, inquiring about the article during that time frame?

A No. I do not have any recollection of calling him about this article.

Was I calling Darren daily?

Probably.

Because the routine was that I would call him mornings, to say what's in the paper, or if I had already seen it, to discuss what was in the paper, why.

That was sort of a morning briefing that I would have with Darren.

And I would call Rich for other issues. And I would call Dave Nocenti for other issues.
This was sort of communication gathering in the morning.

But about this issue, I do not recall that.

I do not believe, again, that it was essential to what I cared about.

So you would not characterize the issue of the Albany Times Union article that comes out on July 1st as a priority issue for you prior to the issuance of that article?

That's correct.

I'm just curious, the e-mail on page 17 of your Exhibit 175, the middle of page 17, what is the e-mail from which that is extracted? Do we have that?

No.

I'm just curious. It doesn't matter.

Talk to the DA about that one.

Okay.

We may get to that.

The article comes out on July 1, and gets a fair amount of attention, both in the media, and from your office.

Did you participate initially --
I'm talking now the July 1, July 2, time frame, in discussions concerning a response from the chamber to what was alleged in the July 1 article?

A    Participate, yes.

There were -- July 1 was, again, a Sunday?

Q    Yes.

A    July 1 was the Sunday.

That next day, I believe -- I'll have to check the schedules -- I believe that was the day I went down to New York City, to tape something with New York One with Dominick Carter. Am I right?

And then had a meeting with the New York Times editorial board.

So it was inevitable that that issue was going to arise.

So I needed to think through what the response should be, both for TV, for the editorial board.

There was also the separate issue of whether it should be -- this is the issue that percolated and bounced around in e-mails, that others had much greater
conversations, I was on some of them. Whether it should be referred or not, and if so, to whom.

Q And what were the substance of those conversations concerning the referral issue?

A I'm not sure that I was involved beyond the e-mails themselves on the Sunday, because I was at the farm, and I was copied on a few of the e-mails.

I think the question was would anybody have jurisdiction, does this rise to the level of something that should be sent.

You always, inevitably, when there's an article alleging impropriety, the question we are going to receive is, have you done something about it.

And either you refer to somebody, you say we're leaving it alone.

You need to figure out what to say in response.

And I think that was the tenor of the conversation to whom, if anybody, why, what's the logic, what do you do.

Q And what was the logic?
A My thinking was, if there is something wrong here, who, if anybody, should take a look at it.

I don't think it's -- I didn't know who had jurisdiction.

So is there somebody who should look at whether this issue needs to be pursued.

Q And who are you talking to at this time?

A Again, I'm saying this without a specific recollection, but I can only imagine that the participants would have been David Nocenti -- at most, I'm giving you the large universe. I don't remember specific conversations.

David Nocenti, Darren is going to have to deal with the press; Rich, who I think was in Florida at the time, so I'm not sure if we were talking telephonically or on e-mail.

I don't remember anybody else being involved. I don't remember them specifically being involved, but that would have been the ordinary course on an issue
like this.

Q      And do you remember, in sum and
substance what the conversations were, as far
as referral?

A      No.

And, in fact, I don't know what
the conclusion was, if there was one. I
think there were e-mails.

There was a public statement at
some point, but I don't know if it was to the
IG, the DA.

I think there was some question
whether the DA asked for it, whether the DA
didn't ask for it, when.

Q      Did you participate in the
decision as to who this should be referred
to?

A      Participate would be splicing it
too finely.

If I was involved, I
participated, and I was the Governor, so what
I indicated would have happened, I think what
I did was indicate that they should figure it
out. I don't think I had a view, whether it
was an IG issue, a DA issue, an AG issue, I
just did not know what, if anything, had occurred that was wrong.

Remember, go back to my initial premise, I don't think any of this violates the law, anyway.

There was commentary back and forth on that.

But I think it ended up going to the DA, and somehow the AG's office got involved, I think the IG later, when the whole thing exploded.

MR. TEITELBAUM: Did you participate in the decision to refer it, who to refer it?

THE WITNESS: My recollection is that I said to them, "You guys figure it out."

And this isn't a body in the street, this is using the State plane in a context where I begin with the premise, okay maybe it's not right, maybe it's not good, maybe the rule should be changed, but not, in my view, violative of what the laws have been articulated to be, necessarily.

And so I'm not big on the idea
that somebody should be investigated for something where it's not clear, in my understanding of the law, they had done anything wrong.

But I said, "All right, you guys figure it out."

And at the end of the day, I think the DA either expressed interest, denied expressing interest, I don't know how that happened.

Was I involved? I was a participant in some way, shape or form in those conversations.

MR. TEITELBAUM: When you say, "You guys figure it out," are we to infer from that that, in effect, you are letting your staff make the decision --

THE WITNESS: Yes.

MR. TEITELBAUM: -- without your approval one way or the other?

THE WITNESS: It was essentially who, if anybody, would have jurisdiction over this, and rightly should look at it.

It's an IG issue in terms of just rules violated. Is it a DA issue in terms of
the criminal jurisdiction.

And at some point, David Nocenti sent me an e-mail in which he laid out who or who does not have jurisdiction.

MR. TEITELBAUM: I'm not focusing now on the issue of to whom to refer it, I'm asking whether the issue to refer it to anybody, did you defer to your staff on that and say, "Well, you know, you guys figure it out, if you want to refer it out, you do, if you don't you don't?"

THE WITNESS: The predicate question is, do you defer it at all. That depends on the jurisdiction. Does the IG have jurisdiction, that doesn't presume criminal conduct.

I don't remember what the syntax was on that Sunday the first.

I remember more the e-mails that you showed me that I was more specifically involved figuring out how to respond on Monday to the Times board and to New York One.

MR. TEITELBAUM: Did you ever learn who made the decision to refer it out
to a law enforcement authority?

THE WITNESS: I'm not sure it's clear.

By that I mean -- I don't believe I said, "Refer it to." I'm quite sure I did not say, "Do this."

I think there's some -- I hate to speculate --

MS. HIRSHMAN: Then don't.

THE WITNESS: I don't know. I don't know who did it.

MR. TEITELBAUM: But your testimony is that you didn't?

THE WITNESS: I don't believe that I said, "Refer it to the DA, IG, AG, Southern District."

MR. TEITELBAUM: Or to refer it.

THE WITNESS: Or to refer it at all.

I remember there were conversations, it was Sunday. I don't remember ever getting closure on that decision.

MR. TEITELBAUM: And you learned eventually that it had been deferred out?
THE WITNESS: Correct. Although I also believe that the record shows there is some ambiguity about whether it was a referral or a request.

Again, I don't know the backdrop to that, either.

But there's ambiguity about that.

MR. TEITELBAUM: When you learned that law enforcement authorities commenced investigating Senator Bruno's use of the State aircraft, did you also learn that there were conversations with members of your staff that prompted a decision to investigate?

THE WITNESS: I'm unclear.

Conversations internal to my staff?

MR. TEITELBAUM: No, with members of your staff.

THE WITNESS: Between members of my staff and the DA's office?

MR. TEITELBAUM: Any law enforcement authority, the DA's office.

THE WITNESS: At a certain point in time, I remember, yes, there were conversations between the DA's office and
members of my staff, yes.

MR. TEITELBAUM: When did you find that out?

THE WITNESS: That I don't know. I don't know if it was the 1st, 2nd, 3rd. That I don't know.

I know that there were, as would almost necessarily be the case where a referral is made, there's going to be a conversation in which somebody says, "This is what this relates to. Are you interested?"

In the ordinary course of any referral is you that you don't refer something over without giving somebody a heads up, partly as a courtesy.

Somebody will pick up the phone and say, "You may have seen this article, or you may not. Here are the facts." It may not be in the public issue.

"Here are the facts, do you want this to refer to?"

Sometimes an office will say yes, sometimes they will say no.

So there is, almost as a matter of propriety, a conversation between the
MR. TEITELBAUM: Now the Executive Chairman had oversight responsibilities with respect to the use of the State aircraft, correct?

THE WITNESS: Right.

MR. TEITELBAUM: After the July 1st article came out, did you participate in, or are you aware of any conversation in which there was a suggestion that the Executive Chairman inquire of Senator Bruno as to the purposes for which he was using the State aircraft?

THE WITNESS: After July 1?

MR. TEITELBAUM: Correct.

THE WITNESS: Inquire retrospectively? In other words, go back to
prior uses of the plane, and say, "Why did you use it on May 1, May 10 and May 15?"

Or prospectively, if he was intending to ask permission to use the plane on July 10, we would conduct a further inquiry?

MR. TEITELBAUM: Retrospectively, before the matter was the subject of conversation between Executive Chamber personnel and law enforcement authorities.

THE WITNESS: I'm not aware of any discussion about whether we should go to Senator Bruno's office and ask him for that, no.

Q At any time, or after July 1?

A Frankly, at any time.

I'm not aware at any time in this process if there was conversation about that matter.

MR. TEITELBAUM: Precisely what was contained in the July 1st article that raised the question on the part of anybody in the Executive Chamber that there might be criminal conduct here?

THE WITNESS: I'm not sure.
I can't answer for anybody else.

And that's why I've said numerous times I wasn't sure why this whole issue was of such interest, in the first place, because going back to May, when the issue was crystallized for the first time, and I said, this isn't an issue.

The rules are such that there is tremendous latitude, elasticity.

So I'm not sure why there is an issue, in the first place.

Now, the article -- and I've read it only once, last July 1st. I said I couldn't care a whit about this, I generally viewed it as I had more important things to do.

The article would suggest that the plane was used on days on which there was exclusively political activity, in which case, the certification arguably might have been false.

Or the use of the plane could have been viewed as a larceny in terms of the value of the property, a misrepresentation, a violation of the ethics rules, oral or not.
There could have been issues relating to whether other meetings were added pretextually in order to create an illusion that there was a schedule, when, indeed, the only use was political.

There are a raft of theories that one could come up with.

MR. TEITELBAUM: What facts were presented in the July 1st article, to your knowledge, that changed the formulation that you had in May that the Starr meeting, the insurance meeting, the legislative business could have been discussed at that meeting? What was contained in the July 1st article that changed your mind?

THE WITNESS: I'd have to reread the article. Perhaps nothing.

I was the very first one who said this isn't a big issue. If there's an article of this sort, then there is a question of what do you do.

And in the ordinary course, you say, look, let somebody who has the jurisdiction that subsumes this issue, strong or weak, take a look at it, see if they want
to do it.

I was not exercised one way or the other about referring it, because my view of the law has been reasonably -- has been constant throughout. The law should be changed, but the law was what it was, and therefore, not much to do.

There was no change in behavior on my part.

Members of the office felt we should suggest to somebody with jurisdiction they look at it. Fine, let them look at it. We are not going to cut off somebody's capacity to look at it.

MR. TEITELBAUM: I think you said that the predicate for whether or not inappropriate, or perhaps illegal conduct, had been committed was the precise purpose for which the Senator was using the State aircraft; is that correct?

THE WITNESS: Restate the question.

MR. TEITELBAUM: In other words, in order to know whether his use of the State aircraft was proper, you have to know whether
he was doing legislative business.

THE WITNESS: Correct.

MR. TEITELBAUM: And the

Executive Chamber having jurisdiction over
the proper use of the aircraft --

THE WITNESS: Right.

MR. TEITELBAUM: -- could have

asked Senator Bruno before referring it
out --

THE WITNESS: We did.

MR. TEITELBAUM: -- as to the

precise purposes for which he was using the
aircraft.

THE WITNESS: No, wrong, wrong.

Flat out wrong.

That was the issue that was
framed in January of 2007, when I have since
learned throughout this that an effort the
was made, as you referred to, to find out
more.

I was not involved, but the
Senate, on behalf of the Legislature, I don't
know if on behalf of the Assembly, as well,
said we don't want to tell you, separation of
powers.
And so, the agreement was the document that was created, which said "governmental purpose," or words to that effect.

Beyond that, the Senate did not want us to inquire, and as a matter of separation of powers, arguably they are correct, even though the Governor theoretically could have said, you don't have access to the plane. I said I wouldn't do that.

Therefore, in order to avoid that separation of powers problem, in order to do our best to ensure appropriate use of the plane, we put in a certification when an article arises, suggesting -- I haven't read it recently -- suggesting exclusive use, use of the plane for exclusively political purposes.

The answer is not for us to inquire in a context where separation of power issues would be implicated, and we argue we don't have to jurisdiction. But to say who does, the IG, the AG, somebody else. Give it to them.
I'm not the Attorney General anymore. Move it to somebody else, I have other things to worry about.

That was the rationale behind where the boundary line was created.

My underlying lack of interest in the issue, and a willingness to let somebody else look at it.

Q I'm going to show you what has been marked as Exhibit 177.

(Witness reviewing document.)

Q I ask you if you can identify this document.

A Yes. This is, again, an e-mail chain.

Interestingly, the times are a little off. I'm sure you noticed that.

The clock seems to be bizarre in this.

Q Did you have e-mail communications with Darren Dopp concerning the article coming out in the early hours of July 1st?

A By "early," if you mean 6:22 a.m., no.
And if you look at the -- I haven't seen paper yet. How does it look? That's my typing.

If you read this, it says 3:21 a.m., Mountain Standard Time, no.

The 1st was a Sunday morning. I would be shocked. The only reason I get up that early Sunday morning is if the dogs are barking and have to go out.

And I was not sending this e-mail at 3:20 or 6:20 in the morning.

MS. HIRSHMAN: 3:20.

THE WITNESS: 3:20 is the first one, Mountain Standard Time.

Q The first one appears to be from Darren Dopp to you and Richard Baum.

A Yes. 3:19 a.m.

Q Correct.

A Which is something -- I have no idea what that refers to about Uncle Charles.

Q And then your response at some point thereafter, perhaps not 3:21 a.m.

A It certainly wasn't 3:21 a.m., no.

Q Was, "Hasn't seen the paper yet."
How does it look?"
A Right.
That was my response, but not at 3:21 in the morning.
Q And Mr. Dopp's response to you, as at least indicated here, at 6:22 a.m., was, "Got to see to believe. I think we need to move quickly to refer it to the proper authorities."
A Right.
Q From this e-mail, it appears that very early on and very quickly Darren, at least, is interested in moving this out to the proper authorities.
A Yes.
Q Did you discuss that with him, initially with Darren Dopp?
A I just went through that. I can't shed any more light on it than I just did, saying over the course of that day, inevitably there were e-mails back and forth which have been produced, and some conversations, some of which I may or may not have been part of. I don't remember any.
The question, who should look at
this thing.

Q What was your response to the Bruno article, your response, when you read it?

A I'd have to see the rest of the front page.

But I would ordinarily drive into Stewart's, pick up a bunch of papers, Sunday morning, whenever I got there, looked at it, and said okay, fine.

This was not -- as the e-mails reflect, okay, we're going to have a little bit of a media pushback on this, but there is nothing here that is fundamentally problematic. He's got other problems, arguably, that are deeper than this.

The airplane had been a media favorite, because they love the notion that we fly around in style at taxpayer expense. It has never been an issue that struck me as being important politically, legally. The ethics of it should be dealt with.

Q I'm going to show you what has been marked as Commission's Exhibit 178.

(Witness reviewing document.)
I ask you if you can identify this document.

A Yes. It's an e-mail, a sequence of two e-mails, one from -- there's three e-mails.

Q It appears to be two in this chain.

A Right.

Q Between you and Richard Baum?

A Correct.

Q Correct? And again, this is the morning of July 1?

A Correct.

Q And there appear to be some description of Bruno article by you. Bruno's story is very bad for him, I think, really puts him in a bad spot.

A Yes.

Q Can't believe it won't have some legs.

A Yes.

Q What do you think?

When you say --

A I'm not sure if that's me. I think that's Rich.
MS. HIRSHMAN: That's responding to the e-mail sent by the Governor.

A      Yes.

And, in fact my e-mail, to Rich, in which I only type in the subject line, which is my ordinary course, I said, "How do you think the story came out?"

I was more interested in Nicholas Confessore.

Q      And Mr. Baum is obviously fairly interested in the Bruno piece?

A      Yes.

Q      Again, did you have a response to Mr. Baum's contacting you now on the Times Union article?

A      I have no idea.

Rich was in Florida at the time, if my recollection is correct. So if we did, it was probably an e-mail response, and you will have it.

I don't remember. It doesn't mean that we didn't have some telephone conversations that day.

But he was in Florida on vacation, so I was less likely to have
telephone calls with him.

Q  There was a fair amount of e-mail communication among senior members of your administration in response to this article.

A  Okay.

Q  What is your recollection as to the general tenor in the staff, in your chamber, in response to this article?

A  The media is going to ask us what are doing, to whom are you referring this, if anybody.

You've got to figure out a response, and who is the right person to take a look at this.

The way the article was framed, even though, as we discussed, I don't see it as an issue that makes out an offense necessarily, although one can probe and find other things out.

The media response is going to be one of inquiry, and they're expecting us to do something. And generating and figuring out that proper response is what needed to be done.

And that was what other people
were going to do. That's their job.

Q      You mentioned a little earlier
the concept of larceny of property, and
Bruno's use of the plane.

A      Right.

Q      Were you aware that that subject
had been explored prior to turning these
documents over to the Times Union?

A      Yes. I was aware of it from

And as I mentioned, I was a
prosecutor in the Orenstein case, when the
issue of what could or could not be done on
public payroll had captivated and dominated a
year of my life.

And that's why the various
larceny theories that could be conjured was
something I was aware of. I was, if not
individually skeptical of them, aware that
the courts were deeply skeptical of them.

And it's a theory, not one with
any judicial traction.

That's one of the theories,
that's the theory, the best we could come up
with, false filings and larcenies.
Q      Were you aware that David Nocenti and Darren Dopp had been communicating on that subject prior to the turnover of documents to the Times Union?
A      No.
MR. TEITELBAUM: Is this the first you're hearing about that?
THE WITNESS: About that conversation?
MR. TEITELBAUM: Yes.
THE WITNESS: Unless it was in one of the reports, and I read it, I'm not aware.
I was not party to it. I know there's the stuff about Peter saying he could go on line with the IG website. People had had various conversations about what this might or might not be.
I don't know specifically if I was aware of that.
MR. TEITELBAUM: Do you know why members of your staff would be communicating about what possible crime might have been committed by saying to Bruno prior to the
article coming out?

THE WITNESS: Do you want me to speculate?

MR. TEITELBAUM: No.

THE WITNESS: Then, in which case, I have no idea.

Q Were you aware that members of your staff were communicating on what crime could have been committed by Senator Bruno?

A No.

You would need to be a legal scholar to figure out what the possibilities are.

Q I want to show you what has been marked as Commission's 125.

I ask you to take a look at the document. There are a number of pages.

(Witness reviewing document.)

A Okay.

Q Have you seen this document before?

A No, I'm not aware of it.

Q Did David Nocenti discuss with you prior to the July 1 article that Darren Dopp had been requesting information
1 concerning a scheme to defraud the
2 government?
3
4 No, I don't believe he had.
5 It's interesting that this e-mail
6 chain begins with Darren to David saying he's
7 curious how this crime is defined.
8 When you said earlier that there
9 were people discussing it, it appears to have
10 been initiated by Darren.
11
12 What date was this?
13 Q Darren Dopp is the initial --
14 A On the 27th is the day the FOIL
15 was received.
16
17 Q Correct.
18 A Yes.
19 Speculating, it could be that
20 Odato said to him, "What is this?"
21 MR. TEITELBAUM: Odato hadn't got
22 it.
23
24 THE WITNESS: But the FOIL was
25 received on the 27th. Presumably, he is one
26 of the reporters who's been asking for it,
27 therefore, he's involved in back and forth
28 long before he gets the FOIL.
29
30 So presumably, he's saying to
Darren, "Okay, what is this?"

Does his article refer to any potential criminal acts?

Q  Yes, it does.

A  Any particular crimes?

Q  No.

A  Presumably, then, he is saying, "Okay, what is this?"

So he is saying to Darren, "What crime might this be?"

And Darren's saying, "I got lawyers. I'll find out."

Q  Was that something that Darren did for newspaper reporters?

A  I have no idea.

His job -- the only thing I'll say is that a Communication Director's job is to help reporters understand the context, the facts, to make a persuasive argument why to write an article about how we've changed health care finance, how we've changed education funding, how we've changed state ethics by drafting a new ethics law and created this commission, or how we've shed light on any one of a hundred issues.
And his job is to be responsive to reporters, in providing them answers to questions that they ask. He's in the service business. So if a reporter says to him, "Does this constitute a crime," his job is to try to answer that question. And maybe he does it by saying to Steve Krantz, or to David, or to whomever did this, "What are the elements of this crime? Help me out."

That's why he called it a favor. That's the way a Communications Director gets an article written.

I've said enough here negative about reporters, they are lazy.

Q On the subject of reporters and reactions, there was reactions in the press, obviously, to the July 1 article. There was also a response, or a reaction, that characterized a number of the activities going on in the Executive Chamber as an effort to spy on Senator Bruno.

A Right.

Q I show you what has been marked
as Commission's Exhibit 53.

Q And ask you if you're familiar with this document?

A Familiar with it?

Q Have you ever seen this? Take a look at it.

A I've seen the headline.

Q Are you aware of the contents of this article?

A No.

Q Are you aware that Fred Dicker made allegations in the press that members of the Executive Chamber had engaged in what I believe I can quote him as saying spying on Senator Bruno?

A I'm aware that he made those allegations, yes.

Q And was there a response in the Executive Chamber to those allegations?

A Sure there was.

I called various individuals and said, "Is this true?" Because if it's true, it's a problem.

And, in addition, I'm going to
be -- I see the press virtually daily, although this is -- this article was dated July 5th, and I'm not sure when I next saw the press. It may not have been until the 8th; am I correct, that Monday? July 4th I think was a Wednesday. So there was sort of odd days off. I was in Albany on the 6th. I needed to make sure that when I saw the press, and I was asked the question, did the State Police spy on or do surveillance on Joe Bruno, I needed an answer, both as a matter of the underlying substance, and the matter of being entirely accurate in my response to the media.

So there, as you have no doubt seen from the e-mail traffic, some statements that were drafted, I wanted to get the answer to that, and I inquired and got the answer, which is that there had been no surveillance, and that there was nothing asked of the SP, as I was told then, as related to this, out of the ordinary standard operating procedure, which is what I said to the press on the 8th.

And in fact, I believe that every
report thereafter has validated that statement.

Q      And who did you go to to ask those questions?

A      Again, it would have been the same, David Nocenti, Karen, Rich, when he got back, that would have been the universe of people most involved.

Q      And what was Darren Dopp's response?

A      I am going to have a hard time parsing one response, his versus David's versus Richard's.

But the response that I was given, and I think in this case everybody agreed that there was no surveillance, there was no accuracy or truth to anything that was alleged here.

Q      Okay. But Darren Dopp is your communications guy, he's the one that provided the information to the Times Union?

A      Yes.

Q      Perhaps not the exact words, but what were your communications with him, in particular, in sum and substance?
A  I just gave it to you.
Q  And you don't have any more
particularly --
A  I had said to all of them, "Is this true?"

You have the statements that were prepared, and you have the e-mails that went back and forth on this, and you have, in addition, the statement I made on the 8th, when I was at the day care center, or whatever, in Albany, where I was very particular in my statement that it had been reviewed by everybody, so I wanted to be meticulous. There was no surveillance. This was simply not true.

So it came to Dale Bolker's self-grandizing comment that he's been the subject of surveillance.

Q  And you spoke a little earlier about the Long incident.
A  Correct.
Q  And discussions with Dan Wiese, of the State Police, concerning the Long incident.
A  Yes.
Q      And Darren is quoted in the
article concerning the Long incident, as
well?
A      Yes.
Q      And I believe the quote was that
in response to that, in the second column,
recalling that incident, the (State Police
made some changes, and yes, keeping basic
records, i.e., logs).
MS. HIRSHMAN: Can you tell me
where you are.
MS. TOOHER: The second column,
one paragraph down.
MS. HIRSHMAN: Okay.
A      Yes.
Q      Did Darren Dopp ever discuss the
Long incident with you?
A      I don't recall having a
conversation with Darren about it, other than
after some of this began to come out --
remember, I said I don't know when I had the
conversation with Dan Wiese, if it was before
July 1 or after July 1.
      When Dan came to me and said,
yes, there had been an issue with Bruno,
Long, that whole set of circumstances, I don't believe I relayed that to Darren, but it lodged in my mind, and I'm not aware I did anything about that until the day or two days before the New York Times article on that issue came out.

So you can check that date.

So, sometime in early, mid-July.

Q But at the time of this article, which is July 5th -- and this is, I'm going to say, a different tenor now being taken on this story -- you had not discussed the article?

A I don't know. I don't know when Dan Wiese told me about that.

So I don't know how that relates to this article and that sequence.

What I do know is that Dan had recounted to me the complaint. I credited what Dan told me. It's impossible for him to have fabricated that.

And then I had him communicate that to the New York Times later on.

Whether I had told Darren, or Rich, or David about this, I don't know.
MR. TEITELBAUM: Putting aside the issue of whether there was surveillance, "surveillance" is a term of art for somebody involved in law enforcement.

This headline in 53 uses the word "track."

THE WITNESS: Yes.

MR. TEITELBAUM: Did you inquire as to whether or not anybody in the Executive Chamber was using the State Police to track?


And that's why my statement on the 8th, which was the subsequent Monday, was the State Police were not asked to do anything, and did not do anything, other than follow their standard operating procedure.

The State Police is the State Police. We don't deal with them as it relates to what they do in moving people around.

MR. TEITELBAUM: So the answers that you got back from your staff was that there was no tracking being requested of the State Police?
THE WITNESS: I did not use the word "tracks."

If they're providing somebody -- when they move me around, they have logs that are maintained, my itinerary, what logs they keep in the standard, ordinary process of maintaining their logs they keep.

What I was told is they did only that which was their ordinary procedure in moving Senator Bruno, just as they moved me, just as they would move anybody else.

There was no deviation from their standard process.

MR. TEITELBAUM: In terms of record-keeping, and so forth?

THE WITNESS: Precisely.

MR. TEITELBAUM: Who told you that?

THE WITNESS: That is the answer, as I said, that was given to me based upon conversations with -- and you can check the e-mail traffic -- with Darren, with David, with Rich. The entire -- Christine may have gotten involved at that point; the press office, because Darren was so much in the mix.
as a participant.

I said, "Make sure this is accurate."

When I go out on the 8th and make a statement about this, we'd better be accurate.

MR. TEITELBAUM: Are you unable to pinpoint the person or persons -- we've gotten four people. Did each one of them say this to you?

THE WITNESS: Herb, I have no idea.

When you're the Governor of the state, and you ask a question, you expect to get an answer. When I asked a question, I expected everybody to get me the right answer. And I didn't ask it of one person. I said get me the answer, get it now, get it right.

And that is the answer that I got back on July the 8th, that's the answer I gave.

As far as I know, as it relates to surveillance there has never been anything that suggested that it was not the right
MR. TEITELBAUM: And you got this answer back from the people you just named?

THE WITNESS: I gave the direction not as opposed to the collection of documents, I gave a directive, get me the answer, and I got an answer.

And I think that answer is correct. According to the Attorney General, the DA, the Inspector General, there was no surveillance, a typical Fred Dicker article.

Q You have been provided a copy of what has been marked as Commission's 56.

A Yes.

Q Can you identify this document?

A An e-mail.

Q This is an e-mail between you and Rich Baum on July 6th; is that correct?

A Well, there are a couple of e-mails.

The first one is from Rich to me on the 6th. The second is from, I gather -- first from Rich to me. The second is from me to Rich, in which I say -- a couple of e-mails, yes. Okay, on the 6th..
Q: And in the first e-mail and chain, which is at the bottom of the page, the e-mail discussion, there is an e-mail from Darren to Dicker that is reprinted in the post, "Is a problem, need to figure out how to explain it away."

A: Yes.

Q: And your response is, "I missed the e-mail. What is it?"

A: Right.

Q: And he responds, and indicates it's concerning the Mike Long claim.

A: Right.

Q: Depending on how you read it, an admission that SP was doing more than we've been saying.

A: Right.

Q: This e-mail chain seems to indicate there is a fair amount of discussion going on about Darren's explanations as they're cited in the post.

A: Well, actually, I read it
Q. How do you read it?

A. Well, my response to Rich on the 6th, which is the day after this article -- again, I don't think it's at 6:04 a.m. Mountain Standard Time, putting that aside -- is, "I missed Darren's e-mail. What is it?"

Which establishes, as I said, I didn't read Dicker's article, but also would have seen the e-mail. Because as I say, I don't read Fred's articles.

So I said to him, "What's in the e-mail? What is this?"

Rich then says, "Reprinted in the Post, not with me now.

But basically, it goes into the Mike Long claim.

And then it seems to be this issue, I think, he's relating to the keeping of basic records, i.e., logs.

That's what I take it to mean right now. But beyond that, I don't know.

MS. HIRSHMAN: You don't have any recollection, as you sit here today of that, you're speculating having looked at
Commission's Exhibit 53.

THE WITNESS: That's correct.

MS. HIRSHMAN: In conjunction with 56.

THE WITNESS: That's correct.

Q And in the e-mail, Rich Baum says, "It's an admission that SP was doing more than we've been saying."

A Yes.

Q What was the position that the chamber had been saying as far as what SP had been doing?

A As I said, they were following the standard operating procedure, which is what we had been saying, and in fact, what I said, this is the 6th, that is precisely what I said two days later, on the 8th. This is Saturday the 6th, Monday is the 8th. After this, on the 8th, I say they followed standard operating procedure. Rich is concerned that this e-mail will create the impression that they were doing something other than that, even though what he says in the e-mail is, I, Rich, think what Darren is really saying here
is that in the prior administration they may have been doing something else, but who knows.

A critical point here, and this goes back to the earlier e-mail down at the bottom, is point number two, in the second full paragraph, all that happened here is the SP used documents sent by Bruno's office. No other info was generated or was asked for.

That's one of the critical points he thinks we need to make, which obviously, he believes is accurate.

He's worried that Darren's e-mail will be misinterpreted.

What he says at the top is, I think what he really means is that during the Pataki administration some other stuff was going on, but we don't know.

This is in the course of what I said earlier was the effort to determine what happened, so that on the 8th, when I see the press, I can be crystal clear and precisely accurate in my comments.

MS. HIRSHMAN: Let me clarify something.
I think the 6th is a Friday.

THE WITNESS: Okay.

MS. HIRSHMAN: The 8th is a Sunday.

THE WITNESS: Okay.

MS. HIRSHMAN: So you don't recall that your visit would have been on a Sunday?

THE WITNESS: No.

It was the next Monday.

Am I correct? It was the next Monday that I was in Albany.

You can check that.

Q Now, you referenced Paragraph 2, that the SP used the documents sent by Bruno's office.

A Yes.

Q Was that your understanding, was that these documents had been provided by Senator Bruno's office?

A I have no idea.

Q Did you ever discuss with Rich Baum that these documents were sent by Senator Bruno's office?

A No.
Which documents do you mean?

Q The documents, I assume the documents that are the subject of the TU article, the Post article, and what's causing all the flurry is the transportation documents concerning Senator Bruno.

A You're presuming.

I have I know idea that said what documents were turned however to the TU, how they were generated, from whom.

I took it, when Rich said to me one of the points we have to make is that these were the documents provided by Senator Bruno's office. I said okay, fine, that must be the case. Otherwise, he wouldn't have put that.

But I did not inquire, other than as I said, to say was standard operating procedure followed.

Q What was your understanding as to what the standard operating procedure was at this time?

A With respect to what?

Q Well, you're saying standard operating procedure was followed.
A Yes.

With respect to how they would move Senator Bruno when he flew to New York, or wherever he may have been.

I didn't care what it was, as long as whatever it was is what they did.

I don't know what the standard operating procedure was for me. When I showed up, there was a car, there was an airplane, a helicopter, whatever it was they would do, but I never told them to vary it, or asked them to vary it for him or for me.

That's all I cared about.

Whatever it was was irrelevant to the issue, which is, did it vary. That's the only issue I cared about.

Q So the standard operating procedure that's referred to here, or by you, is the standard operating procedure of the State Police in moving Senator Bruno around?

A Right.

Q It's not standard operating procedure of the State Police in terms of keeping documents?

A For all of it.
But the issue was surveillance.

Q      Yes.

A      The issue was surveillance. And I said, "Did they do anything different, out of the ordinary? Get me the answer."

The answer that came back was they followed standard operating procedure.

Which is, I think, if you go to my statement at the school on Monday, that's what I said.

And I don't think there is contrary evidence.

Q      You don't think there is contrary evidence to your statement?

A      With respect to surveillance, with respect to the variance from the standard operating procedure that I asked about.

Q      In terms of the record-keeping procedure?

A      That I don't know.

In terms of the surveillance, which is what this was about. The headline here is tracking his movements. I said, "Was he surveilled?"
I said, "Let me know if there was any variance from the standard operating procedure."

Q      Did there come a time where you became aware that the record-keeping procedure in this circumstance concerning Senator Bruno was different than the procedure they had followed in the past?

A      I became aware that there were allegations of that as this issue was then subsequently investigated by the IG and the AG.

Q      And when did you become aware of that?

A      The very end of July. After -- I'm not sure. At some point in late July is my best recollection.

I'm not sure when and how that came to the surface.

MR. TEITELBAUM: Just for a second, for a logistical issue, in terms of a car, and whatnot, do you know how far you are from finishing?

Let's go off the record.

(Recess had.)
MR. TEITELBAUM: As to when you
learned about these allegations, was that
after the Attorney General's report came out?

THE WITNESS: I don't know.

There were a sequence of
allegations raised after the article came
out.

First was surveillance. That's
why we responded to the surveillance
allegation.

Then there was an allegation of,
I gather, the records were not kept properly.

Frankly, I stopped focusing on
this issue, because you may remember there
was actually some people trying to get work
done. July 16, there was a session.

Thereafter we negotiated a deal
on congestion pricing and campaign finance
reform that totally captivated me, and I had
no interest in this issue, and no involvement
in this until the Thursday which would have
been the 20th, the 19th, whatever that
Thursday was, when, after I had a press
conference announcing an agreement on
campaign finance reform and congestion
pricing, and I sat down and was given a briefing on what had been occurring in this regard.

So I do not know where along that spectrum the issue of documentation arose, if at all.

MR. TEITELBAUM: Who gave you the briefing?

THE WITNESS: That was David Nocenti. Rich was there. It was in Rich's office. And I don't know if one or two other people were in the room, but I don't recall.

MR. TEITELBAUM: And that's when you found out about the allegation?

THE WITNESS: That's when I reengaged with this issue.

I don't know if that's when I found out that there was an issue relating to documentation, how they were gathered. I do not know.

But that was the moment when I then began to hear again about these issues.

MR. TEITELBAUM: Did there come a time when you learned whether the manner in which information was conveyed and documents
were accumulated, documents were created, departed from normal State Police practice?

THE WITNESS: I know it became an issue. I do not know if it did or did not depart from -- as we sit here today, I do not know if it did or did not depart from ordinary State Police practice, because there were statements that it was a practice, it was discontinued, it was started once again.

I do not know what they did and how they did it.

And frankly, I don't care what they did.

MR. TEITELBAUM: Did there come a time when you learned whether the State Police were conveying information regarding Senator Bruno's movements to Howard on a real time basis.

THE WITNESS: That was made aware -- I became aware that there was an issue about that at the end of July, sometime either at this briefing or thereafter.

MR. TEITELBAUM: Was that looked into by the Executive Chamber as to whether, in fact, that was going on?
THE WITNESS: At that point, there was already an Attorney General and an IG investigation.

So the IG was going to look into that. At that point the IG was the appropriate party to look into all of these issues. And that was their jurisdiction.

MR. TEITELBAUM: Is that also true with respect to the creation of documents?

THE WITNESS: True, because certainly nobody within the Executive Chamber, as you would ordinarily define it, was going to look into it. It was going to be either the IG, or the State Police, Inspector General, or some entity that had actual jurisdiction over this.

Q I'm going to provide you copies of what was previously marked as Commission Exhibits 1, 2, 3 and 4.

A Okay.

Q I ask if you've seen these documents before.

A No. Unless they are part of the FOIL response that I saw the first time
today.

Unless you've shown them to me today, and they were part of that, the answer is no.

Q      And, for the record --
A      And one of them actually looks
like --

Q      Portions of these documents were
part of that.
A      Beyond that, no.

Q      There is evidence in the record
that these documents were created by the
State Police after the transportation had
actually occurred, in response to a request
that was represented to be from the Executive
Chamber.

Were you aware of that request?
A      No.

Q      At any time did you become aware
of that request?
A      No.

Q      In your briefing on, I believe
you said it was July 19th --
A      Thursday, whichever.
Q      -- did Mr. Nocenti, or anyone who
conducted the briefing, relate to you that there had been the creation of documents by the State Police?
A I don't believe so.
What they did was go through their preliminary take on what these were.
Q And what was that preliminary take?
A They had been working with the Attorney General's office to facilitate their acquisition of documents.
Q "Their" being the Attorney General's office?
A Right. Of documents to reach whatever conclusions they were going to reach.
Q And did anyone ever indicate to you in that briefing that they had reviewed documents that had been created by the State Police?
A I don't remember at that point.
That's why the issue of creation of documents, it's hard for me to place it.
I don't recall at this point in time if the issue was whether documents were
being created or not, the issue was whether
or not there had been surveillance, whether
or not there had been anything that deviated
from standard operating procedures in other
ways.

Q. And was it relayed to you at the
briefing that members of the Executive
Chamber, specifically Darren Dopp and Bill
Howard, had been advised that they should
obtain outside counsel?

A. I don't believe I was told that.
I don't remember that coming up at that
Thursday meeting.

I became aware of it by Sunday
night, because on the eve of when the
Attorney General's report was coming out, and
there was an issue of a statement from
Darren, he had outside counsel.

But I don't remember knowing
Thursday that he had been told that.

Q. Did there come a time when you
were advised --

A. Well, as I just said sometime
between then and Sunday night I became aware
of it.
When along that seventy-two-hour spectrum I became aware of it, I do not know.

Q      Do you know who advised you of that?

A      No.

Q      Were you told why those individuals should obtain outside counsel?

A      No. No, I was not. I'm a former Attorney General. I know what it means when somebody says to get outside counsel.

Q      Was it ever discussed with you who should be obtaining outside counsel in the Executive Chamber?

A      No. Who beyond Bill or Darren, whether they should? No.

It was stated to me as fact that they had outside counsel.

I don't remember the conversation actually relating to Bill Howard.

With respect to Darren, it arose because of the issue of his statement on Sunday.

Q      And how did it arise?

A      Just that he was going to --
there was going to be a statement that he would submit to the Attorney General's office, but that he had outside counsel who would prepare it, or craft it. 

That is Darren's outside counsel.

Q      Did you ever ask about why Darren had been suggested to get outside counsel?
A      I don't know if I was told that he was told, or it was suggested that he get it, or that he had done so independently.

And I don't know, as we sit here today, which it was.

He might have determined on his own to get outside counsel.

I don't know if he got it, he was told to get it. I was told that he had outside counsel. And I did not inquire who it was, or how he obtained it, or what the reason was.

Q      Or who made that decision?
A      No, I did not.

Q      And you mentioned the Sunday night statement. What statement are you referring to?
A      Well, the statement which was
crafted, and Darren submitted by Sunday night, at some point along the way.

Q And what was that statement?
A Well, you have the statement, the statement which he submitted to the Attorney General's office.

Q Did you participate in reviewing that statement at all?
A I saw drafts of it. I did not participate in editing it.

As you've seen from the e-mails over the course of the weekend when -- I did not.

I was not involved in this until Saturday morning, when the AG's office and the executive were going back and forth about the process with releasing their report, or issuing their report.

The issue of the statement from Darren was raised. I was curious, obviously, to see what he said the facts were. I was curious as this was unfolding what had happened.

So I said the e-mails as you've seen, what is the statement, and what does it
Q      And what was your understanding as to how that statement came about? In other words, did the AG request it, did the Executive Chamber offer it?

A      I do not know. I know that there was a determination made, whether by Darren, by his lawyers, by others, I do not know, that he was not going to testify, but that he would offer a statement in lieu of testimony. And so I was curious to see what that statement would be.

Q      And was it your understanding that anyone else would be giving a statement to the AG?

A      Yes, Rich Baum.

Q      And did you review that statement, as well?

A      I did not review it as an editor. You can see from the e-mails, I said, "What are the statements?" I'm curious what these facts are.

Understand, as I've said, this was an issue, this entire set of issues had completely fallen off my radar screen during
the week-and-a-half prior to that Thursday. That Thursday afternoon, I go in, I'm exhausted, because we were working literally around the clock on substantive issues.

I go to Columbia County Thursday night, leave early to go to New York City Friday morning.

And Friday afternoon I get calls that this is likely to happen over the weekend, Monday. Saturday morning begin to talk to these folks about it again.

So I'm curious what all this has amounted to, and what the issue is.

MR. TEITELBAUM: Did the Executive Chamber take a position as to whether or not Dopp should submit to testimony?

THE WITNESS: I don't know what you mean by the Executive Chamber.

MR. TEITELBAUM: Members of the Executive Chamber.

THE WITNESS: I don't know. You would have to -- I don't know if David Nocenti took a position. I don't know if
Peter Pope would. Who knows.

There were people involved. I don't know if they collectively took a view, or independently took a view.

I know that there was a conclusion that he was not going to testify. Whether that was his conclusion, his lawyer's conclusion, or somebody else's, I don't know.

MR. TEITELBAUM: Was there any discussion that you were aware of among members of your staff to persuade Dopp not to give testimony to the Attorney General?

THE WITNESS: I do not know.

I know, I think it was Friday afternoon, I was in the city, I was leaving New York City, I believe being told that he was not going to testify, and that the Attorney General had concluded its investigation.

What had been told to people, whoever was dealing with the AG's office, they were done, and Darren was not going to testify, and that there would be a statement instead.

MR. TEITELBAUM: With regard to
Mr. Baum, did you ever learn that Mr. Baum wanted to give testimony to the Attorney General?

THE WITNESS: Ever learn that?

Yes.

MR. TEITELBAUM: Did you ever learn that Mr. Dopp wanted to give testimony to the Attorney General?

THE WITNESS: I'm not sure I ever heard that.

Because I don't think I've spoken to Darren since early July.

MR. TEITELBAUM: When did you learn that Mr. Baum wanted to give testimony to the Attorney General?

THE WITNESS: After the AG's report was issued, I believe at some point, and the issue of why Darren and Rich had not testified was being raised, I believe Rich at some point, either orally or in writing, said, "I want to testify."

Now, I don't know if he was persuaded not to by the Executive Chamber lawyers, his lawyer, I don't know.

MR. TEITELBAUM: The first time
you found out that he wanted to testify was after the AG's report?

THE WITNESS: Yes, I believe so.

Q What was your understanding of the amount of input that the Executive Chamber staff had in the AG's report?

A Minimal.

I know there were conversations. And I know that there was back and forth with the AG's office. I was not party to any of it, so I can't quantify it, or give you a sense of texture.

And I certainly don't know what the report looked like before the input, what it looked like after.

So I don't know if it had any input at all, or affect on the final outcome.

I do know that the Attorney General's office wanted to get from us a statement, a statement that we would issue after their report was issued, prior to our having seen their report.

And for whatever misguided reason, they were willing to do that.

Q When you say "whatever misguided
reason," what do you mean by that?

A Just that when I look back,

agreed to craft a statement, and show it to

the AG's office ahead of time, saying, "Here

is what we will say about your report."

And, in retrospect, we knew that

that report was, at a minimum, terribly

incomplete, and based upon an incomplete

record.

Q And were you apprised of the

conversations that were occurring between

members of the Executive Chamber staff and

the AG's staff?

A I knew there were conversations,

but I did not know the substance of each of

them, or even more than the general tenor of

them, in the sense that on Saturday and then

Sunday they said, "Look, we have had

conversations with the AG's office, here is

what we think their report will generally

say."

And this was part of the back and

the forth. The Attorney General wanted to

know what our statement would be upon

issuance of his report.
Q      And who were you having those conversations with?

A      Primarily, Darren -- excuse me, not Darren, primarily Peter Lloyd and two -- I'm not sure if Rich was part of that. Peter Lloyd and maybe David.

Q      And were you aware of the extent to which the content of the AG's report was being discussed with staff members? Did they advise you of that?

A      I think on Saturday morning -- and you can see this in the e-mails -- Peter and/or Lloyd or David was given a general sense of what the report would be. Now, beyond that, I do not know. I think there were major pieces that they were not told about.

Q      When you say "general sense," as relayed to you, what does that mean?

A      It means that they were told that there would be a conclusion that there was no violation of law, and that there had perhaps been missteps taken, but there was no violation of law.

Q      And how detailed was that
information?

A I don't know how detailed it was
in its presentation to them.

I know that in the presentation
to me from either Peter or -- I believe Peter
is the one who then recounted it to me, what
he had been told by the AG's office.

He relayed to me the entirety of
what he knew, or what he told me, in probably
a minute.

So it was not, in its recitation
to me, a lengthy report.

Q Was it your understanding that
Peter was involved in fairly extensive
discussions concerning content with the AG's
office?

A I have no idea.

Q Did Peter ever relay to you that
they were reading to him large portions of
the report in advance of its issuance?

A I don't think he characterized it
that way.

He told me what the conclusions
were going to be, but I don't recall being
told they had read him significant portions
of it.

Q And did he identify to you areas
in which the chamber staff was in
disagreement with the AG in the report?
A I don't recall back then if we
focused on the areas of disagreement.
Q What were you focused on?
A On what their conclusions were.
Q And did he relay to you
concerning their conclusions on the creation
of documents by the State Police at that
time?
A I don't remember if he focused on
that.
Q And did he discuss with you the
e-mails that the chamber was providing to the
AG that appeared to implicate members of your
top staff to the AG?
A He at one point referred to some,
and told me that there were some e-mails that
indicated that e-mails that were in the
report that indicated that there was interest
in this issue of Bruno's use of the plane at
the senior levels, but he did not
c characterize it much beyond that.
Q And did he discuss with you who those e-mails involved?
A Sure, we discussed e-mails. It was in the report. It was Darren, it was Bill Howard. Again, it was Bill Howard was involved, Darren. One or two involved Rich. And I think that was it.

Q And was there any conversation with anyone at that time concerning the response from the Executive Chamber to the AG report?
A Yes. They were crafting a statement that the AG's office wanted to see.
Q I'm sorry, I should be more clear.
A In terms of a response for those individuals who were employed by the Executive Chamber.

Q Well, later on the issue of what sanctions would be appropriate was a topic of conversation, as you know from the e-mails.
A When you say "later on," when?
Q I think that was more a Sunday. You have the chronology. I think it was Sunday afternoon, Sunday evening.
I went to Albany, and I said, "This is something we've got to talk through. And the appropriate sanctions, based upon the AG's report have to be resolved if we want to address this Monday morning in a forthright way."

So that's what we focused on.

Q      And was the issue of sanctions discussed with the Attorney General's office?

A      I don't know. I'm not sure.

We had internal conversations about that.

Whether or not -- I'm not sure. I'm not sure if they were ever apprised of what we intended to do on the issue of sanctions.

Q      And you were not communicating directly with the Attorney General's office --

A      No, absolutely not.

Q      Prior to the issuance of the report?

A      Absolutely not.

Q      And were you ever aware of specific areas, or content in the report that
the Executive Chamber was requesting from the Attorney General's office?

A      Well, I was aware of what I told Peter.

I told Peter at some point, and there's an e-mail to this effect, I think it was a question. I said, "Are they going to include Dopp's and Baum's statements?"

Because I thought they were important.

So to that extent, if Peter carried that request back to the AG's office, I was aware of that.

I asked Peter whether it was going to be a report that examined both aspects of the inquiry, which was the issue of -- what I viewed as the issue of surveillance. That's how the issue had been initially framed, and the issue of propriety abuse of the aircraft.

And I was told it would address both. Conclude there was no illegality, conclude there was no surveillance. And then there were going to be other conclusions, which, frankly, I did not focus upon as much until later on.
The issue of document creation, and the issue of whether or not their claim that this is pretext, which I think is a complete misreading of the record. That's what they concluded in that report.

Q      And were there discussions between you and other members of the Executive Chamber staff concerning the inclusion of the Chamber's cooperation in the Attorney General report?
A      I imagine so.

That would be an ordinary thing for Peter, or whomever, to have raised, and say, "Look, you should make it clear we cooperated."

Q      And did you ever discuss ways in which you could try and ensure -- and perhaps that's too strong a word -- the inclusion of that in the report?
A      Did I? I have no recollection. But I'm sure that that was an issue.

This was essentially a discussion/negotiation with the Attorney General's office, was were trying to extract
1 from the executive an affirmative statement
2 about its report.
3 And the lawyers for the chamber
4 were saying, "Fine, we're happy to do this,
5 but you've also got to be clear that we
6 cooperated."
7 It was a very standard
8 conversation that goes on between or among
9 parties who are releasing a document that
10 concludes, was intended to conclude, at least
11 part of an investigation.
12 Q Were there ever conversations
13 concerning the inclusion or exclusion of
14 particular members of the Executive Chamber
15 in the report?
16 A Not that I'm aware of.
17 In other words, make it more
18 definite, whom.
19 Q Well, obviously Mr. Dopp was
20 identified in the report?
21 A Yes.
22 Q And Mr. Howard was identified in
23 the report?
24 A Yes.
25 Q Were there ever conversations
concerning the extent to which Mr. Baum would be included in the report?

A      Not that I'm aware of.

That was not something that I was either party to, raised, or had any conversations with anybody about.

Q      And in terms of discipline, were there ever conversations concerning Mr. Baum's -- any potential discipline for Mr. Baum?

A      Prior to issuance of the report, I don't believe so, because it wasn't until we saw the report Monday morning that we understood who they suggested had acted improperly, after the report.

But I don't believe that they suggested that Rich Baum acted in violation of any of his statutory or ethical obligations.

Whereas with respect to Darren, Preston Felton, and Bill Howard, they reached a contrary conclusion, which is why the conversation of sanctions relating to those three -- and we knew that they were going to be involved in the report -- was something
Q      And Preston Felton, concerning
inclusion of any sanction against Preston
Felton, was that discussed with you?
A      By who?
Q      With members of your staff as
they were discussing it with the Attorney
General's office?
A      Separated out. As I said, I
don't know if the issue of sanctions was
discussed at all with the Attorney General's
office.
       Conversations with respect to
sanctions I had were internal. That was my
decision. And I wanted to garner the advice
of those on my staff, and then I would make
the final determination about it.
       The issue of sanctions was not
something that I felt the AG's office should
be part of.
Q      Were you aware that the issue of
sanctions was being discussed with the
Attorney General's office?
A      As I just said, I'm not aware if
it was or it wasn't. My concern was what I
believed the appropriate sanction was for each of those three.

Q    In the statement that you were providing to the Attorney General's office prior to the issuance of the report, or the proposed statement that was being provided, did it include the discussion of sanctions?

A    We have to look at it. As I sit here today, I don't know.

Q    And are you aware of conversations concerning that statement and sanctions between the AG's office and members of your staff?

A    I answered that. I've already told you. I don't know if that statement referred to sanctions. I don't know if sanctions was discussed with the AG's office.

When it came to sanctions, I viewed it as my determination, and I was going to impose the sanctions that I believed, based on the record, should be imposed.

I don't know if the AG's office was or was not part of that, and I don't know if it was in the statement.
Do you have the statement here?

Does it, in fact, refer to sanctions?

Q      Yes.

A      And they saw it.

And what did I say about sanctions.

Q      You discussed the individual sanctions as to --

MS. HIRSHMAN: Why don't we look at the document.

A      I'm not going to play a guessing game.

MS. HIRSHMAN: He said he doesn't remember.

So if we have the document, we can show it to him. I can read it, or we can move on.

But we are not going to have as the record evidence the questioner's recollection of what the statement says.

Fair enough?

MS. TOOHER: I was just responding to a question.

MS. HIRSHMAN: Understood.

And I'll ask you, Mr. Spitzer,
not the ask the questioner questions.
Could we take a break?
MS. TOOHER: Yes.
(Recess had.)
Q You've been provided copies of
what has been marked as Commission's Exhibits
144, 145 and 146. Can you identify these
documents?
A They appear to be sequential
drafts of the statement I was going to
issue.
Q And is this the statement that
you were going to issue in response to the
Attorney General report?
A It would appear to be, yes.
Q And have you seen these
statements before?
A Yes.
Q I'm sorry?
A Yes.
Q And are you aware as to whether
or not these statements, or these drafts,
were provided to the Attorney General's
office?
A I do not know specifically if
these drafts were provided to the AG's office. I know that over the course of the weekend, various drafts were discussed, and I believe provided to the AG's office.

I do not know if these precise drafts were provided.

Q And who was responsible for having those conversations with the AG's office, do you know?

A No.

Again, I've mentioned what I believe to be the universe of people involved Peter, David, maybe Lloyd, but I'm not positive, but certainly Peter and David.

Q And if I told you that there was evidence in the record that copies of these statements had been provided to the Attorney General's office, would you have any reason to dispute that?

A No.

Q And in the statement, look at 146, which is the latest statement.

A Yes.

Q If you look to the second page.

A Yes.
Q      It discusses personnel actions --
A      Yes.
Q      -- concerning Darren Dopp,
William Howard, and in italics, Preston
Felton.
A      Yes.
Q      Why are the discussions
concerning Preston Felton in italics; do you
know?
A      Well, at the end, I did not
sanction Preston Felton, and I know over the
course of the weekend, although it was based
upon our understanding of what the
conclusions of the report would be, it seemed
clear that there would be some sanction
imposed upon Darren and Bill Howard.
I was, to say the least,
ambivalent about imposing sanctions on
Preston Felton.
And the intent here may have been
to indicate that it was an uncertainty.
Q      And you indicated it became clear
that there were going to be sanctions against
Darren Dopp and William Howard. Why is that?
A      Based upon our acceptance of the
conclusions of the Attorney General's report, although we now believed that they were based upon significantly incomplete and inaccurate factual records. Nonetheless, at that time, accepting those statements as accurate, it seemed the appropriate thing to do.

Q      The first sentence in that first full paragraph on page 2, "I" -- meaning you, "have decided to take two personnel actions based upon the clear lapses in judgment that occurred."

What were those lapses in judgment that you're referring to at that juncture?

A      Well, again, based upon the Attorney General's report as we understood it, it was the failure to pursue FOIL processes as would have been dictated by ordinary procedure, magnified by the reality of this involved a political environment, where people could impute improper motives to what was being done, and the issues relating to how information was gathered that was also referred to in the AG's report.

Now, I don't know if at this time
we were aware of what really was the
essential argument in the Attorney General's
report, which was that the entire claim of a
media request was a pretext.

I do not know -- and there may be
something which can shed light on that -- I
don't know if that was part of our
understanding of the AG's report.

It may or may not have been.

And that is the piece that I
think has now been, as I understand the
record, significantly altered by a more
complete factual inquiry, which goes back
earlier to the mid-May and the early May
period.

Q But as of July 22, 2007, and the
information that you had at that time, the
lapses in judgment you are referring to are
the avoidance of the FOIL protocol, if I can
use that word?

A I just answered several others,
as well.

Q And in terms of Preston Felton at
that time, what was your impression as to his
involvement?
A Again, I had not read the report. Obviously, we didn't see it until Monday morning. I was relying upon an abbreviated recitation to me of what was told to either Peter or David, whoever it may have been, of what was going to be in the report.

But my sense was that I was dealing here with somebody who had spent thirty years in uniform, an extraordinarily honorable career, who had been asked to gather, or provide, certain information by the second floor.

And I did not feel that he should be made a fall guy or scape goat -- and those are not necessarily the precise terms -- for having responded to the requests for information that were made to him by his, technically, his superiors in the State government, somebody I respected, and I had respect for his three decades of service.

Q And when did you become aware that Preston Felton had received these requests from the Executive Chamber or his superiors?

A This is over the course of
Saturday, Sunday, that we were trying to parse through what the appropriate sanctions would be, dealing with an incomplete understanding of what was going to be in the report that we hadn't read. We were trying to, basically, feel our way in the dark, saying, okay, what is the appropriate sanction to impose.

Q And if I can take you to page 1, again, of Exhibit 146.

A Yes.

Q And the third paragraph up from the bottom.

Concerning the, if you will, collection of information concerning a political opponent.

And about halfway through that paragraph, "Every effort should have been made to follow proper procedures, and thus reduce any perceived conflict."

A Yes.

Q What would have been the proper procedures in this case?

A I suppose when a FOIL was received, simply send it to the FOIL office.
Q And if an oral inquiry were made, what would be the proper procedure?

A Frankly, that's why this is such an ambiguous area.

We had been providing information about use of the airplane, as had prior administrations, I presume, for years.

The media says, "We want information about the use of the airplane," you gather it, turn it over to them.

If it had not been for the screaming and shouting, and Darren, or if somebody else had simply said here are the manifests, here are the documents that were signed off by Senator Bruno's office, requesting use of the plane, I don't think anybody would have complained.

And then, frankly, it would be hard to know how anybody could have. This is all public information about a public plane, and it should be, and should continue to be public information.

I think the problem was, that as we believed at this point in time, based upon what we were told about the AG's report,
Darren arguably had gone directly to the State Police and said, "We want other documents to turn over."

And that process of gathering the documents was not the ordinary course of responding to a FOIL or a media request. So you're dealing with the State Police records relating to somebody in a political context, where, as I say, you have to be extraordinarily careful.

But as I also say in this sentence, it is clear that there was no illegality.

And the perceived conflict here, what is the perceived conflict?

Joe Bruno, who is the head of the Republican Party in the state, and I'm the Governor, and the head of the Democratic Party, so there is a perception, as you can certainly have seen in the prior three weeks of press that this was not tea and crumpets that we are playing out in front of the Capitol.

And the creation of an appearance that the State Police were being used
inappropriately, what was that inappropriate use?

A    The report insinuated, and as I just said, I think improperly, and didn't insinuate, said overtly, that this had been pretextual, that there, in fact, had not been media inquiries.

And hence, the inappropriate use of the State Police to gather documents that were not, in fact, responsive to a legitimate inquiry, but were merely designed to generate a story that would paint Senator Bruno in a negative light, using the plane for political purposes.

Now, the alternative view is, there were, in fact, media inquiries, the information was all public, it was accurate information, and it framed an issue that deserved to be focused upon, and arguably had the appropriate result of changing the State ethics rules.

Q    If the first interpretation that you voiced, which is what is somewhat reflected in the AG report, that the State Police were being utilized to gather
information concerning Senator Bruno, to, in
effect, create a bad article, would that be
an inappropriate use of the State Police?

A It would be inappropriate for
somebody to involve a law enforcement
organization in an effort to create a
political story.

That is my personal view, which
is why I have always tried to be incredibly
careful when you are anywhere near law
enforcement.

And I said this this Monday
morning, when I spoke to the press, I think, if you have a transcript of what I said, it
was responsive to a question, not a
statement.

I said, "The problem here is you
cannot break that law between law enforcement
and politics."

But if, in fact, that's what
happened, that would be, in my view,
something -- it would be a lapse in judgment
that I referred to two or three paragraphs
below, that would deserve the sanction.

Now, whether that was, in fact,
the case, because I now believe that there
was -- and I think the record is overwhelming
on this point, and nobody has challenged it,
I don't believe -- there were, in fact, media
inquiries, and so forth, not a pretext.

Now, whether every step along the
way was proper, that's a separate issue. But
there was, in fact, a media inquiry, as there
had been for many months and years on this
issue, and so, it frames the issue marginally
ly different than you just did, but still
raises this tension between law enforcement
and politics which one must be conscious of.

MR. TEITELBAUM: Mr. Spitzer, did you ever learn as to why these statements
were being submitted to the Attorney General?

THE WITNESS: I think it's fair
to say the Attorney General was saying, "We
want to know what you're going to say."

I think the Attorney General's
office was very fearful that we would come
out and blast their report.

MR. TEITELBAUM: Did you know
what that fear was based on?

THE WITNESS: I don't want to
speculate now, but now, I think it's
certainly interesting as we now look back on
it, that we know the report was certainly
substantially incomplete as it related to
many significant factors here.

I don't know that they knew that
at the time. But I think, with anybody who
is issuing a report, they were perhaps more
expressly with this Attorney General's
office, they were very conscious of what the
response would be.

This was very much, as I
understand it, very much at their
instigation. They said, "We want to see your
statement."

In hindsight I wish I had said,
"Forget it."

Q And at a certain point in time,
the Attorney General's report did come out,
and I think you have pretty much encapsulated
it, made a determination that no criminality
had occurred, but that there were ethical
lapses, if you, will, as they described it.

A Okay. Did he say no criminality
or no violation of law?
Q      No violation of law.
A      Okay. But potentially ethical violations, hence your jurisdiction.
Q      Were you in communication with the DA's office at the time that the Attorney General was preparing their report, or was the Executive Chamber in communication with the DA's office?
A      I don't know. I personally was not. Whether members of the Executive Chamber were, I do not know. At some point down the road they obviously were. When that began, I do not know. I don't know when the DA's office began its inquiry. I don't know the answer to that.
Q      I want to show you what has previously been marked as Commission's 157.
(Witness reviewing document.)
Q      And these appear to be a series of e-mails between members of the Executive Chamber in response to a request from the Albany County DA's office to review a statement by that office.
A      Were you aware of these
Hearing May 9, 2008

1 communications?

A I'm looking, and I'm trying to
read it quickly.

Q Take a moment.

A Did I receive any, I don't
believe I did.

Q But were you aware of them?
Were you aware of the
communications between members of the
Executive Chamber and the Albany County DA's
office?

MR. TEITELBAUM: Take your time.

Q There's no hurry.

A I don't recall being aware of
this.

And the reason I wanted to check
the recipients, the to and the from, was just
to see if I had received it, which obviously
was irrelevant.

I don't believe I was aware -- in
fact, I don't remember the -- I don't
remember this back and forth in terms of -- I
think David's observation, at the very top,
which is why are we commenting on their press
release, is neither here nor there.
Q      Were you aware of the DA's office
turning to your office for comment on press
releases in the past?
A      Now, I'm trying to think when we
dealt with that office.
The answer is no.
Q      And you did not become aware of
this statement being commented on by your
office?
A      No.
They initiated it, at least I
gather from the e-mail chain, it was
initiated by Richard Arthur, whose title I'm
not -- press person. I gather that was his
title.
Q      Now, it was clearly initiated by
the District Attorney's Office?
A      Right.
MS. TOOHER: Will you mark this
as Commission's Exhibit 179.
(Document marked Commission's
Exhibit 179.)
Q      Showing you what has been marked
as Commission's Exhibit 179.
(Witness reviewing document.)
Q      I have provided you with a copy
of what's been marked as Commission's Exhibit
179, and ask you if you've ever seen this
document before.

A      If I have, only in the course of
the past few days or weeks since this
investigation proceeded.

Christine did not copy me on the
e-mail, in which she said she didn't think I
did well in answering the questions.

Q      And the e-mail is dated 7/23,
which is contemporaneous with, or soon after,
the release of the Attorney General report?

A      No, no, no, I actually think it's
before.

MS. HIRSHMAN:  It's before.

A      This is late Sunday night.  I
think, if I read this, it's 7:23 at 1:18 a.m.

And what had happened was that I
had gone to Albany Sunday evening, and we had
a meeting to discuss what the response should
be.

We had done some Q and A in
response to this.  And the reason she didn't
and others didn't think I did well was
because I actually thought there were
different approaches. And hindsight doesn't
matter.

But I wish I had stuck with my
position.

But this e-mail chain was
circulated prior to the press conference on
Monday morning.

Q And the bottom paragraph on the
first page, David Nocenti is writing to Rich
Baum and Christine Anderson, and the e-mail
says, the bottom line, it says the OAG report
does not even mention the Governor.

If we have a press conference,
then he'll have to say that he knew about the
impending release of information to the ATU,
which could be spun as his condoning a
political dirty truck.

What is he referring to when he
says, "You'll have to say you knew about the
impending release of information to the ATU?
Do you know?

A I think because, as I said, I had
the conversation with Darren in which I said,
yeah, answer the question, public
information.

In other words, it was inevitable, and I have never tried to avoid, I tried to ask the critically important fact that at the end of June, Darren came and said, "We have a media request. What do we do?" I said, "Answer them."

His recollection is more vivid, passionate and more timely said than mine. But the point is, my answer was, "Answer the question."

The report painted it as a political trick based upon a pretext. I wish that we had said the report is fundamentally wrong. And I think the record now makes it clear it was wrong, certainly as it related to that element. It wasn't a pretext. There were questions.

There may have been issues, there may still be questions about the gathering of the documents, creation, whatever, of documents.

But David was rightly concerned that if I, in any way, was shown to have
known about the release, as would inevitably become clear, should become clear, people would misunderstand that I had said, "Yeah, you answer media questions, that's it."

MS. TOOHER: Will you mark this as Commission's Exhibit 180.

(Document marked Commission's Exhibit 180.)

(Witness reviewing document.)

Q You have been provided with a copy of what has been marked as Commission's 180. Can you identify this document?

A An e-mail chain.

Q And at the bottom, the e-mail starts, I believe, from you to David Nocenti. This is now July 26th. "I gather the Attorney General didn't say anything publicly about Rich today."

Who is Rich, as we are referring to here?

A That's Rich Baum.

Q And David's response, "As far as I know, he has not."

Were you anticipating a public
statement from the Attorney General concerning Rich Baum?

A I have no idea.

There must have been a predicate to my sending an e-mail to David, but I do not know what it was.

There was a fair bit of press inquiry about why Rich and Darren had not testified. And so, maybe there had been a call, or some indication from the AG's office, that they were going to make some statement.

Q And so, the continuation of the e-mail up the line, "Should maintain contact with him tomorrow, to make sure that he stays the case"?

A Yes.

Q Are you aware that David Nocenti was in touch with the Attorney General concerning Rich Baum at this time frame?

A David was in contact with the AG's office, and with the Attorney General, over this time frame.

Q Concerning Rich Baum?

A Concerning a multitude of issues,
I guess.

Q. I understand that, but the e-mail --

A. It would suggest that one of the issues was Rich, sure.

Q. And was there anything that you were aware of that made you believe the Attorney General was going to make a public statement concerning Rich Baum?

A. I just answered that. I don't know. But it would certainly be logical to presume that that was the predicate for the first e-mail.

Q. But you can't recall anything specifically at this time?

A. No.

Q. Were there other issues besides what was going on with the Attorney General's report that involved Rich Baum and the Attorney General's office at this time?

A. Not that I'm aware of.

MS. TOOHER: I think if we can take a short break, we can probably tell you that we are about fifteen minutes from being done.
MR. TEITELBAUM: Mr. Spitzer, the Commission has information that after the Attorney General's report was issued, sometime in the latter part of July, e-mails of Richard Baum, Bill Harris and Darren Dopp were reviewed through June 17th. Are you aware of that?

THE WITNESS: I just want to make sure I understand the question.

The answer is no.

Sometime at the end of July, the e-mails of Rich, Darren and Bill Howard were reviewed through June 17th.

MR. TEITELBAUM: Right.

THE WITNESS: By whom and for what?

MR. TEITELBAUM: Can we talk?

MS. HIRSHMAN: Yes.

MR. TEITELBAUM: Let me withdraw the last question.

Mr. Spitzer, did there come a time after the AG's report was issued that you asked someone on your staff to review
your e-mails.

THE WITNESS: Yes.

MR. TEITELBAUM: And who did you ask?

THE WITNESS: Lloyd ended up doing it.

I'm not sure if I asked Lloyd to do it specifically, or if I said I wanted somebody to review the e-mails, just to make sure that my recollections were correct, and I understood fully what my involvement was, if any.

MR. TEITELBAUM: And this occurred in the latter part of July, this review?

THE WITNESS: I think it was earlier.

I'm not sure.

At some point I asked that we check my e-mails, just to be clear about what the record was. I'm not sure precisely when it was.

MR. TEITELBAUM: What record are you referring to now?

THE WITNESS: My involvement in
this entire situation.

    Because I was firmly convinced then, as I am now, that what had been done -- put aside the issue of how Darren collected the documents perhaps was not only proper, but is mandated by law in terms of releasing public information, so we were correct on that.

    But always to be careful after the fact about how you describe what decisions were made, and I wanted to make sure that what I stated was consistent with what the record was, as best we could reconstruct it.

    MR. TEITELBAUM: And this review took place after the report was issued?

    THE WITNESS: That's where I'm hesitating.

    We can establish that fact, because I think in one of the pieces of paper I gave you it refers to the fact -- when was -- I know I'm not supposed to ask questions. Can we establish what the date was when the Empire State meeting opened at Westchester, and I went there that night? I
believe that was the day that some of this review was ongoing.

So it may have been the week that the report came out.

We can check my schedule.

MS. HIRSHMAN: Do you want to do that?

THE WITNESS: My lawyer is getting very upset with me.

I'm thinking out loud. So I'm quite convinced that it was the middle of the week that the report came out when we've seen this recitation of facts, and I'm saying to myself, this is not my what understanding was of what my understanding was in terms of pretext, and other issues. Let's see what there is.

And that is why that week, I started to check my e-mails.

Q So this is following the AG's report?

A Yes.

MS. HIRSHMAN: I think there's evidence in the record that that was on the 25th of July.
THE WITNESS: Okay.

MR. TEITELBAUM: And so if I understand you correctly, this is kind of a post hoc review, to see if your e-mails don't contain any information that would be inconsistent with the AG's report?

THE WITNESS: Transport yourself back to where I am, and what I'm focusing on at that point in time.

The article comes out, there is a fair bit of screaming and shouting about surveillance. I say very clearly, "No surveillance."

I think these issues are pretty much put to rest, and that you know my view of the overarching issue, the Attorney General is doing his report.

We go off and have several weeks of legislative back and forth, and announce the agreements on that Thursday.

That weekend, the report comes out, the whole issue reemerges.

And I say, "I'd better dig into this. This is something that appears to be taking on a different context that than I had
believed. I want to make sure that what I’m saying is precisely correct, because this is something to be careful with.

MR. TEITELBAUM: And these are e-mails between yourself and Darren Dopp?

THE WITNESS: Any e-mails.

MR. TEITELBAUM: This includes all e-mails?

THE WITNESS: Not e-mails between me and my wife or my kids.

But I mean, any relevant e-mails that could shed light on what, if any involvement, that I had.

MR. TEITELBAUM: And did they constantly review all of the e-mails, or just e-mails between you and particular people?

THE WITNESS: I do not know.

MR. TEITELBAUM: And what was the result of that review?

THE WITNESS: That the factual record, as I began to understand it then, and as has been stated by me, is what emerged.

MR. TEITELBAUM: And were any e-mails deleted?

THE WITNESS: No.
MS. HIRSHMAN: Do you know?

THE WITNESS: Not that I'm aware of.

And I'm firmly of the view that you can never really delete e-mails. They exist somewhere out there, somewhere in cyberspace on some server. You can't really eliminate it.

MR. TEITELBAUM: But you have no knowledge of any deletions having occurred?

THE WITNESS: No, absolutely not.

MR. TEITELBAUM: Do you have any knowledge of any documents being destroyed in connection with this Commission's investigation on members of the executive staff.

THE WITNESS: None whatsoever. None, no behavior like that would have been tolerated.

Q You were shown earlier Commission's 1 through 5, which I'm going to call the itineraries of Joseph Bruno.

A I thought it was 4.

Q You were shown 1 through 4 and 5 earlier.
A      Okay.
Q      And there was a commentary in the Attorney General's report that in speaking with the former Superintendent of the State Police, they had concerns about these documents as presenting security risks in their release. Are you aware of that within the report?
A      Okay.
Q      Yes?
A      Yes.
Q      And as you look at these documents, it is my understanding that you provide your own schedules, or did provide your own schedules on a fairly regular basis for public consumption.
A      That is correct.
Q      And are these schedules dramatically different than the ones that you provide?
A      Yes.
Q      And how so?
A      Much shorter.
Q      When you say "much shorter"?
A: I had more meetings on my schedule.

In terms of telling the public where I am, or when I'm going to be there, from a security perspective, no, they do not differ.

And my schedule was, when I was Governor, provided, I believe, in its entirety.

Q: When you came into office as Governor, did anyone from your staff communicate with the State Police concerning the release of your schedules to the public?

A: I do not know for certain, but I can imagine -- I imagine somebody must have.

Q: Did you ever become aware of any communications between Darren Dopp, requesting of the State Police, "Are there any security concerns with us releasing his schedule"?

A: I do not.

But let me say this. The State Police, I believe, was aware that my schedule was released publicly.

Q: Did anyone at the State Police
ever voice to you concerns over the openness of your schedules and itineraries with members of the public?
   A No.
   Q And you are not aware of them communicating with the Chamber staff on that issue?
   A I'm not aware of any such communication.
   Q Are you aware of any documents that exist pertinent to this investigation that we have not received?
   A I'm not aware of any documents anywhere that you haven't received, pertinent or not.

MS. TOOHER: I think we're done.
MS. HIRSHMAN: Can I ask just one question, to clarify, or can I ask you to ask a question to clarify?
MS. TOOHER: You can ask a question.
MS. HIRSHMAN: Let's go off the record.
(Recess had.)
MS. HIRSHMAN: Can we go back on
the record.

MR. TEITELBAUM: Mr. Spitzer, you wanted to add something with respect to Exhibits 4, 5 and 6?

THE WITNESS: Sure.

Merely that my schedules that were released publicly are slightly different in form, in the sense that they have dates, times, locations of meetings, and often, the participants in the meetings.

These schedule Exhibits 1 through 5 talk about transportation from one location to another, whereas my schedules are more akin to traditional schedules that actually, with greater specificity, indicate where and when I will be at a particular location.

BY MS. TOOHER:

Q And I'm sorry, this is just a follow-up on that issue.

You indicated you had never seen these documents before?

MR. TEITELBAUM: 4, 5 and 6?

MS. TOOHER: 1 through 5.

MR. TEITELBAUM: 1 through 5.

A That is correct.
Q      And that you were not provided
the documents to review prior to the release

to the Times Union?

A      That is correct. As I said
earlier, to the extent that these were the
documents provided responsive to the FOIL, I
did not see those, the materials turned over
to the TU before they were turned over, have
not seen them until today, when you provided
them to me, was never shown the materials
that were gathered, nor asked to review them
prior to their review.

Q      Did you ever ask if the documents
that were being released were public
documents?

A      In those words, no. My
statements to Darren were, "This is public
information," not as a question, but as it
related to the general subject, use of the
plane is always something the public hears
about, knows about, knows who flies it, when
and where.

This is not information that is
kept from the public.

MS. TOOHER: We are done at this
time.

Thank you for coming in.

(Time noted: 4:30 o'clock p.m.)
CERTIFICATION

I, STEVEN KLEIN, a Certified Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on May 9, 2008, at 123 William Street, New York, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this day of , 2008.

STEVEN KLEIN