STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

IN THE MATTER OF AN INVESTIGATION
INTO THE ALLEGED MISUSE OF RESOURCES
OF THE DIVISION OF STATE POLICE

STENOGRAPHIC MINUTES OF SWORN TESTIMONY

Conducted of TERENCE L. KINDLON, ESQUIRE, held on the
23rd day of January, 2008 at the offices of the
Commission on Public Integrity, 540 Broadway, Albany, New
York, commencing at 2:00 o'clock, p.m., before Theresa L.
Klos, a Shorthand Reporter and Notary Public in and for
the State of New York.
APPEARANCES:

ON BEHALF OF COMMISSION:

NEW YORK STATE ETHICS COMMISSION
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Investigative Counsel

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Director

ROBERT J. SHEA, Associate Confidential Investigator

BARRY GINSBERG

ON BEHALF OF WITNESS:

KS, P.C.

NKS, ESQ.

ON BEHALF OF DARREN DOPP:

IG, LLP

OENIG, ESQ.
PROCEEDINGS

MS. TOOHER: Ms. Shanks, could you note your appearance for the record, please?

MS. SHANKS: Yes. My name is Laurie Shanks. I'm here appearing as Mr. Kindlon's attorney.

EXAMINATION BY COUNSEL FOR THE COMMISSION

BY MS. TOOHER:

Q. And Mr. Kindlon, could you state your full name for the record?

A. Terence, T-E-R-E-N-C-E. Middle initial "L". Kindlon, K-I-N-D-L-O-N.

Q. And where are you employed?

A. Kindlon, Shanks & Associates.

Thereupon

TERENCE L. KINDLON, ESQUIRE,

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

BY MS. TOOHER:

Q. I apologize.

A. I reaffirm that my name is Terry Kindlon.

Q. Okay. And you are employed at the firm of Kindlon & Shanks?

A. Yes.

Q. What is your capacity there?
A. I'm the president.

Q. And what functions do you perform?

A. I practice law.

Q. And you represent individuals?

A. I do.

Q. In that capacity?

A. I do.

Q. Did there come a time where you represented one Darren Dopp?

A. Yes.

Q. When did that occur?

A. It began on the -- late on the afternoon of July 20, 2007 and it ended some time thereafter. I apologize. I don't know the exact date. But there came a time when I felt it would be my ethical obligation to withdraw from further representation of Darren Dopp.

Q. And how did your representation of Mr. Dopp come about?

MR. KOENIG: Share only what you did, not any conversation you had with Mr. Dopp. (Directing to the witness)

I think it should be clear for the record that my name is Michael Koenig, K-O-E-N-I-G. I'm an attorney at Greenberg Traurig in Albany and I
began representing Mr. Dopp roughly in early November, '07 and I currently represent Mr. Dopp. And I am here today in the event any questions were to be asked that would breach or impinge upon Mr. Dopp's attorney-client privilege and I am solely here for that purpose and will interpose objections if and when it becomes necessary.

I requested to be here and Mr. Teitelbaum, in response to a letter I wrote him, gave me a telephone conversation, I believe, on Monday, January 14th, and invited me in for that purpose.

MS. SHANKS: If it's okay with you, I'd like to make a statement for the record. When Mr. Kindlon received a subpoena, our office contacted Mr. Koenig to indicate that Mr. Kindlon was being subpoenaed and that his proposed testimony appeared to be concerning his representation of Mr. Dopp. And I told him I did not believe that it was appropriate now that Mr. Dopp had independent counsel for either me or Mr. Kindlon to interpose privilege objections on behalf of Mr. Dopp and if Mr. Koenig wished to be here, he should contact the Commission and make arrangements so that he could interpose objection.
And it is my anticipation today that Mr. Kindlon will answer questions unless there is an objection interposed on Mr. Dopp's behalf by his present attorney, Mr. Koenig.

MR. KOENIG: Let me make one other thing very clear so there are no questions about this. Darren Dopp is not waiving his attorney-client privilege nor any other privilege either in this hearing or for the purposes of the record now or at any other time. But for purposes of this afternoon, Mr. Dopp is not waiving the attorney-client privilege he had with Mr. Kindlon or any other attorney who he may have consulted with in this case.

MS. TOOHER: And the Commission was made aware of Mr. Koenig's representation and we did consent to Mr. Koenig being present in the room for purposes of protecting any attorney-client privilege he feels is necessary.

Q. And Mr. Kindlon, you are here pursuant to subpoena today; is that correct?

A. Yes.

Q. And for purposes of your representation of Mr. Dopp, how did that come about?
A. I had just gotten off an airplane at Albany Airport. It was late on the afternoon of July 20th, a Friday, 2007. I was walking from the exit ramp to the baggage area. My BlackBerry I had just turned back on again. I had been in London and the BlackBerry had been turned off for a week. I was walking through the lobby area at the airport. I received a telephone call from Judith Ank, a woman I know who works in the Capitol, somewhere on the second floor, and she indicated to me that one of the people who worked in the Chamber needed legal representation.

I said, "Okay. I'm exhausted. I've been traveling since 4:00 o'clock London time today, but I can meet with him right now just to touch base and we can take it from there."

Q. Can you tell me approximately what time that call was?

A. It was, I believe -- and I'm not completely sure, because I had crossed six or seven time zones that day. But I believe it was somewhere around 4:00 o'clock or so. It was late in the afternoon on Friday.

Q. And what happened next in the course of that representation?

A. I spoke -- oh, I gave Judith my cell phone number
to give to the person. Whether she told me his name or not, I don't remember. She gave me no details at all about what the legal problem was. And given that about 80 percent of my practice is criminal defense and given that about 95 percent of that is blue collar as opposed to white collar criminal defense, I anticipated, for what it's worth, that somebody in the Chamber had gotten, you know, mixed up with another woman or something and, quite frankly, it was what I expected. So --

Q. We don't need to explore the basis for that expectation.

A. No. It was because of the Boxley situation of which we, in Albany, are all aware so, you know, and I was afraid I was going to hear, you know, a rape third problem or --

Q. Did you receive a call in that regard?

A. I received a call -- picked up my luggage, walked to my car, which was parked in long-term parking indoors, got into my car and my cell phone rang and it was Darren Dopp on the telephone. We had conversation with each other.

I said to him, "I'm exhausted, but let me meet with you right now just to touch base so you can tell me something about the situation. Don't discuss it on the
telephone, the cell phone."

I said, "Where are you?"

He said, "I'm at the Capitol."

I said, "I'll tell you what; let's do this, I will meet you outside the Capitol near General Sheridan who sits atop his horse on the lawn." And I drove to the Capitol building. I parked my car on State Street. I got out. I did not know Darren Dopp, had never seen him nor had I seen ever a picture of him, but there was only one person -- again, it was a late Friday afternoon. There weren't many people around. And I saw a slender, young-ish, white man dressed for business.

And I walked up to him. I said to him, "Are you Darren?" And he said "Yes." So that's how we established contact.

We sat on a bench and had conversation for not long, 10, 15 minutes. I said to him, I said, "Look, I'm exhausted. I've been traveling. Let's get together tomorrow. My wife is on her way to Israel. My children are at summer camp," or in Israel, and we agreed to meet the following day. That's how it started.

Q. And did you agree to represent Mr. Dopp at that time?

A. I did, yes.
Q. And did you speak with anyone else concerning your representation of Darren Dopp that evening?

A. Not that evening, that I recall.

Q. Did you have any conversations with anyone from the Executive Chamber that evening concerning Mr. Dopp?

A. Not that I recall, but I thought about this very carefully and I do know that I spoke with someone from the Executive Chamber early into this, and I apologize. I wasn't taking notes. I wasn't keeping an hourly record at that point and, you know, I was really on horseback moving quickly.

I did speak to someone very early on and it may have been Sean Patrick Maloney, it may have been Peter Pope, one of those two guys. And it's possible, but I'm not certain, it's possible we had a brief conversation on Friday evening at about, you know, some time around when I met Darren.

Q. Mr. Kindlon, did you review any notes or materials prior to coming here today?

A. The only notes that I reviewed were the notes that were put together as a result of an interview of Darren by Linda Griggs, Albany County District Attorney's Office, that was reduced to a transcript.

Q. Did you bring a copy of those with you today?
A. It may be -- I think I left them in my office, because I wasn't asked to bring anything here.

MS. TOOHER: Can we request a copy of those notes?

THE WITNESS: I'm sure you have the Griggs's interview.

MR. KOENIG: Well, I'll ask Linda Griggs about that. I'm not sure they're gonna let out an interview --

MR. TEITELBAUM: Is there an attorney-client privilege objection?

MR. KOENIG: Conceivably, yes. Actually, Mr. Kindlon was with Mr. Dopp at that interview and that interview could be based upon -- I don't know what the parameters of that were so, potentially, yes.

MR. TEITELBAUM: You mean it's a privileged communication with Linda Griggs involved?

MR. KOENIG: There may be things on that transcript that, in fact, raise the issue of attorney-client privilege. I haven't looked through that transcript recently. For what it's worth, I would attempt to preserve it.

I'm also telling you even apart from the
attorney-client privilege that may or may not exist, I am going to call Linda Griggs about this transcript.

MS. TOOHER: We would request a copy of the transcript from you.

(Commission Exhibit No. 113 was marked for identification.)

MR. GINSBERG: I have a question about the interview. Was this under oath?

THE WITNESS: No.

BY MS. TOOHER:

Q. Mr. Kindlon, in the interview that you had with Linda Griggs, just quickly before we discuss this, can you tell me what was said during that interview?

A. I mean --

MR. KOENIG: You know what? No, no. What may have been said during that interview would emanate in large part from conversations that Mr. Dopp had with Mr. Kindlon and I believe that would be attorney-client privilege.

MS. TOOHER: But if they were said during the course of the interview, I think the attorney-client privilege would effectively be waived during that juncture.
MR. KOENIG: I don't know the parameters of that interview. I don't know if it was under "queen for a day". I don't know the answer to that.

MR. TEITELBAUM: Attorney-client privilege is a confidential communication between attorney and client. If we're gonna start off this interview with the proposition that what Mr. Dopp said to an Assistant District Attorney conceivably, under some set of circumstances, is protected by the attorney-client privilege, we're gonna have a very, very difficult time.

MR. KOENIG: There are prosecutors' offices which, whether successful or not, do agree to certain parameters whereby privileges are not waived. Their agreements are constructed. I don't know if that agreement was constructed that way or what the terms and conditions were of it.

I'm also not sure whether or not the District Attorney's Office -- again, I can't assert any privilege on behalf of them. It's not for me to do or whether or not they want that transcript out there, so I can't take position with regard to that.
But with regard to Mr. Dopp, I think that there are certain portions of that that could be attorney-client privilege. If there's a more specific question other than what was discussed, maybe we can do it on a question-by-question basis and, perhaps, get through that.

Q. Can you tell me the date of the interview?
A. I don't remember it off the top of my head, but maybe if I just talk to counsel for a second, we can reconstruct when that was.

MS. SHANKS: I will just say for the record that I reviewed it and it's about 150 pages long. So I don't know that my client can testify as to what was said during the entire course of the 150 pages.

Q. Was this interview prior to Mr. Dopp testifying before the Commission?
A. Oh, yeah, yeah.

Q. And in the course of that interview, did you discuss the statement that Mr. Dopp had given to the Attorney General's Office?

MR. KOENIG: Can you say the question one more time?

Q. In the course of that interview, did you discuss
the statement that Mr. Dopp had given to the Attorney General's Office?

MR. KOENIG: When you say you, who's you?

MS. TOOHER: Mr. Kindlon and Mr. Dopp;
discuss with the District Attorney's Office the statement that was given to the Attorney General's Office.

MR. KOENIG: Did they discuss among themselves or through Griggs?

MS. TOOHER: I'm asking if the subject matter was discussed. I'm not —

MR. KOENIG: I understand. Was the subject matter in the statement discussed among the three of them at that interview?

MS. TOOHER: Correct.

MR. KOENIG: He can answer that.

A. I believe so.

Q. And were the circumstances under which the statement was given provided to the District Attorney at that time?

A. I just can't recall.

Q. And is that detailed in the transcript?

A. Well, I mean, the transcript is a fairly accurate replica of the questions that were asked and the answers
that were given. It wasn't recorded by a certified
shorthand reporter. It was recorded on a little digital
dictating machine that was just left on the desk in front
of us.

Q. And did you have an opportunity to review that
transcript?
A. I did, yeah.
Q. And when you say it's somewhat accurate --
A. I mean, there were typographical errors. There
were inaudible portions of questions and answers. It was
not a high quality recording and it was not really a high
quality transcript. And it was not a sworn transcript.

Q. Do you recall what other subject matters were
discussed at the District Attorney's Office?
A. Yes.
Q. And can you identify those subject matters?
A. There were questions asked about Darren's
employment, the scope of his authority within the
Chamber. There were questions asked about the build-up
to the conflict that had gotten a lot of publicity
between Senator Bruno and Governor Spitzer.

There were questions about Darren's relationship
to the other people who were employed in the Chamber
but -- and no disrespect to any person on the face of the
earth that's attended here -- the questions that were asked by the questioner were, for the most part, unfocused, poorly constructed and not very probing.

Q. When you say the other individuals in the Executive Chamber, do you recall what other individuals in the Executive Chamber?

A. I don't know if their names appear in the transcript, but I know that the people whose existence was being discussed were Peter Pope, David Nocenti, who was counsel, Sean Patrick Maloney -- and I don't know what Sean Patrick's title is. Also, there were questions about Mr. Felton and -- I'm sorry. I'm drawing a blank on his name but --

MR. TEITELBAUM: William Howard?

THE WITNESS: William Howard, yes. Thank you. And beyond those people, I don't recall there being any information sought concerning any other people.

Q. And in terms of the July 22nd statement and your discussions with Mr. Dopp in the District Attorney's Office, did you or Mr. Dopp raise any concern about the nature of his statement and any discussions he had with members of the Chamber about not wanting to sign that statement?
THE WITNESS: Can I --

MR. KOENIG: Said in front of Griggs, not what he talked about with Dopp?

MS. TOOHER: Correct.

A. My recollection, Ms. Tooher, concerning that matter is that there weren't many questions asked about it. Again, this is my recollection.

MS. SHANKS: Can I just have one moment?

(Conferring.)

A. At the Griggs's interview, there was testimony offered by Darren Dopp to the effect that he had wanted to testify and I think the testimony he anticipated was testimony to the Inspector General which had been scheduled for Monday, the 24th.

MR. KOENIG: Can I just say Sunday was the 22nd? We established that.

A. Sorry. Monday, the 23rd. I apologize. And let me push the pause button here for a second. I'm trying to be as accurate as I can possibly be. The problem is that, I mean, I'm answering questions about the interview by Griggs of Darren Dopp and I don't know if my recollections at this moment are coming from the things that were said during that interview or from the things that happened that were being asked about at that
Because, obviously, since I was present at both, you know, in both time periods, I have knowledge that comes to me from both of those areas and I am concerned about giving you information from my recollection based upon having been present in the Capitol building on the 21st or the 22nd that may not be in the record from the interview at the District Attorney's Office. So I'll do the best I can here.

Now, at the Griggs's interview, my recollection is that Darren told Linda Griggs that he had wanted to testify but that he was told he didn't need to. And the best of my recollection is that he received that information from Peter Pope.

And to sort of give some context to that, when I was first in the Chamber on the second floor on Saturday, the 21st, when I met Peter Pope for the first time and Sean Patrick Maloney for the first time, one of the very first pieces of information that I received was that Darren's testimony was not going to be required. But my best recollection is that that information came to me from Peter Pope and, in fact, it came in the men's room, because I think I got something on my hands and I had to go wash them and Peter and I walked in there together and
we were chatting. And I believe it was in the men's room
on the second floor that he said to me that the public
integrity -- not public integrity; that's you -- the
Inspector General matter had been, I think he said,
called off. That's my recollection.

Q. When you say the Inspector General matter at that
point, you're talking about Mr. Dopp's testimony before
the Inspector General?
A. Correct.

Q. And you said you were told, you believe, by Mr.
Pope on the 21st that Mr. Dopp's testimony was not going
forward with the IG on that Monday --
A. Correct.

Q. -- the 23rd?
A. That is correct, yeah.

Q. And did he tell you why?
A. No.

MR. KOENIG: I want to object to that and
this is an issue that may arise later, so I just
want you to be aware of it. There is an
outstanding issue as to who represented Darren
Dopp prior to Mr. Kindlon's representation, the
basis for the privilege article I sent you on
January 10th.
There is an issue over whether or not Peter Pope and/or Sean Patrick Maloney was serving as Mr. Dopp's attorneys in the period leading up to the time where he retained Mr. Kindlon. And it is Darren's position and belief that, in fact, Pope and Maloney were representing him in those days leading up to it.

So the reason I object here is this is kind of a continuing of potential attorney-client privilege. Anything that Dopp and Pope and Maloney spoke about that was then conveyed to Terry as his subsequent attorney is still protected by the attorney-client privilege.

MS. TOOHER: Mr. Dopp had testified that the reason he retained Mr. Kindlon was because he was advised by the Chamber that their interests had diverged.

MR. KOENIG: I agree with that, but the divergence is why Mr. Dopp retained Mr. Kindlon. Prior to that divergence, Pope and Maloney had -- as Dopp, I believe, would say, he believed Pope and Maloney were representing him.

MS. TOOHER: But I believe the testimony Mr. Kindlon's giving now concerned after Mr. Kindlon
MR. KOENIG: No, I agree with that, but anything -- I agree with that. Anything that Mr. Pope and/or Mr. Maloney would have conveyed to Mr. Kindlon that Mr. Pope and Mr. Maloney learned in the course of representing Mr. Dopp would be protected by the privilege.

Your question did not go to a communication. You asked whether or not -- it was a yes or no question, which he could answer, but I wanted to alert you to the issue that could arise were you to start to ask questions about what Pope and Maloney may have subsequently told Mr. Kindlon and that were subsequently based on things they learned while they represented Mr. Dopp.

MR. TEITELBAUM: Just so the record's clear, is Mr. Dopp taking the position that he himself was represented by Maloney and Pope?

MR. KOENIG: Yes, up until the time that he retained Mr. Kindlon.

MR. TEITELBAUM: And have Pope and Maloney taken any position on that?
MR. KOENIG: I've been advised by others in Executive Chambers' counsel's office that they would disagree with that. They believe they made it clear they were always representing the Chamber and not Mr. Dopp.

Mr. Dopp has a very different view of that and that issue has never yet been explored. I shouldn't say it's not been explored. It's not been adjudicated.

MR. GINSBERG: Can I just try to clarify one thing? You said, I think, that anything that Pope and Maloney learned in the course of this period; that, according to Dopp, they were his counsel. We won't argue about whether or not that was so or not, but -- hear me out -- is that to say that that's true whether or not that information came to them from Darren Dopp?

MR. KOENIG: No, no. I meant contact with Mr. Dopp. I didn't mean anything they learned. Anything they learned from Mr. Dopp. I thought that would be implicit, actually.

MR. GINSBERG: Since we're trying to make sure the record is clear.

MR. KOENIG: No, let's make the record very
clear. Darren Dopp believed that up until the
time he retained Mr. Kindlon on July 20th that Mr.
Pope and Mr. Maloney were acting as his attorney.
I've learned from people in the Executive Chamber,
though not Pope directly, not Maloney directly,
that they would disagree with that. That issue
has never been adjudicated.

My position is anything that Mr. Pope and Mr.
Maloney may have learned in communications with
Mr. Dopp during that 10- to 12-day period in July
would be privileged.

MR. TEITELBAUM: Just to put a fine point on
this: Is it Mr. Dopp's position that Maloney and
Pope were representing him in his personal
capacity; that these government lawyers were
representing him in his personal capacity?

MR. KOENIG: That is, Mr. Dopp believed that
in the period up until he retained Mr. Kindlon
that they were representing him.

MR. TEITELBAUM: Personally?

MR. KOENIG: That they were his attorneys,
yes.

MR. GINSBERG: Getting back to the question
that was posed, Mr. Kindlon learning information
from Mr. Pope about some communication he had with
somebody else about the necessity or lack thereof
for Dopp's testimony, you're not claiming
privilege as to that; right?

MR. KOENIG: You gotta repeat the question.

I don't think I --

MR. TEITELBAUM: Let's get the question --

MR. KOENIG: I think the last answer to the
question was fine; did Mr. Pope tell you --

MR. TEITELBAUM: You objected --

MR. KOENIG: No, I didn't object to the
question. I think your question was: Did Mr.
Pope tell you why the IG had been called off? And
he said no.

That was the question -- I believe that's
what the question and answer were.

MR. TEITELBAUM: Can you read it back?

(Directing to the court reporter)

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

QUESTION: "And you said you were told, you
believe, by Mr. Pope on the 21st that Mr.
Dopp's testimony was not going forward with
the IG on that Monday --"
ANSWER: "Correct."

QUESTION: " -- the 23rd?"

ANSWER: "That is correct, yeah."

QUESTION: "And did he tell you why?"

ANSWER: "No."

MR. TEITELBAUM: Okay.

BY MS. TOOHER:

Q. If we can just come back to the document you have in front of you, which is Commission 113, the one-page document --

MR. TEITELBAUM: Before we get to this, I want to ask you a question concerning the interview. Were you in communication with the District Attorney's Office before the interview took place with Mr. Dopp?

THE WITNESS: Yes.

MR. TEITELBAUM: You were called by whom at the District Attorney's Office or was it a conversation? You tell us.

THE WITNESS: I spoke directly with David Soares and David and I sat down in Dunkin Donuts across the street from my building and had coffee on a morning -- I forget exactly what morning it was. And that was at a time before Mr. Soares had
decided whether or not his office was going to
take any action one way or the other.

MR. TEITELBAUM: And what did Mr. Soares say
to you?

THE WITNESS: Mr. Soares said to me that he
and some of his Assistant District Attorneys were
attempting to determine whether or not the Penal
Law of the State of New York was implicated in any
way by -- could possibly be implicated in any way
by the information he was receiving and he had not
at that point formed any opinion one way or the
other.

David and I, of course, know each other
because of the fact that we're both involved in
the field of criminal prosecution and defense and
have known each other as a result of that. And we
had a meeting that was about maybe an hour long
and at the conclusion of that meeting, Mr. Soares
still had made no decision as to what exactly he
was going to do, if anything, in regard to this
matter.

MR. TEITELBAUM: During that conversation,
was he asking you questions --

THE WITNESS: Yeah.
MR. TEITELBAUM: -- concerning the -- for purposes of shorthand, we'll call the July 22nd, 2007 statement that Mr. Dopp signed the Dopp statement. Did he ask you questions about the Dopp statement?

THE WITNESS: You know, sir, I don't recall if he specifically asked me any questions about that statement. At that point, there wasn't that kind of focus. It was still, you know, a wide open area of inquiry and we talked about many things and I honestly do not specifically recall whether or not the statement itself from July 22nd was focused on.

MR. TEITELBAUM: Was he asking you questions concerning the activities of the state police in connection with the gathering of information regarding Senator Bruno?

THE WITNESS: I believe there was generalized discussion concerning that. I think there was generalized discussion concerning Attorney General Cuomo. There was generalized discussion concerning the Inspector General, some questions about the individuals who were in the, for lack of a better term, inner circle in the Chamber and,
again, questions about Mr. Felton and Mr. Howard. And I recall that the dominant theme during that conversation that I had with Mr. Soares was that he was intensely interested in doing the right -- the best right thing or the right best thing possible as District Attorney of Albany County in connection with this matter, but at that point in time, he had not formed any opinion as to what that was. And he told me he'd be discussing it with some of his assistants and attempting to, you know, formulate some kind of plan of action.

MR. TEITELBAUM: Now, what did Mr. Soares say concerning the Inspector General?

THE WITNESS: Only that he had heard that the Inspector General was going to take some action but then had changed her mind, but I don't -- if he had any specific information, he didn't choose to share that with me.

MR. TEITELBAUM: Did he tell you what his understanding was as to why the Inspector General discontinued her investigation?

THE WITNESS: No, sir, he never did.

MR. TEITELBAUM: What did the District Attorney tell you concerning the Attorney General?
THE WITNESS: Nothing in particular; only that he thought that the Attorney General's report had been issued very quickly. But beyond that -- as far as the -- you know, as far as the professional aspects of his position are concerned, I would have to say that Mr. Soares, although he was very pleasant, kept his cards very close to his vest and didn't really share them with me. And as I say, we had a very cordial conversation, but he didn't give me any inside information or anything. He asked questions. I answered them as best I could. We discussed possibilities. We drank a cup of coffee.

And at the conclusion, the matter was left entirely open. There weren't any decisions made at all about what would happen next.

MR. TEITELBAUM: What did he say about the inner circle?

THE WITNESS: He just asked me what I knew about it and, frankly, I didn't know that much about it, because I don't -- you know, I didn't even -- I had -- before July the 20th, 2007, I had never heard of Peter Pope. I had heard of Sean Patrick Maloney, because he was running for
Attorney General at some point. I had never heard
of David Nocenti. They were all strangers to me.
I just didn't know them or really know anything
about them.

And I had come to know them to a small degree
at that point, because when I came into this
matter, my sense was that the baton was being
passed to me by them. I heard a discussion before
about who was representing whom here and the fact
is that it was certainly my impression when I
entered this matter that Darren Dopp had been
represented by the lawyers that I'd met.

MR. TEITELBAUM: That would be --
THE WITNESS: Pope.

MR. TEITELBAUM: -- Pope and Maloney?
THE WITNESS: Yeah. Primarily, Pope. I
mean, he -- he -- I didn't see that much of
Maloney. When I was in the Capitol building on
the 21st, which was Saturday, and on the 22nd,
which was Sunday, I didn't see very much of Sean
Patrick Maloney. He had popped in, said a few
words and was gone.

Most of the conversation that I had was with
Peter Pope, and that was on Saturday. I never --
I didn't see David Nocenti on Saturday at all, to my recollection. I never met him until Sunday.

MR. TEITELBAUM: Can you fix the date of your Dunkin Donuts' meeting with the District Attorney in relation to the 20th of July? Was it before or after?

THE WITNESS: Oh, no. It was well after. It was -- not well after, but it was probably within a month. If I went and looked at my diary, I could probably figure it out, because I had to jam it into the morning before a court appearance. And I'm sure if I sat down and talked to my secretary, we could figure out exactly when it was.

MR. TEITELBAUM: We're talking weeks?

THE WITNESS: Oh, yeah. It wasn't a real long time.

MR. TEITELBAUM: And at the meeting with the District Attorney, did he raise the subject of his interviewing Mr. Dopp?

THE WITNESS: Yes. Yeah. He raised that it was a possibility. There was no decision made at that time as to whether or not he would, but he said to me would Darren Dopp be willing to be
interviewed and I said yeah, by all means. I said, "He's dying to be interviewed by somebody and you're a good candidate, Mr. Soares. He would be delighted to talk to you."

And, again, Darren wanted to talk to somebody and this seemed like a great opportunity for him to do exactly that so --

MR. TEITELBAUM: And then was there a communication between yourself and a representative of the District Attorney's Office after that cup of coffee where the interview was arranged?

THE WITNESS: Yes, and I -- I don't think that there was anything in writing. My recollection is that I received a telephone call either from Linda Griggs, an Assistant District Attorney, or from Steven --

Do you remember his last name? (Directing to Ms. Shanks)

MS. SHANKS: I don't know.

THE WITNESS: There was an almost brand-new Assistant District Attorney and I apologize, but I can't recall his name either, but he was brand-new, just out of law school, just in the
office, and he may have been the person who telephoned me.

But by and by, it was arranged as a result of a telephone call that Darren Dopp would come to the District Attorney's Office and would give a statement. And I believe my information is that out of all the people who were spoken with by the District Attorney, Darren was the first and the last, because he went twice.

MR. TEITELBAUM: And did you accompany him on both occasions?

THE WITNESS: I did.

MR. TEITELBAUM: And was there a transcript made of both of those interviews?

THE WITNESS: No; just the first.

MR. TEITELBAUM: The first one?

THE WITNESS: Yes.

MR. TEITELBAUM: How long did the second one last?

THE WITNESS: Not that long. Maybe an hour.

MR. TEITELBAUM: As far as you know, did Mr. Dopp appear before the District Attorney's Office for an interview without you being there?

THE WITNESS: No. He only went there twice
and, both times, we went together.

MR. TEITELBAUM: And was there any discussion between yourself and a representative of the District Attorney's Office concerning the waiver of attorney-client privilege?

THE WITNESS: No, there wasn't, not specifically. It was standard issue, come into the room, sit down at the table, you know, introduction and questions. But in both instances, the statement was taken as an unsworn testimony. There was not an oath or affirmation that was administered at the time.

MR. TEITELBAUM: And did you sign any agreement with the District Attorney's Office concerning those interviews on behalf of Mr. Dopp?

THE WITNESS: Like a cooperation agreement or a "queen for a day" agreement or something like that? No, we didn't sign anything at all, nothing.

MR. TEITELBAUM: That's also true of Mr. Dopp as far as you know?

THE WITNESS: That is correct.

MR. TEITELBAUM: Were you told the reason why the District Attorney wanted a second interview?
THE WITNESS: The only information that I was given in that regard was -- and I believe this was in a telephone conversation and I believe it was with Linda Griggs -- that they wanted to clarify a few things. And my understanding is that the second interview by members of the District Attorney's Office of Darren Dopp came after all of the other individuals who were interviewed had been interviewed.

So in other words, we went first and we went last and there were X-number of interviews in between of other people. And I was not advised as to who exactly the other people being interviewed were. I didn't feel it was appropriate for me to ask, so I didn't.

MR. TEITELBAUM: What were the subject matters that were inquired about at the second interview?

THE WITNESS: There was actually nothing new and the -- my recollection is that at that second interview, there was nothing new or different or unique or even, you know, more particularized asked about than had been for the first interview. So I was a little puzzled as to why we had to even
MR. TEITELBAUM: Did the District Attorney's Office raise an issue as to any conflict in what they were being told between what Mr. Dopp had told them in the first interview and what other people told them?

THE WITNESS: No, no, and I mean I -- I candidly, you know, was sensitized going in, because I thought, well, gee, maybe somebody's -- you know, maybe one person said the light was green and somebody else said the light was red and they wanted to clarify that.

But, no, there was no specific information that I recall of that nature. It seemed to me that the second interview was really cumulative to the first.

BY MS. TOOHER:

Q. Did you have any subsequent conversations with the District Attorney about Mr. Dopp?

A. No. The next conversation that I had was -- and, again, I don't recall the date. Forgive me. But I did receive a telephone call from Linda Griggs and I want to think it was right around Election Day. I'm pretty sure it was right around Election Day. It might have been the
Friday before Election Day or the Monday before Election Day, but it was in there some place.

And she indicated to me that she wanted Darren and I to come to the District Attorney's Office together. I said okay and we went there. And at that time, she read a prepared statement to me and she indicated to me that -- or it was written on the prepared statement that in the opinion of whoever it was who wrote the statement, I had been converted from a lawyer to a witness. So I thought, well, okay, that's never happened before. I better go do a little research, and I did. You know, I checked the ethical considerations and the disciplinary rules and I talked to some other lawyers about this issue and I concluded as a result that the best thing for me to do, so as to not dissipate -- you know, so as to not act in any way disadvantageous to Darren was to remove myself from the case and to cease representing him, and Darren then retained Mr. Koenig.

And that was the -- I mean, those were the only three contacts I had with the DA's Office, the two meetings and then finally the --

Q. And did Ms. Griggs indicate to you the context in which you were converted from attorney to witness?

A. Actually, no, she didn't. I mean, the statement
itself was sort of purposefully vague, was my impression,

or badly written. Pick one. And you know, I was,

however, concerned -- I wasn't really -- I wasn't really

clear as to what it was that was the thing at issue here,

but I just decided the best thing for me to do would be

to just get out on the theory that, you know, if there's

any ethical issue that comes up at all, the best thing to

do is try to avoid it so -- but no, she didn't tell me

exactly what it was that she had in mind.

Q. And have you spoken with the District Attorney's

Office since that communication?

A. Not concerning this case, no, not concerning this

matter.

Q. And has the District Attorney's Office contacted

you in regard to Mr. Dopp since that communication?

A. Nobody from that office has contacted me since

then.

Q. I'm going to take you back to Commission 113, a

one-page e-mail from Peter Pope dated 7/20/2007 to Darren

Dopp. The front of the e-mail starts with Mr. Dopp

relaying to Mr. Pope at 7:55 p.m. on 7/20 "Terrence

Kindlon will call you this evening," and Mr. Pope

apparently responds "Thanks. He has placed call and we

will talk in about 30 minutes."
A. Okay.

Q. Does this refresh your recollection at all of that conversation with Mr. Pope on that date?

A. I don't recall any conversation with Peter Pope on that day specifically.

MS. SHANKS: Excuse me just a moment.

(Conferring.)

A. The thing I do see here, which probably should be clarified, this indicates -- this bears the time that it was sent from Darren Dopp at 7:55 p.m. Eastern Daylight Time and I was saying late afternoon. It could have been early evening.

Again, I was completely jet-lagged when I first had contact with him and my recollection is that I spoke with Judith, I gave her my phone number, I asked that Darren call me and that I then met with him. It's possible that somebody other than Darren actually called me also from the Chamber, but I don't -- I don't specifically remember that.

I do remember driving my car from the airport to the Capitol. I remember thinking that I was really tired and that I just barely had the energy to have this brief conversation with Darren and that, really, nothing other than we met each other and shook hands and agreed to get
together the next day came as a result.

If I spoke with Peter Pope or Sean Patrick Maloney on the evening of the 20th, it was an insubstantial conversation and I truly don't have any recollection of having had a conversation with either one of them, with anybody but Darren that night, Judith and Darren.

Q. And following your meeting with Mr. Dopp that evening, you indicated you met with him again the next day?

A. Correct.

Q. Do you recall approximately when that was?

A. Well, what I said -- what I said to Darren was that we needed to meet and that I needed to learn about the situation and that I needed -- I said were there any documents or papers or reports or anything to look at.

And I don't want to get into the attorney-client area here, but I think I can safely say that I was advised there were some papers, and I said, "I'd like to get those. Let's meet." And we met early in the morning. I'm still on London time so it's easy to get up early.

And I very specifically remember I met Darren in the parking lot of Borders Books on Wolf Road, because it was halfway -- it seemed like it was roughly halfway
between my house in Glenmont and his house in Saratoga County and it just was the quickest way for us to get together. We met briefly.

Q. When you say early morning, what is early morning to you?

A. It was before the stores were open. The parking lot was empty. It was early enough to -- you know. So that was probably 7:00 o'clock, 7:30, some place in there.

Darren gave me a bunch of papers, which I took away and read up on. We spoke by telephone during the day. Eventually, Saturday, I came to the Capitol building. I had to go through that funny new, you know, space-age air lock thing they got there and got inside and met with Peter Pope and briefly with Sean Patrick Maloney and then left. And that was pretty much the end of it that day.

Q. When you met with Darren first thing in the morning, had you spoken with anyone in the Chamber prior to that meeting?

A. Not to my recollection, no.

Q. So it's your recollection that you met with Mr. Dopp on Friday evening in the park?

A. Yes.
Q. And that you then spoke with him and met with him again in the Borders parking lot --
A. Yeah.
Q. -- early Saturday morning?
A. Saturday morning, yeah.
Q. And you don't even have any conversation with anyone from the Executive Chamber during that time frame?
A. No.
Q. Did there come a time when you spoke to someone in the Executive Chamber on Saturday morning?
A. At some point during the day, there was a determination made that I should go to the Capitol to meet with people in the Chamber.
Q. And how was that determination made?
A. Again, I don't specifically recall. It may have been a telephone call. And I went down to the Capitol in the afternoon and I had conversation -- as I recall, it mostly was Peter Pope. Again, Sean Patrick Maloney was in and out.
I remember that -- I think it was Sean Patrick Maloney mostly who was concerned about the fact that a conflict or divergence of interest, to use his phrasing, had developed between Darren and others, non-specified others, in the Chamber, which was why they felt he should
get a different lawyer.

Q. Did he ever relate to you what he thought that divergence of interest was?

MR. KOENIG: Hold on a second. I think that would be covered by the privilege, things Maloney learned from Dopp in the course of Maloney representing Dopp. That would be covered by the privilege.

MR. TEITELBAUM: We don't know where it came from yet, do we?

MR. KOENIG: Can you repeat the question?

Just read it back or repeat it.

Q. Did he ever explain to you what the divergence of interest was?

MR. KOENIG: Sorry. I thought you -- okay. That's a fair question. You can answer that.

A. I'm sorry. Can you ask me that question again?

Q. Did he ever explain to you what the divergence of interest was?

A. No, no. There was a lot of mystery; okay? I mean, these guys were radiating mystery at the time.

Q. When you say radiating mystery, what do you mean by that?

A. I mean that there was not a whole lot of
information coming my way from them other than that they felt that, which was very clearly stated to me, Darren needed, quote-unquote, a different lawyer because of the way things were developing in the conflict with Senator Bruno.

Understand something; I mean, this is a situation in which a bunch of really smart people, which it is clear to me they were, okay, are dealing with an issue that appeared to be very complex and I'm the new guy and I'm trying to understand exactly what's going on.

This situation is further complicated by the fact that they're all lawyers and politicians and nobody is being all that forthcoming. I mean, people didn't sit down and take out a ballpoint pen and a piece of white paper and say, "Okay, here are the issues" and write them out clearly on a piece of paper. So that I'm trying as hard as I can as quickly as possible to understand what is going on here.

And in large measure, this early in the game, I didn't even know what questions to ask yet so that I was at a bit of a disadvantage and I was trying really hard to understand what was going on. I was working on Saturday to try to get caught up with this thing, and I am afraid that I don't have a lot of the information
which, if I were a little bit smarter, I'd been at this a little bit longer, I would have.

But things were moving very rapidly. I didn't know any of these people and I was just doing my darndest to figure out what was going on, what the problem was and what the issues were within that problem. And this was all breaking very quickly and I was exhausted, too.

So, you know, I was at the Chamber until some point in the afternoon and then I went home and -- you know, and I told Darren I was going to think about this and work on this some more and I talked to him again the following morning, Sunday morning.

Q. Did you relay that to Mr. Pope at the time, that you were trying to come up to speed, that you needed more information --

A. Oh, yeah, yeah, yeah, yeah.

Q. -- and that you felt at a disadvantage? Is that a fair characterization?

A. Yeah, absolutely. I said, you know, "You guys are light years ahead of me here and I'm doing the best I can." And I think that they needed -- I mean, they would have to understand that reality, because again, they had all been very intensely -- I mean, it was clear to me based on my observation that they had all been intensely
engaged in these issues that we were dealing with for a
period of time.

Q. What did you observe that made you come to that
conclusion?

A. They were almost speaking a code. They were
making reference to events that they were clearly, you
know, well acquainted with that meant nothing to me, you
know, issues -- it goes like this: I mean, this thing,
this problem, this dilemma that we're dealing with here,
it all bubbled up as a thousand things were happening
simultaneously. The session was ending -- legislative
session was ending and issues were being -- you know,
obviously, I mean, it had been described to me issues --
all different kinds of issues were coming up and people
were fighting. They were doing the budget, fighting over
this, that and the other thing.

And then they say "Preston Felton" blah, blah,
blah and I'd say, "Who's Preston Felton?" And then
they'd say "Mr. Howard." Well, who's Howard? "Sean
Patrick." Sean Patrick? It was like that. I was the
new kid in class and, you know, I got there on October
the 12th.

It had been going for a while and, you know, there
was just a lot of information that was completely foreign
to me, foreign to me not only because I hadn't been there when these things were happening but foreign to me because this is a slightly different environment from the one that I normally work in. And, you know, references were being made to, you know, political issues and personal issues and legal issues and it was all spun together. And as I say, I was trying very hard to understand this as quickly as I possibly could and to understand what exactly it was that they were concerned about as far as Darren's actions. So Saturday, you know, began and ended, I'd say, sort of inconclusively.

MR. TEITELBAUM: Before we get to the next question, you had said October 12. I want to make sure we have a rational record here. You didn't mean October 12, did you?

THE WITNESS: I was trying to use a metaphor. What I was saying was I felt like a kid who had shown up at a class that had begun when classes begin, in early September, but I didn't get there til the middle of October. There was just a lot I didn't know, you know, the names. I didn't know the people.

And, also, you know, just as a practical matter, if you walk into the Chamber, which I did,
on Saturday afternoon in the summer when
everybody's supposed to be at the beach, you've
got all these people with type A personalities
sitting behind their desks grinding away on a
Saturday afternoon and you realize that this is a
different level of existence we're dealing with
here. Everybody was working as hard as they could
and, you know, that leaves an impression, too,
so --

BY MS. TOOHER:

Q. But when you said a moment ago that they were
speaking in code, is that what you're referring to?

A. It sounded like code to me. They're speaking in
shorthand. They're using, you know, shorthand that they
were all obviously familiar with that just sounded like a
foreign language to me and I was trying to figure out
what the heck they were talking about.

Q. But it was a foreign language because you didn't
know the language?

A. Exactly.

Q. Not that they were trying to withhold information
from you?

A. To my knowledge, no. But, again, you know, I'm a
criminal defense lawyer and I don't trust most people as
far as I can throw my car. So, you know, I take

everything that people say with a grain of salt.

Q. And did they identify to you what the problem was

for Darren Dopp at that time?

MR. KOENIG: That's a potential problem.

MS. TOOHER: Yes or no.

MR. TEITELBAUM: Yes or no.

MS. SHANKS: I think you've already answered

no, they didn't tell you what the problem was.

THE WITNESS: Yeah. I mean, I really I can

say they didn't tell me that and I couldn't really
discern it that early on.

MR. TEITELBAUM: I think the prior question

had to do with divergence of interest.

MS. SHANKS: Okay.

MR. KOENIG: The question now is: Did they
tell you what Darren Dopp's potential problems

were? Did they tell you that? You can certainly

answer yes or no, not what they told you.

THE WITNESS: No, they didn't. You know,
it's like -- honestly, it's like I'd shown up in

calculus class having never taken anything more

than algebra and I didn't understand much of what

they were talking about. Things were moving so
quickly and I was so completely unfamiliar with the issues that I did not that early in even know what questions to ask.

Now, from this vantage point looking back, it's a different thing, but this was really day one for me and I felt like I'd shown up, you know, at some sort of a big accident scene and I didn't know whose fault it was or even why it happened. I mean, there was just -- nothing made a whole lot of sense to me and I knew that it was my job to have to figure it out. I was in a good spot, because it was summer, my practice was quiet, my family was away. I had nothing but time to devote to this problem and I intended to do that. And I thought it would probably be something that would -- you know, I'd be dedicating a lot of time to over the next week or so.

Okay? That was my impression on the 21st of July, Saturday, which of course, is the day before the 22nd of July, Sunday.

BY MS. TOOHER:

Q. And we'll get there. At the end of this meeting, what is your understanding of what's going to happen
next?

A. By the end of the meeting on Saturday, my best recollection is that I had been advised as of that time that the IG meeting for the following Monday had been eliminated, canceled, put off, suspended or something, but that wasn't going to happen. And my recollection is that I had that information when I left the Capitol on Saturday.

I understood also that the Attorney General, Mr. Cuomo, was through some people who were described to me as being extremely aggressive former federal prosecutors and assistant district attorneys from the Metropolitan area, that they were investigating the situation.

My understanding was that Darren Dopp -- listen up. I don't want to drive off the road here. (Directing to Mr. Koenig)

MR. KOENIG: Go ahead.

A. But that Darren Dopp was not going to be offering any testimony to either the Attorney General or anybody else at that point. And I remember specifically receiving that information and just filing it away.

MR. KOENIG: IG or AG?

THE WITNESS: AG.

Q. Had you discussed the issue of Mr. Dopp testifying
in front of the AG with Mr. Dopp?
A. Not --

MR. KOENIG: Yes or no is the question.

MR. TEITELBAUM: You can answer with yes or
no.

THE WITNESS: Oh, okay. Yes.

Q. And was the position that the Chamber was now
taking concerning Mr. Dopp's testimony at odds with your
discussion with Mr. Dopp?

MR. KOENIG: He can't answer that. He can't
answer whether the Chamber's position was at odds
with Dopp's position. That's privileged.

MR. TEITELBAUM: It's not privileged, because
Mr. Dopp already testified to this before this
Commission.

MR. KOENIG: I want to see testimony where he
said that. Then, the answer wouldn't be
necessary. You know the answer. You wouldn't
need to ask that.

MR. TEITELBAUM: Mr. Dopp answered it.

MR. KOENIG: The question was: Was the
Executive Chamber's position concerning Darren
Dopp testifying to the AG at odds with Darren
Dopp's position?
Can you answer that question without anything you learned from Darren Dopp in the context of a privileged conversation as opposed to what may have been said to the Commission?

THE WITNESS: You know, it would be -- I think I can answer it. I think I might be able to answer that question --

MR. KOENIG: I want to see the transcript.

THE WITNESS: -- but if we could look at the transcript, I mean, that probably would resolve any questions.

MR. TEITELBAUM: Line 9, page 70.

MR. KOENIG: I need to see it. Line 9, page 70.

MR. TEITELBAUM: There, you go.

MS. TOOHER: (Handing to Mr. Koenig)

MR. KOENIG: Dopp says, "I want to testify for the Attorney General, encouraged not to --"

okay. Your question is: The Chamber's position regarding Dopp's testimony was at odds with Darren, so was what the Chamber told him different than what Dopp says here?

MR. TEITELBAUM: No. Let's -- do you see the transcript? Do you see the transcript?
THE WITNESS: Yes, sir, I do.

MR. TEITELBAUM: Is that what Mr. Dopp told you, in words or substance?

MR. KOENIG: That's privileged.

MR. TEITELBAUM: It's not privileged if it's already been testified to.

MR. KOENIG: No. What he testified to -- what he told Mr. Kindlon is privileged communication.

MR. TEITELBAUM: Not if he disclosed it.

MR. GINSBERG: Not if he's waived it.

MR. TEITELBAUM: Then, he's waived it.

MR. KOENIG: He's given his answer.

MR. GINSBERG: It's the client's privilege --

MR. KOENIG: It's not waived, what he talked to Mr. Kindlon about. That's not true.

MR. TEITELBAUM: If he's told us what he said to Mr. Kindlon in words or substance, there's no privilege anymore.

MR. KOENIG: Say that again.

MR. TEITELBAUM: If he told us what he told Mr. Kindlon --

MR. KOENIG: Right. There's no communication that he told to Mr. Kindlon.
MR. TEITELBAUM: Well, I'm asking him.

MR. KOENIG: Then, you're asking what he told Mr. Kindlon, which is privileged.

THE WITNESS: There's gotta be a solution here.

MS. SHANKS: I have a sense this is going to keep coming up. Here's my position: As long as there is a privilege asserted by Mr. Koenig on the part of Mr. Dopp, I have to advise my client that he cannot answer the question as to what he was told by Mr. Dopp.

I understand that there's an argument being made by the Commission that the privilege is waived once he testifies to this, but as to the scope of the privilege that is waived, I think that we cannot be in a position where either I or Mr. Kindlon determines the scope of the privilege.

So as long as there's a dispute between the two of you as to whether the privilege is waived and the scope of that waiver, then I have to tell Mr. Kindlon not to answer.

MR. TEITELBAUM: We understand.

MR. KOENIG: I have a solution here, I think, because if I understood Meave's question, it was:
Was the Executive Chamber's position regarding Darren Dopp's testimony before the AG at odds with the position articulated here?

MR. TEITELBAUM: That was not the question.

MR. KOENIG: If the question is: Was the Chamber's position at odds from what Dopp testified to, he can answer that. If the question is: Was the Chamber's position at odds with what he told Kindlon, that, he cannot testify to.

MS. TOOHER: There was a predicate question I asked, and that was: Is what is contained in the transcript the same or different from what Mr. Kindlon was told by Darren Dopp concerning the subject?

MR. KOENIG: He can't answer that. That's privileged.

MR. TEITELBAUM: Yes, he can, because he has already given testimony to it and once he's given testimony to it, he has waived the attorney-client privilege on this subject. Because what your position is, counsel, is that Mr. Dopp could have testified ad nauseam on subject matters that he also discussed verbatim with his lawyer, but the fact that he discussed it with his lawyer means
that his giving testimony about it does not constitute a waiver. That's at odds with everything that I know about the attorney-client privilege in New York State, but maybe I haven't read it recently.

My understanding is that what you tell your lawyer, if it is to be confidential, is attorney-client privilege, but if what you tell your lawyer you testify to as well, it is not covered.

MR. KOENIG: Where does it say in here this is what he told his lawyer? I think the question you're asking is covered by the privilege. I think a fair question to ask him is: Is what Mr. Dopp testified to at odds with the Chamber's position?

MR. TEITELBAUM: They're both fair. But if you're directing him not to answer --

MR. KOENIG: Right.

MR. TEITELBAUM: -- we'll take it up.

MR. KOENIG: Okay.

MR. GINSBERG: Can I ask a different question before you move on? Maybe we can get an answer to -- just go ahead.
BY MS. TOOHER:

Q. Did you relate to the Chamber at that time Mr. Dopp's desire to testify before the Attorney General?

MR. KOENIG: You can answer that. (Directing to the witness)

A. I don't think so.

Q. So just to be clear, during that meeting, the Chamber advised you that Darren Dopp would not be testifying before the Attorney General or before the Inspector General?

A. Uh-huh.

Q. And you did not relate to anyone in that room at that time that Darren Dopp wanted to testify before the Attorney General?

MR. KOENIG: Are you talking about the Saturday meeting?

MS. TOOHER: Correct.

MS. SHANKS: Here's the problem that I anticipate: The answer to that question will implicate conversations that he had with his client about what his client had told who he believed to be his lawyers previously.

In other words, the reason why the information was not given at that meeting is
because of what his client told him he had
discussed with other members of the Chamber who he
considered to be his lawyers at previous times.

MR. KOENIG: That's correct. That's correct.

BY MS. TOOHER:

Q. Who was at that meeting?
A. Which meeting are we talking about?
Q. The Saturday meeting.
A. Oh, okay. Peter Pope, Sean Patrick Maloney --
   Peter Pope, the dominant presence, Sean Patrick Maloney
   in and out, going somewhere else, doing some other thing.
I don't recall any other person being there. There may
have been a young, young, young, young, baby lawyer
running back and forth photocopying things and like that
but --

MS. SHANKS: I mean, what I'm concerned about
is that I don't want the impression left that if
it wasn't brought up at this meeting by Mr.
Kindlon that Mr. Pope did not know about Darren's
views, but I cannot allow Mr. Kindlon to testify
about the reason why it didn't need to be brought
up at that point, because that impacts on
conversations that Darren had previously with
people who he believed to be his attorneys which
he then related to Mr. Kindlon.

So that at the time of the meeting, Mr. Kindlon knows there's all these conversations going on with Darren talking to people who he believes to be his lawyers who are very clear in his mind about what his desires were so --

THE WITNESS: Let me give you --

MR. KOENIG: I agree with that.

THE WITNESS: Let me just give you a silly example. Meave Tooher is here wearing a red sweater and if somebody asked me a month from now, "Did you tell Meave Tooher that she was wearing a red sweater", my answer would be no, and that doesn't mean you're not wearing a red sweater. It just means that I didn't say that at the time.

Q. I understand that. And the reason as to why you may not have spoken, we don't have to go into at this juncture. We can address that on a separate issue. But whether or not you advised those individuals at that time, I think, is a reasonable question and does not implicate those factors.

A. And I think --

MS. SHANKS: Right. I just want to be clear that I don't want someone to say later, "Well,
don't you agree that there was no way for Peter
Pope to know that Darren wanted to testify?
Because right here, there's a transcript that says
Mr. Kindlon didn't tell him. How else would he
know?" So I just want the record to be clear.

MS. TOOHER: I understand.

MR. KOENIG: Is there a question pending?

MR. TEITELBAUM: There is.

MR. KOENIG: Can you ask it again or read it
back?

THE WITNESS: Can you ask it again?

BY MS. TOOHER:

Q. Did you advise any members of the Executive
Chamber during that Saturday meeting that Darren Dopp
wanted to testify before the Attorney General's Office?

A. I don't recall ever stating that to Peter Pope or
Sean Patrick Maloney or anybody else from the Executive
Chamber that Saturday afternoon.

Q. And did anyone from the Executive Chamber during
that meeting on Saturday afternoon indicate that they
were aware of a desire by Darren to testify?

A. Yes.

Q. Who relayed that to you?

A. I can't specifically remember, but it had to be
either Sean Patrick Maloney or Peter Pope, because I don't recall speaking with anybody else that afternoon.

Q. So either Pope or Maloney indicated to you during the Saturday meeting that they were aware that Darren wanted to testify?

A. Yes.

Q. And they did not -- the Chamber was not going to encourage Darren to testify?

A. That would be an understatement.

Q. They --

MR. TEITELBAUM: What did they say?

A. They said that Darren was not going to testify before the Attorney General.

Q. Did they say anything else?

A. No.

MR. TEITELBAUM: What was your understanding of their authority to direct that Mr. Dopp not testify before the Attorney General?

THE WITNESS: My perception was that they were the lawyers and they were providing legal advice to him and he was taking legal advice from them and that when it came to lawyering, Darren was the one who was not a lawyer so they were slightly more equal than he was as far as the
legal representation issue.

Again, I mean this gets difficult, because you had people who were operating on several levels simultaneously, you know, in a pressure cooker. But, clearly, my perception -- I mean, my perception and I think I can say Darren's perception was --

MR. KOENIG: No. Was it what Darren told you or was it your perception of Darren's perception? Those are different things. You do not testify about what Darren told you. You can testify about your perceptions.

What? You disagree with that?

MS. TOOHER: No.

MR. TEITELBAUM: I disagree with your position --

MR. KOENIG: You disagree with what?

MR. TEITELBAUM: I disagree with your position on this, because Mr. Dopp's position to provide testimony to the Attorney General has been testified to so --

MR. KOENIG: What's the issue? You have Dopp's testimony.

MR. TEITELBAUM: I understand that. That
doesn't foreclose us of inquiring of this
witness --

MR. KOENIG: Of what?

MR. TEITELBAUM: That doesn't foreclose us;
in fact, that enables us to ask this witness these
questions. I don't want to revisit the issue.

MR. KOENIG: I haven't objected to this
question.

MR. TEITELBAUM: I understand that. Let's
get the answer.

THE WITNESS: Okay. I think I can answer
that question sensibly. On Saturday afternoon,
the 21st, it was clear that Darren wanted to
testify. It was clear that they did not want
Darren to testify.

I am the new guy and I said to Darren, "I
don't understand the situation well enough to
advise you one way or the other." So default
position for a lawyer, being what it is, I said,
"Don't say anything to anybody. Hold tight. Let
me spin up here. Let me find out. Let me make
myself understand what's going on and, you know,
exercise your right to remain silent," I said to
him.
And what happened was by the very next day, it was clear that Mr. Cuomo had already finished his report and there was nobody to go talk to anymore anyway. It was too late. It was a done deal.

By Ms. Tooher:

Q. Did you relay that to the Chamber, to Pope or Maloney, that you were coming up to speed and you would advise your client accordingly?

A. Yes. Yeah.

Q. Did Pope or Maloney say anything to you in response to that?

A. I don't know if it was said in specific response to that, because we weren't doing, you know, Q and A here. We were doing lots of conversations.

Q. What did Peter Pope say about Darren's testifying before the Attorney General?

A. That he was not going to testify before the Attorney General.

Q. Is that all he said?

A. Well, I mean, that was all he needed to say at that point, because again, I mean, I was not in a position, I felt, to question it one way or the other. I was trying to understand this situation in which they
were at that time and I was advised by Peter Pope that
Darren was not going to testify before the Attorney
General.

Q. And did you inquire at that time as to the basis
for that determination?

A. Not specifically, because there were so many
things I didn't know. I didn't know where he would
testify, how he would testify, when he was supposed to
testify. I mean, there wasn't a grand jury meeting.
There weren't a group of people in a room like this.
There was -- I understood that William Howard had gone to
New York City -- I think it was William Howard had gone
to New York City without counsel and had given sworn
testimony, I was told. I haven't seen the testimony.
And that his having done so, it was explained to me, was
a mistake.

But, again, now, at this point, I'm saying, "Okay.
Who's William Howard", you know, again, because these
people are all new to me and their roles and their jobs
and their positions and issues are all brand-new to me.

Q. Did Peter Pope say anything else to you besides
Darren Dopp's not testifying before the Attorney General
on that subject?

A. Boy, he -- well, he said that there wasn't gonna
be any testimony before the Inspector General at all.
That was just -- that was not gonna happen. So that
there couldn't be -- this is a distinction here; that
there could not be any testimony before the Inspector
General, because the Inspector General wasn't gonna be
taking any testimony or doing anything else. The
Inspector General had dropped off the radar. And that
Darren was not going to testify before the Attorney
General.

Q. And that's it?
A. That's what I recall, yeah.

Q. And did Mr. Maloney say anything?
A. No. Maloney just sort of bopped in and out four
or five times. He didn't say much of anything. He told
me he used to work in the Clinton White House two or
three times and he was out, but I don't recall him
telling me anything specific about what we should do or
could do or what he wanted us to do or anything like
that. He was in and out.

For what it's worth, there was a pretty serious
personality conflict obviously existing between Mr.
Maloney and Mr. Dopp. It was palpable. You could see
the vibrations in the air. They didn't get along.

Q. So Mr. Dopp was present during this meeting?
A. Mr. Dopp was present, yes.

Q. And when you say there was a conflict in personality, what do you base that observation on?

A. Well, it was -- I mean, it's just, you know, from -- it was obvious to see their interactions with each other. They were like, you know, magnets repelling each other. I mean, there was just -- there was no cordiality between the two whatsoever. There was obvious animus between them.

MR. TEITELBAUM: There's something that's puzzling to me and I'd like you to help me figure this out. At that Saturday meeting, you were Dopp's counsel; correct?

THE WITNESS: Yes sir, and -- but again, now, my sense was that I was coming into this and I was taking over from Pope and --

MR. TEITELBAUM: I understand. I understand. But at that point, it was you who's Dopp's lawyer?

THE WITNESS: Yeah.

MR. TEITELBAUM: And at that point, Pope and Maloney were not his lawyers?

THE WITNESS: Well, I --

MR. TEITELBAUM: Or is it your testimony that the three of you at that time -- that they
continued to represent him and you were also representing him?

THE WITNESS: That's the sense that I had, that they were winding down and I was spooling up; that I was taking over from them and I was substituting as counsel. But there wasn't -- there couldn't possibly be in a dynamic situation like this a clean break. I mean, it isn't "At 3:51, you stop and at 3:52, you start." It didn't work like that.

They were clearly doing things that involved acting as his lawyer and he was clearly dependent upon them as such. And I was new and I was trying really hard in a, for me, foreign environment involving a lot of complex issues, many of which had nothing to do with the law at all and were just distracting coming aboard.

So I can't say to you that I was a hundred percent in charge and they were zero percent in charge at some specific point. I came in. They sort of segued out.

MR. TEITELBAUM: I want to focus on that moment in time. At that point in time, you had been told that you were being retained at least in
part because the interests of Mr. Dopp were no
longer parallel or consistent with the interests
of the Executive Chamber?

THE WITNESS: Yeah. I think they were
diverging, I think was the term of art.

MR. TEITELBAUM: They were diverging. So at
that moment in time, we had Dopp with interests
that were divergent from the Executive Chamber?

THE WITNESS: Right.

MR. TEITELBAUM: And you knew that Pope and
Maloney were representatives of the Executive
Chamber?

THE WITNESS: (Nods head)

MR. TEITELBAUM: And you're telling us that
at that moment in time, Pope and Maloney and you,
the three of you, represented Darren Dopp?

MS. SHANKS: Let me, if I could, be clear and
maybe it's because we do criminal defense work and
I don't know -- I obviously don't know all of your
backgrounds, but let me give you an example,
because Mr. Kindlon and I have discussed this at
great length.

I was a public defender in Phoenix, Arizona
for years. It was a very large office. It is a
not-at-all-unusual situation where I will pick up
my clients at a preliminary hearing. So I would
go to a preliminary hearing and I would have a
stack of files and I would find out that Juan
Garcia was my client and I would go introduce
myself to Juan Garcia and I would talk to him and,
clearly, anything he said to me was privileged and
anything I found out in the course of the
representation of Mr. Garcia was privileged. And
come to find out three weeks in that the major
witness in the case against Juan Garcia was Joe
Jones, and Joe Jones was represented by Ms.
Gonzalez who was my colleague and she said, "Oh,
my God, Laurie. I just found out that, you know,
my client is the witness against your client. You
need to get -- you can't represent him any
longer."

And I say, "Okay. Wait til I tell Juan,
because I really like him and his mother really
likes me." And so then I call -- they don't have
AFD lawyers in Arizona. They have conflict
lawyers. So I call up Mike Terabiel (phonetic),
and I say, "Mike, can you take on this case?" He
says yes. I say okay.
So at that point, I absolutely know that I have a conflict and Mike Terabiel comes in the office and Juan Garcia's in the office and Juan's mother is in the office and I say, "Mike, I need to bring you up to speed. Juan, I really like you. I don't want you to take this personally. I can't represent you any longer."

Okay? So I know I absolutely have a conflict and I say, "Mike, I want to tell you what I found out so far," and I bring Mike up to speed on what Juan has told me, what Juan's mother has told me, maybe what Juan's psychiatrist has told me and, perhaps, what some of the witnesses have told me. And Mike is asking me questions and I'm telling him.

So I absolutely know I have a conflict and that I can no longer represent Juan and that Mike Terabiel is going to be his lawyer from then on. If, at some later point in my life, they ask me to divulge what happened or what Juan said at that meeting, I would say, "I absolutely will go to jail before I will divulge what happened at that meeting." Because even though I know I can't be Juan's lawyer from the time I find out I have
an absolute conflict, anything I'm telling Mike at
that meeting in my mind is privileged, because
Juan certainly believes I'm still his lawyer and
that anything is privileged.

And that's the closest analogy I can come to
in this case. Is there a divergence happening?
Is the divergence already absolute? What is in
Sean Patrick Maloney's mind or what is in Peter
Pope's mind is not relevant to the attorney-client
privilege. What is is that Darren Dopp thinks all
these people are on his side and are representing
him. So I think that the privilege continued
until and unless there is some later point.

So I don't think that you can say, you know,
you were brought in because of X and, therefore,
at this moment in time, anything that they said is
no longer privileged or anything that happened at
that point, you know, that they're not the lawyer
and Darren knows.

So that's where I think, as a criminal
defense lawyer, we may have a different view than
you do as a Commission lawyer.

MR. TEITELBAUM: Can you repeat the question,
please? (Directing to the court reporter)
(Thereupon, the following excerpt of the proceedings was read back by the reporter:

QUESTION: "And you're telling us that at that moment in time, Pope and Maloney and you, the three of you, represented Darren Dopp?")

THE WITNESS: And my answer is yes. I couldn't pull a lever and make the world stop for a week while I got caught up here.

MR. TEITELBAUM: What I'm really focusing on is not attorney-client privilege issues.

THE WITNESS: Okay.

MR. TEITELBAUM: What I'm focusing on is what, as you've testified to, sounds like a directive from representatives of the Executive Chamber that Darren Dopp will not testify before the Attorney General. Do I have it right?

(Conferring.)

MR. TEITELBAUM: Counsel, if there's an attorney-client privilege issue here, I have no problems with conferring, but there's a question pending and I'd like the question answered.

THE WITNESS: Okay. Let me just consult for a second.
MR. TEITELBAUM: I'm asking you to please not consult while a question's pending unless there's an attorney-client privilege matter.

(Conferring.)

THE WITNESS: It was my understanding that a decision was being made -- and this is the situation that I came into the middle of -- and as such, I mean, I don't have, you know, instant recognition of the whole universe of legal issues and factual considerations here; I don't.

The only thing I could possibly say to Darren was "Don't do anything until I figure out what's going on here."

MR. TEITELBAUM: I don't think you answered my question.

THE WITNESS: No. Let me explain that; okay?

MR. TEITELBAUM: Sure.

THE WITNESS: My understanding of the position of the Pope-Maloney group was that there was a divergence of issues. Darren had to get independent legal representation. Until he had independent legal representation, he should take no further action one way or the other.

I was coming aboard as independent legal
representation. I instructed him, you know, in
that attorney-client relationship that he couldn't
do -- I couldn't advise him to do anything except
not say a word to anybody until I had a better
understanding of the facts and circumstances as
they were exploding around us, which is what they
were.

I mean, this wasn't a slow-moving process
that I walked into the middle of.

MR. TEITELBAUM: Let me just point out to
you -- and I'll show you the transcript page of
Mr. Dopp's testimony at 115 concerning --

MS. TOOHER: 47.

MR. TEITELBAUM: Sorry. 47. As to whether
he viewed Maloney, Pope, et cetera, as his
lawyers.

MS. SHANKS: Page 47?

MR. TEITELBAUM: 47. It starts "Q" --

MR. KOENIG: What line, counsel?

MR. TEITELBAUM: It starts with 13. "Q: Who
said that you couldn't talk to him," meaning
Andrew Cuomo, and the answer: "Administration,
Peter Pope and Sean Maloney. There was a critical
moment where it was conveyed to me 'You can't do
it. He is not going to listen.' And I objected and I wanted to turn to Terry. I didn't have counsel when those discussions were underway. When I finally obtained counsel, we just didn't have the time to sort of interact with Andrew."

Now, in light of that testimony, are you continuing to maintain that it was the perception of Mr. Dopp that Pope and Maloney were his lawyers?

MR. KOENIG: Yes. Yes.

MR. TEITELBAUM: Okay.

THE WITNESS: Yeah, and I would -- you know, I think he probably was starting to feel abandoned at that point, but that's a separate issue. A lot of office politics here, too, you know.

MR. TEITELBAUM: What was your understanding of the purpose of the Saturday meeting in the Executive Chamber?

THE WITNESS: It was educational. I mean, again, I was trying to learn, as they say in law school, the fact pattern.

MR. TEITELBAUM: What did you learn?

THE WITNESS: Not enough so that if you gave me a quiz on it at 10:00 o'clock that night,
I'd be able to pass. I mean, it was all very confusing.

MR. TEITELBAUM: Did you learn anything as a result of that session?

THE WITNESS: I practically felt like I had a learning disability, because I was trying really hard to understand what was going on and I was not succeeding in that endeavor. It was very complicated, because everybody was jumping around and everybody was talking about -- or those people I was talking to were -- when I finally described this to one of the other lawyers in my office, this situation I found myself in, I said I felt like somebody in one of those old 1950's movies; that is, in the cab of a tractor trailer that's lost its brakes and it's going down a hill and it's a windy road and you're just trying to keep the thing from turning over.

I mean, it was really an impossible situation to walk into and my initial efforts here were devoted primarily just to keeping this truck on the road until I could find out what on earth was going on.

This was a monstrously, incredibly
complicated set of circumstances that was
presented to me when I first came upon it, because
people were talking about politics, personalities,
office politics, governmental politics, people I'd
never heard of, Andrew Cuomo's investigation, the
IG. All of this was exploding around me and I'm
just one person and I was trying as hard as I
possibly could to get caught up with it. But this
Saturday, Mr. Teitelbaum, I'm only in it for
really the very first day and, you know, there
were just -- I mean, I wasn't even sure which one
of you guys is Peter Pope, you know. It took a
while to get that nailed down. I hadn't had --
you know, I know other people in my end of the
profession. I hadn't had dealings with Mr. Pope
when he was in the Attorney General's Office. I
never did. I never saw him.

MR. TEITELBAUM: Well, I think the record is
clear now that at that meeting, you were not yet
up to speed.

THE WITNESS: Right.

MR. TEITELBAUM: If that's accurate. I think
it is. I understand that. I think we all do.

What we're trying to find out, Mr. Kindlon,
and we haven't been able to find out yet is: What was said to you by these people about politics? What was said to you about the office? What did they say? Whether you understood it or not, what did they say?

THE WITNESS: Well, they said, you know, any number of things. I mean, they had things to say about the people conducting the investigation in Andrew Cuomo's office which were not complimentary.

MR. TEITELBAUM: What did they say? What were the words?

THE WITNESS: They made specific reference to a woman lawyer -- I cannot recall her name -- describing --

MR. TEITELBAUM: Ivan? Lacewell?

THE WITNESS: Might have been Lacewell. They said words to the effect of, you know, she's a killer. She's brutal. She's incredibly aggressive. She listens to nobody. And, you know, okay, I hear things like that all the time. I mean, that's not unusual. I heard -- you know, I heard derogatory things said about Andrew Cuomo. I mean, obviously --
MR. TEITELBAUM: What was said?

MR. KOENIG: He's asking what you heard. I'm not asserting an objection. (Directing to the witness)

MR. TEITELBAUM: You're a trial lawyer. I was a trial lawyer. We need the words.

THE WITNESS: I hesitate because I don't want to read this on the front page of the New York Post three days from now. That's my hesitancy. I don't want to hold anything back, but when I get subpoenaed and I find out from Fred Dicker that I've been subpoenaed, it concerns me; okay? It concerns me a lot.

MR. TEITELBAUM: I'm prepared to have a stipulation among all of us that nobody will talk to the press.

MS. SHANKS: Good.

THE WITNESS: Great. I thought none of us were talking to the press to begin with. So why the hell does Fred Dicker know that I've been subpoenaed? Who told him?

MR. TEITELBAUM: Mr. Kindlon, you will not find me defending either Mr. Dicker or anybody who talks to Mr. Dicker.
THE WITNESS: All right.

MR. TEITELBAUM: I can assure you.

THE WITNESS: People said, "Cuomo's an asshole. He's a cock-sucker. Watch out for him."

I said, "I've been hearing that for the last 25 years"; okay?

MR. TEITELBAUM: Who said that?

THE WITNESS: I don't know. Somebody. I wasn't really that concerned. It's conversation. It didn't mean anything to me; okay? I've never heard anybody say anything nice about Andrew Cuomo, so I didn't say, "I gotta write that down."

MR. TEITELBAUM: But what was the context in which those remarks were made?

THE WITNESS: It was just conversation. I mean, it wasn't -- it was just conversation.

MR. TEITELBAUM: Was it about the fact that Mr. Dopp shouldn't testify because these people are of the character that you just described for us? Was that the contention?

THE WITNESS: Yeah, I think that's probably, you know, fair to say. The fact is that there seemed to be very little trust of Andrew Cuomo and his -- and the women -- there were two women and a
man, I recall, who were named and, again, I didn't
record their names.

MR. TEITELBAUM: Does Ben Larski --

THE WITNESS: I honestly don't -- I really
don't recall. I'm not good with names. I have
seven children and I get their names wrong all the
time.

The fact is that, you know, there were many,
many derogatory things said about Andrew Cuomo and
the people working with him and that he wasn't
trusted; that there was a sense -- and here we go
from, you know, lawyer to politics. There was a
sense that, you know, he wanted to be governor
some day and wanted to destroy Eliot Spitzer. And
I'm thinking, you know, God, let's try to keep
this on the road, because I don't care about
politics. It's got nothing to do with what I'm
trying to figure out here, you know. And there
were, you know, a lot of derogatory remarks made
about Senator Bruno.

MR. TEITELBAUM: What was said?

THE WITNESS: Just, you know, he's -- just
he's -- I can't recall specifically. I mean, they
were just derogatory remarks of the sort of thing
people say when they're sitting around a barroom
yacking about people.

MS. SHANKS: Can I just ask can we have a
two-minute break?

MR. TEITELBAUM: After this, we certainly
can.

THE WITNESS: But, again, none of it struck
me as tremendously significant. It was just
chatter. I mean, it was just -- frankly, it was
interfering with my trying to understand what the
legal issues were, I mean, because I didn't care
about the political issues but everybody in this
group of people cares. You know, I mean, they
live for politics. I don't.

And I -- frankly, I just found the political
talk to be distracting, because I had been told
that Darren Dopp has a legal problem and I'm
trying like crazy to identify it, because that's
my role here and I don't -- I mean, I don't care
what negative comments are being made about women
prosecutors from New York City. It means nothing
to me. I mean, I'm trying to understand what
exactly is it about Darren's conduct that's got
everybody concerned and, honestly, Mr. Teitelbaum,
I was having a very difficult time understanding that.

I kept saying to myself "What has he done wrong?" I couldn't identify it and, you know -- well, I can't tell you what I said to Darren, but I mean, I was unable to identify a legal problem that attached itself to Darren Dopp or his actions as, you know, the press guy for the governor or anything like that so --

MR. TEITELBAUM: Let me just circle back, and then we'll take two minutes, to the matter that's puzzling me. And don't infer from the question that there's an accusation by the question.

What I'm trying to figure out is: The people from the Executive Chamber taking the position that Darren Dopp was not going to testify, were they speaking as people who had given him advice not to testify, which is what lawyers do, or were they Executive Chamber people saying as Executive Chamber people, he's not gonna testify? That's what I want to get clarified, or some other explanation.

THE WITNESS: No. I think I can --

MR. TEITELBAUM: That's what's puzzling me.
THE WITNESS: I think I can respond to that question intelligibly. I'm there as a lawyer. I'm talking to lawyers, talking to lawyers. We lawyers talk to each other about my client, a client. And when they spoke to me, my understanding was that this was legal advice that they had given him.

Now, it may have been political advice, but that wasn't my perception. My perception was that it was legal advice that he had received from them but that because of issues that were unclear to me that early in, there was now developing some divergence of interests between them and Darren and that I would be protecting Darren's legal interests from this point forward.

And I said this ad nauseam, and forgive me for saying it this one last time, but I just -- my reaction to that was to say to Darren, "Don't say anything to anybody until Kindlon figures out what it is we're talking about here," and -- you know.

MR. TEITELBAUM: Do you want to take a break?

MS. SHANKS: Yes.

(A short break was taken.)

(Commission Exhibit No. 114 was marked for
BY MS. TOOHER:

Q. I'm showing you what's been marked as Exhibit 114. It's an e-mail thread from Sean Maloney to Peter Pope. The top thread is 7/21 at 1:07 a.m. The next thread is 7/20/2007 at 1:23 p.m. to Nocenti and Maloney.

A. So I guess we have to read from the bottom up then?

Q. Correct.

A. Okay.

Q. The first line: "Do we need to discuss this with DD lawyer? I think we do. DD cannot just read in the report that we declined to produce him."

A. Okay.

Q. Did Peter Pope discuss with you that the report would likely be written without producing Darren Dopp?

A. No, he did not specifically tell me that.

Q. Did he tell you that in sum and substance?

A. No. In fact, there was no specific mention made that there was going to be a report at that time.

Q. When did you first learn that there was going to be a report?

A. I first learned that there was going to be a report on Sunday when I was told that the report was
Q. Okay. We'll get to that in a moment. I just want to take you back to the e-mail, this from Sean Maloney to Peter Pope. "Agree, though, he may not want it to be on advice of counsel. He may prefer that it's a Chamber strategy."

Was it ever discussed with you that Darren Dopp not testifying would be a Chamber strategy versus on the advice of counsel?

A. Not as such. I was told --

Q. By whom?

A. I believe Peter. I believe Peter Pope.

(Continuing) -- that Darren was not going to testify; that he was going to give a statement instead of testifying.

Q. And did he ever relate to you that that was a Chamber strategy or did he discuss with you the option of a Chamber strategy versus advice of counsel?

A. No. No. It was presented as a simple factual proposition, not characterized one way or the other. Darren was not going to testify. He was going to give a statement.

Q. And you were told that at the Saturday meeting?

A. I was told that -- I believe it was at the
Saturday meeting, yeah. I'm quite certain it was at the
Saturday meeting, to my recollection.

Q. And what was your response to that statement?
A. I didn't question it. I didn't discuss it. I
just accepted that information. I filed it along with
the other information that I was accumulating at that
time.

Q. And did you relay at some point to Pope that Dopp
wanted to testify; he didn't want to give a statement?
A. Well, no, but the -- the fact that there was going
to be a report -- as I said before, the first I heard
about there was going to be a report was when the report
was done and it was done very, very quickly after I came
into this situation.

I can't recall specifically today whether I
learned before noon or after noon on Sunday, the 22nd
that there was a report, but as I search my memory, the
best recollection I can come up with is that I learned
that early in the day before Darren ever gave a
statement.

Q. So it's your recollection that you learned the
report was done prior to Darren giving a statement?
A. Correct.

Q. And how did you learn that?
A. Somebody told me. It was either Peter or somebody else from the Chamber. And I think that the only two representatives of the Chamber that I met at the outset were Peter Pope and Sean Maloney. The third person I met from the Chamber was David Nocenti, but that was not -- I didn't meet him personally face to face until the afternoon of the 22nd. I knew he was in existence. I had never laid eyes on him until maybe 4:00 o'clock on Sunday, the 22nd. I don't recall him being around on Saturday at all, and David's a pretty memorable guy.

Q. When did you learn that Darren was going to be giving a statement for the first time?

A. It may have been on Saturday afternoon.

Q. At the meeting or afterwards?

A. At the meeting or afterwards, right in there, you know. It became an issue, however, the following morning. That's when the question of the statement really came into focus.

Q. And how is that?

A. I learned from somebody that Darren would be giving a statement and it may have been on Saturday afternoon. I'm just not -- I'm not completely certain about that, but I learned that. On Sunday morning, there was a statement that came to me from the Chamber.
Q. And how did that come to you?
A. I believe it was an e-mail.
Q. And who did it come from?
A. I don't specifically recall. And I didn't keep a copy of it and I couldn't find one in my -- you know, in my e-mail trough. It doesn't seem to be in there.
Q. Did you have conversations concerning the content of the statement prior to the arrival by e-mail?
MR. KOENIG: With who?
Q. With anyone.
MR. KOENIG: Well, except for conversations you had with Dopp.
Q. Okay. With anyone from the Chamber prior to the statement's arrival.
MR. TEITELBAUM: Including Dopp. That's not a privilege.
MR. KOENIG: I'm sorry. Not the substance -- well, was your question did you have --
Q. Conversations with anyone --
MR. KOENIG: I thought she was getting to substance. You can answer whether or not you had conversations.
A. Right. On Sunday, there were conversations had, I believe, with Peter Pope, I believe, and Darren. And I,
of course, discussed it, but I don't think I can --

MR. KOENIG: No.

THE WITNESS: Yeah.

Q. And did you have conversations with anyone else in the Chamber? Do you remember talking to Sean Maloney?

A. I may have.

Q. And what about David Nocenti?

A. I don't recall speaking with David Nocenti at all until the afternoon of the 22nd when I physically was in his presence at the Capitol. And, again, I may have, but I don't have any specific recollection of having conversation with David Nocenti.

Q. Did you ever have a conversation with someone at the Chamber on Sunday morning where you relayed to them that Darren was willing to take the hit, and that's a quote, on the Troopergate?

A. I don't recall that as such, but it's possible. It is possible. I don't specifically recall that, though.

Q. Did you --

MR. TEITELBAUM: Forget the exact language.

Words or substance.

THE WITNESS: Words or substance, you know, I honestly -- I just don't remember. I just don't
remember. And, I mean, I can't -- I can't discuss conversations that Darren and I had with each other.

Q. What about conversations with the Executive Chamber?

A. I don't have any specific recollection of saying anything like that; I really don't.

Q. To anyone in the Executive Chamber?

A. No, I don't. And the only people I recall speaking with from the Executive Chamber on the 22nd were Peter Pope and Sean Patrick Maloney.

Q. And did you have a conversation wherein you relayed to them -- this is again Sunday morning -- "I don't get it. Why isn't Darren just doing a good job?"

A. I probably said that.

MR. KOENIG: It's not an objection. I just didn't hear it.

MR. TEITELBAUM: To the Executive Chamber.

MR. KOENIG: I just need the question. I didn't hear the question.

Q. "I don't get it. Why isn't he just doing a good job," meaning Darren.

A. Yeah.

Q. Did you relay that to the Executive Chamber?
A. Well, again, I don't specifically recall that, but that certainly sounds like something I would have said a couple of hundred times early on, because I didn't get it. I didn't know what he supposedly had done that was incorrect or unlawful or unethical or untoward or anything.

MR. TEITELBAUM: Was it also the case that you would likely have said in that same conversation, in words or substance, that Darren Dopp was prepared to take the hit?

THE WITNESS: I can't say that I didn't say that. I can say that I don't have any specific recollection of having said that. And Darren was, you know, prepared to give a statement that said in substance that he could have done -- he could have performed his job differently, but that's -- you know, I don't -- I really don't recall saying he was prepared to take the hit. I just have no recollection of saying that.

Q. Did you relay that Darren was willing to give that type of a statement to the Executive Chamber?

A. Well, the statement originated with the Executive Chamber and it was given to me and the statement that I was initially given was something that I didn't like the
way it was written. I spent time during the day proposing modifications to it. I was in contact with Darren during the day. I can't --

MR. KOENIG: Don't say --

A. -- discuss the conversation that we had with each other.

MR. KOENIG: She's not asking that.

A. But I can say there came a point in time when there was a statement in existence which he subsequently signed.

MR. TEITELBAUM: How do you know it originated with the Chamber?

THE WITNESS: That's where I got it from. Maybe I got it from Darren. I'm not -- but I mean, it certainly didn't originate with me, let me put it that way. And my recollection is that it came from the Chamber because of the fact that I had previously received information that Darren would be providing a statement.

Q. And you said you received that statement by e-mail?

A. Correct.

Q. Was that the first version that you got was an e-mail version of the statement?
A. To the best of my recollection, yes.

(Commission Exhibit No. 115 was marked for identification.)

BY MS. TOOHER:

Q. I'm going to show you what's been marked as Commission 115. Can you identify this document?

A. This appears to be an early version of the statement from the Chamber that was, in a different form, ultimately signed by Darren.

Q. And is this the first version you saw?

A. I can't say.

Q. Were there numerous versions that went back and forth between you and the Chamber?

A. Yeah, there were a number that went back and forth.

Q. Do you have any idea how many?

A. You know, I don't. The fact is that I know I got a version from the Chamber. I sent, you know, a modified version to Darren. We talked on the phone. We had a number of conversations about the document over the course of the day.

Q. You and Darren had a number of conversations?

A. Darren and I. And I think I may have had conversations with Peter Pope or somebody else in the
Chamber earlier or, you know, during the course of the day.

Q. I note that this e-mail is from David Nocenti to you?

A. Uh-huh.

Q. Did you discuss the statement with David Nocenti on that day?

A. I didn't. To my recollection, I did not discuss the statement with David Nocenti. My recollection is my conversations were with Peter Pope. My recollection is that the very first contact I had with David Nocenti was an in-person meeting with him at Chambers.

MR. TEITELBAUM: Off the record.

(Discussion off the record.)

MR. TEITELBAUM: Mr. Kindlon, you see on Exhibit 115, it says "settlement discussions"?

THE WITNESS: Right.

MR. TEITELBAUM: What was your understanding of what settlement discussions meant?

THE WITNESS: I didn't think we were having any settlement discussions at all. I don't think I attached any significance to that whatsoever.

MR. TEITELBAUM: On July 22nd, 2007, at 1:00 p.m., was it your understanding -- withdrawn.
Were you negotiating the language of what would ultimately be the Dopp statement?

THE WITNESS: Oh, yeah.

MR. TEITELBAUM: -- with the people at the Executive Chamber?

THE WITNESS: Definitely.

MR. TEITELBAUM: When did those negotiations start?

THE WITNESS: In the morning.

MR. TEITELBAUM: In the morning of the 22nd?

THE WITNESS: In the morning of the 22nd, yeah.

MR. TEITELBAUM: At that point in time, was it your position that Mr. Dopp was being represented by representatives of the Executive Chamber?

THE WITNESS: At that point in time, my sense was that we were all working together to create a statement that was going to be utilized to explain or -- not to explain but to give to the Attorney General. That was my understanding on Sunday.

MR. TEITELBAUM: Is your answer yes?

THE WITNESS: I'm not sure. You'd have to ask the question again before I answer.
MR. TEITELBAUM: At 1:00 o'clock on July 22nd, 2007, was it your understanding that Pope and Maloney and anybody else in the Executive Chamber who is a lawyer was representing Dopp as his counsel together with you?

THE WITNESS: My answer is I thought we were all working together on this. I didn't think we were working as adversaries or as, you know, separate entities. My sense is that we were all working together. So the answer would be yes.

MR. TEITELBAUM: Let me ask one other question, if I might. On the 21st, did Darren Dopp express to any representative of the Executive Chamber that he wanted to testify before the Attorney General?

MR. KOENIG: In his presence is what you're asking? Well --

MR. TEITELBAUM: First, let me get a yes or no answer. Then, I'll fix it with a foundation.

THE WITNESS: I know he expressed that at some point, Mr. Teitelbaum. I don't know if it was on the 21st. I think it was.

MR. TEITELBAUM: To whom was it expressed?

THE WITNESS: I think Peter Pope and Sean
Patrick Maloney. And if David Nocenti had been
there, and if it was the 22nd, not the 21st, then
also David Nocenti would have been there as well.
And Darren was -- Darren was clear that, you know,
his wanted to go talk to Andrew Cuomo.

MR. TEITELBAUM: And he was clear in
expressing that to representatives of the
Executive Chamber?

THE WITNESS: Yeah, and me.

MR. TEITELBAUM: And that was in your
presence?

THE WITNESS: Correct.

MR. TEITELBAUM: You heard Dopp say that to
them?

THE WITNESS: Yeah.

MR. TEITELBAUM: And what did he say?

THE WITNESS: He said, "Andrew's a friend of
mine. I want to go talk to him about this. This
is silly. I just want to tell my side of the
story."

MR. TEITELBAUM: And what did they say to him
in response, the Executive Chamber
representatives? And do you think you could
remember who it was --
THE WITNESS: Well, in that context, they said words and substance just, you know, "It isn't necessary. Don't do it."

And I said to him, I said, "Darren, hold still. Don't do anything yet. It would be premature."

And what then happened was, whamo, the next thing we knew, the report was done and there was no Cuomo to go talk to. It was a done deal so --

MR. TEITELBAUM: Tell me if I got this right; I understand from your testimony that you didn't learn that there was a report til the 22nd?

THE WITNESS: That's my recollection, yeah.

MR. TEITELBAUM: Right. So the conversation based on that recollection would have occurred on the 21st, the conversation that you just recited to us?

THE WITNESS: It could have. It could have. And it may have -- it may have been said a second time after we had an awareness that the report had already been written.

MR. TEITELBAUM: That would have been on the 22nd?

THE WITNESS: Yeah. And after I became aware
that the report was written, I think I can say
this without violating any confidences, I said --
    MR. KOENIG:  Don't say anything that Darren
Dopp told you.
    MR. KOENIG:  Keep going about anything but
not --
    MR. TEITELBAUM:  I think he was about to say
what he said.
    THE WITNESS:  Yeah.  I can say what I say.
    MR. KOENIG:  Fine.  Then, he also said "I
don't want to violate --" he can't say something
he heard if he's parroting Dopp.  What he said
would be fine as long as he's not parroting what
Dopp told him.
    THE WITNESS:  After the report was written,
my position was that there was no testimony to be
given by Darren, that there was no statement to be
made, that there was no forum for him to speak to
Cuomo, that it was done.  I mean, it was a done
deal.
    MR. TEITELBAUM:  Did you feel blind-sided by
the fact that you weren't told that there was a
report that was essentially prepared when you met
on the 21st?

THE WITNESS: Well, I don't know what -- you know, if my feelings are relevant here.

MR. TEITELBAUM: Well, because at that time, it was your perception that the three of you were --

MS. SHANKS: Blind-sided by whom?

MR. TEITELBAUM: By the Executive Chamber.

MS. SHANKS: Oh.

MR. TEITELBAUM: Because on the 21st, it was your perception that Darren Dopp had several lawyers, including Executive Chamber lawyers?

THE WITNESS: Absolutely.

MR. TEITELBAUM: So I'm asking you now whether you felt blind-sided by the fact that those lawyers did not tell you on the 21st that there was a report that was essentially done by the Attorney General.

MS. SHANKS: Did you have any idea that they knew that?

THE WITNESS: Yeah, I mean I --

MR. TEITELBAUM: On the 22nd, you did.

THE WITNESS: Well, on the 21st, to my knowledge, there was no report written or even
being written on the 21st. I mean, I didn't --
that -- nobody ever said to me that the Attorney
General is engaged in activity which will result
in a report being written and issued and made
public. Nobody said that.

To my knowledge, Pope, Nocenti, Sean Patrick
Maloney, et cetera, didn't know it either. You
know, I suppose it's conceivable that they knew it
and didn't tell me, but I had no reason -- I mean,
that just wasn't -- that wasn't in play. That
wasn't an issue.

And on Sunday, I was advised that there was a
report and that it was, quote-unquote, brutal. I
found that -- I received that information on
Sunday.

MR. TEITELBAUM: From whom?

THE WITNESS: From either Pope or Maloney. I
didn't talk that much to Nocenti. He was very
distant.

MR. TEITELBAUM: Do you remember which one
used the word brutal?

THE WITNESS: I think it was Pope. I think
it was Peter Pope.

MR. GINSBERG: Do you know when in the day
MR. GINSBERG: When in the sequence of events, approximate time.

THE WITNESS: Well, I found out at some point during the day. I mean, I remember having the discussion where the word brutal came up at the Chamber in the afternoon Sunday and I'm not even real sure what time that was. It was late in the afternoon, early evening.

MS. TOOHER: I thought you indicated earlier in your testimony that you were aware that the report was done prior to the time he gave this statement?

THE WITNESS: Yeah, but brutal, that was later; okay? The report -- that was earlier that he had already finished the report and then I learned later in the day that it was -- that was when it was characterized to me by, I think, Pope as being brutal.

BY MS. TOOHER:

Q. When you learned of the report and you indicated earlier, I believe, that you thought there was no reason to speak to Cuomo, there was no reason to give a
statement --

A. Uh-huh.

Q. -- did you make any efforts at any time to reach out to the Attorney General's Office?

A. No.

Q. Did you make any efforts at any time to reach out to the IG's office?

A. No, no. The IG was -- the IG was out of it almost simultaneously with my coming aboard. That was --

Q. You were told?

A. Yeah, I was told.

Q. By members of the Chamber?

A. Yeah, I think again by Peter Pope. Most of my contact at the beginning was with Peter Pope.

Q. And the AG's office was at that point doing the major part of -- I'll call it the investigation --

A. Well --

Q. -- or whatever it is?

A. I subsequently learned that the Attorney General was doing the major part of the investigation. That's information that came to me -- you know, that became evident fully -- that really began to be clear on Monday morning, the 23rd, because it was about 9:30 or 10:00 o'clock that the report was publicly issued.
Q. But you knew the report was from the Attorney General's Office?

A. I knew that there was a report from the Attorney General on Sunday during the day. I had heard it characterized as brutal later in the day on Sunday and it was released on Monday.

Q. Did you ever have any contact from Friday until Monday, the 23rd, with the Attorney General's Office?

A. No, none at all.

Q. Did you ever notify them that you were representing Darren Dopp?

A. No, I did not. I did not.

Q. To your knowledge, did anyone notify them that you were representing Darren Dopp?

A. To my knowledge, nobody notified them.

Q. And when you were doing the statement, the July 22nd statement that you're drafting here --

A. Uh-huh.

Q. -- what do you think the purpose of this statement is?

A. I understood the purpose of the statement to be that it was going to be given to the Attorney General.

Q. And was it to have -- did it have anything to do with the report?
A. Well, I presume that it was going to and, you
know, again, we're in the situation where we're working
on the statement. We're told that the Attorney General
has finished his report. We finished the statement. We
executed the statement. Again, it was later in the day.
And we learned -- or I was informed that the report was
brutal and the next morning, it became clear that it was
brutal. So, again, these things were all evolving
quickly.

MR. TEITELBAUM: I want to take you back to
Ms. Tooher's question. What was your
understanding of the reason that you were drafting
a statement for the Attorney General?

THE WITNESS: To give to the Attorney
General.

MR. TEITELBAUM: For what purpose?

THE WITNESS: Information instead of
testimony. You know, statement in lieu of
testimony.

MR. TEITELBAUM: In what context did you
understand the statement was being given in lieu
of testimony; about what issues?

THE WITNESS: About the issues involving the
use of aviation resources by Senator Bruno, the
POIL request, the James O'Donnell from the Times Union's formal and informal FOIL requests.

MR. TEITELBAUM: So at that point in time, did you have -- did you at that point in time have an understanding of what the issues were that concerned Mr. Dopp?

THE WITNESS: I had a nascent and developing as rapidly as possible understanding of the issues. I would have to say that on the 21st and the 22nd -- I've said this many times. I'm going to get in trouble with my counsel for saying it again. But it was very much in the formative stages and hadn't yet come clearly into focus.

But I did understand that there were issues involving FOIL requests and how exactly information was disseminated and what the purpose of the dissemination of the information was. I mean, that was all becoming clear.

MR. TEITELBAUM: How did you learn all of that and when did you learn it?

THE WITNESS: Mostly on Saturday based upon conversations with my client, review of papers and I -- I pulled up all of the --

MR. KOENIG: Don't go into conversations with
Darren Dopp. (Directing to the witness)

THE WITNESS: No, no.

MR. TEITELBAUM: He just said he pulled up something.

MR. KOENIG: He started to say a minute ago -- I don't want to come back to -- he said he had conversation with Darren, which is fine. The subject of the conversation with Darren, you can't --

THE WITNESS: No, no. I'm headed in a different direction.

MR. KOENIG: I understand that.

THE WITNESS: I pulled up all of the New York Times, Times Union, New York Post, New York Daily News articles that I could find, a bunch of wire stories. I buried myself in a pile of news stories and that helped quite a bit to understand what the outside, you know, contours of the issues were. And, you know, again, running as fast as I could, I was learning things very rapidly and trying like the dickens to understand them.

And, you know, I'll tell you very candidly that the statement that was ultimately signed was very deliberately drafted to be -- you know, to
say next to nothing. I think I previously characterized it as being analogous to a non-apology apology.

BY MS. TOOHER:

Q. Did you ever relay to anyone in the Chamber a desire to speak to someone in the AG's office, to talk to them directly?

A. No.

Q. And during this time frame that, now, you're going to execute this statement, your understanding of the purpose of this statement is just to provide additional information to the AG?

A. No. My understanding was that it was a placebo.

Q. A placebo to what?

A. Well, it was -- you know, it so to speak was papering the file, a gesture. It wasn't meant to be a material statement of anything one way or the other.

Q. And where did you get that understanding from?

A. From inside my brain.

Q. Based on what?

A. Based on 35 years of practicing law and knowing that, for all intents and purposes, the best thing for Darren to do at this point was to admit to nothing. And my understanding from the Chamber, I think I can say, was...
that if Darren gave -- you know, if Darren closed the

circle so to speak that he would suffer a little piece of
discipline, five-day suspension, something like that, the
matter would be concluded and he could go back to work.

Q.   And where did that understanding come from?
A.   I believe it came from Peter Pope.

Q.   And what did he say to you in that regard?
A.   Words or substance -- and I mean -- and, again, I
mean, this is not a world where people speak in simple
declarative sentences; okay? I mean, there's a lot of --

MR. KOENIG: There's a word that comes to my
mind, but you can't use it.

THE WITNESS: Not here, not on the record. A
lot of poetry.

MS. SHANKS: Can I just have one moment here?
(Conferring.)

THE WITNESS: That's a privilege issue then,
right?

MS. SHANKS: Then, I think you need to make a
statement, anybody who thinks there's a privilege
issue --

MR. KOENIG: What was the question?

THE WITNESS: Why don't you two talk because
it's --
MR. KOENIG: I don't know what you're conferring on. You want to step out and tell me what the issue is?

MS. SHANKS: Here's the problem. I will say this in front of you. You're asking questions about how did he get this information and I need to make clear on the record that even though an attorney-client relationship was established between Mr. Kindlon and Mr. Dopp, people in the Chamber did not go through Mr. Kindlon to speak to Mr. Dopp.

So there were continuing conversations between Mr. Dopp and many of the members we've already discussed here today of the Chambers and other members in the Chambers that were then related to Mr. Kindlon by his client.

So when you say, you know, how did you find this out, I think that a privilege is impacted, because they were not one-on-one conversations, for instance, between Mr. Pope and Mr. Kindlon. They were statements made by Mr. Pope, Mr. Nocenti, Mr. Maloney to Mr. Dopp even though he was represented by a different attorney. And I think that that may at some later forum factor
into whether or not he believes that they were
still either representing him, advising him,
consulting with him, negotiating with him. I
don't know how you would characterize it. But the
information that Mr. Kindlon got, some of it was
from his client -- was from these individuals
through his client. And that's why I want to make
it clear that I don't believe that he can answer
the question other than when you ask specifically
what did Mr. Nocenti, for instance, tell you, but
I don't want the inference to be that if he didn't
specifically say something, then Mr. Kindlon
didn't have any information.

    MR. TEITELBAUM: Mr. Kindlon, do you adopt
the statement of your counsel as accurate and
truthful?

    THE WITNESS: I do, yeah.

    MR. TEITELBAUM: And as your own testimony?

    THE WITNESS: Yes.

    BY MS. TOOHER:

    Q. So -- but you became aware that Mr. Dopp, if he
gave his statement, would suffer what consequence or
benefit?

    A. Well, that he'd be sidelined for about a week and
then returned to his position in the Governor's office.

Q. And did anyone from the Chamber relay that to you?

A. I know that that information came from the Chamber. It may have been --

MR. KOENIG: Don't answer anything that Dopp said. (Directing to the witness)

A. Here's the problem: That was the information that emanated from the Chamber that came to me.

Q. When you had your meeting about executing the statement on the 22nd now, there were discussions amongst all of you concerning the execution of the statement and the impact of that on Darren Dopp to which he testified in your presence in front of the Commission. And Mr. Dopp indicated to the Commission under oath that the Chamber relayed to him that he was to, quote, take the hit and live to fight another day, I think was the reference that he used.

Did your conversations at that time in the July 22nd meeting encompass the benefit to Darren from executing the statement?

MR. KOENIG: His conversation with people in the Executive Chamber other than Darren?

MR. TEITELBAUM: Talking about this meeting.

MS. TOOHER: This meeting at that point, if
he's talking to Darren or anyone else.

MR. KOENIG: If it's a one-on-one conversation with Darren, I'm not going to let him answer.

MR. TEITELBAUM: We've already established it's all. She used the word all.

A. I just -- I don't remember exactly what happened at that meeting. I know that I had this information, you know, in my consciousness. That was something I had become aware of, but I don't know if that was specifically stated at that time.

I fully anticipated after Darren signed the statement that he would be on the beach for a week and then back in the game. That was what was -- that's the way it was supposed to work.

Q. And how did you obtain that understanding?

A. Out of the --

MR. KOENIG: Apart from anything Darren relayed to you. (Directing to the witness)

THE WITNESS: Right.

MR. TEITELBAUM: Lawyers need to get instruction? He's a lawyer, too.

THE WITNESS: I'm not a lawyer right now.

MR. TEITELBAUM: I know, but you got
instructions based upon the rules here that you
all established, that if Mr. Koenig raises an
issue, we understand that the witness is not gonna
testify, but we don't need two lawyers doing it.

THE WITNESS: Yeah. See, here's the problem.
I wasn't making -- I wasn't having a verbatim
transcript made of the events on the 22nd and
there was -- you know, there were conversations
throughout the day, some with my client, some with
Peter Pope, and there was this ongoing exchange
of information back and forth.

And all I can say is that my understanding as
of the afternoon of the 22nd was that Darren was
going to give a statement, that it was going to be
the statement that we had pounded out during the
day and that it was to be anticipated that he was
gonna be suspended for a short period of time from
his job and then return to his employment.

Nobody coerced Darren to give a statement,
though. I mean, you know, he wasn't backed into a
corner or threatened.

BY MS. TOOHER:

Q. If I read you the following section from Mr.
Dopp's transcript -- and I just want you to listen.
A. Okay.

Q. -- question: "Did Mr. Pope tell you this issue would go away if you signed 74," 74 being his statement.

A. Right.

Q. "He said they were animals and we couldn't reason with them."

Do you recall that statement being made in the room on that date?

A. Yeah.

Q. Question: "Mr. Maloney was present, too?"

Answer: "Mr. Maloney was in and out dealing with telephone calls, but he agreed."

Question: "He said the same thing in substance that Mr. Pope was saying?"

Answer: "Yes, that they wouldn't be reasoned with, that they weren't listening to us."

Question: "And if you signed 74, the matter would go away?"

Answer: "Right."

Is that an accurate recitation of what was going on in that room?

A. Well, that's an accurate recitation of what Darren said in response to, I think, your questions. The -- there were conversations going on in the room, you know,
on and off between and among Darren and Maloney and, I believe, Nocenti. Those things may have been said. I don't specifically recall hearing those things said.

I do recall Andrew Cuomo being described as an animal. That's probably the nicest thing anybody called him. But I don't have any reason to believe that that wasn't said. I know that at some point while they were chitchatting, I was reading the statement that had been printed on the Chamber stationery that we had been working on throughout the day so --

Q. So you don't recall the conversation regarding 74, but you were aware that if your client, Mr. Dopp, signed the July 22nd statement, his understanding and your understanding was that this would go away?

A. Correct.

Q. And that he would, in effect, be back at work in a short period of time?

A. Correct. That is correct.

Q. And that that was contingent upon him signing the statement?

A. Well, I don't know if it was contingent upon him signing the statement. I don't know if that was a condition precedent or something. I think that was just the way it was being handled. I don't think anybody was
saying that that was the only way it was going to be accomplished, but it certainly was the way it was being handled. He wasn't going to give a statement written -- I mean, he wasn't going to testify. He was going to give a statement and that would be the end of it.

Q. And did anyone relate to you that the Attorney General was aware of that agreement; that if he signed the statement, this would be over?

A. I don't think that anybody made a declarative statement to that effect, but my sense is that that was something that was being taken for granted; that Andrew Cuomo would be satisfied with a written statement.

Q. When you say being taken for granted, by whom?

A. I think just the tenor of the conversation, Pope and Maloney, that -- I mean, nobody said to me, "If we give him this statement, then that will satisfy him and he won't bother us anymore", but it seemed to be a given. And, again, to put this in context, the perception in the room at the time was that Cuomo's investigators who were working for him, that they were being more aggressive in their investigation than he intended for them to be and that they had sort of -- they'd become kind of like a runaway grand jury, that they couldn't be stopped, that they were just on a mission and I had --
and again, now, I've got information that I'm aware of, but I'm not sure it didn't come from Darren, so I can't go there. It's kind of -- I don't know if I heard certain things from Pope and Nocenti or Maloney or Darren, so that's what troubles me.

Q. Again, I'm going to read to you from Darren's testimony before us.

MR. KOENIG: What pages?

MS. TOOHER: This is page 56.

MR. KOENIG: When you read earlier, what was the page?

THE WITNESS: 47.

Q. And we asked him about Mr. Nocenti. "Did Mr. Nocenti say anything?"

And Darren's response: "When I protested --" I'm sorry. "When I protested at this session and expressed the belief that I have nothing for which I should be ashamed and I was convinced I could speak in a way that would be compelling to Mr. Cuomo, I said I can talk to him, I can convince him that nothing inappropriate happened. He interjected, he being Mr. Nocenti, that they didn't believe us and they were intent on, you know, prosecuting us; that the Attorney General's Office wanted to prosecute me for --" here, it says chime. I believe
it was crime "-- and that this was best for all concerned
that I did sign it."

Was that relayed to Darren Dopp at that meeting,
that the Attorney General's Office wanted to prosecute
him for a crime?

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

Q. You don't recall it ever being relayed to Darren
Dopp that he was going to be prosecuted for a crime?

A. No. I have no recollection of anybody saying in
my presence to Darren Dopp that Andrew Cuomo wanted to
prosecute him for a crime. Now, I hasten to add a lot of
very negative things were said about Andrew Cuomo by
everybody there except for Darren Dopp.

Q. Did Mr. Dopp ever relay to you that it was his
understanding he would be prosecuted for a crime that he
had been --

MR. KOENIG: He can't answer that question.

MR. TEITELBAUM: Did the subject matter of
whether Mr. Dopp would be prosecuted by the
Attorney General's Office come up in conversations
with you? Don't tell me what was said. Just was
the subject matter raised?

THE WITNESS: In conversations with me?

MR. TEITELBAUM: Yeah.
THE WITNESS: Never.

MR. TEITELBAUM: Could we go back to the first part of that quote and see if you have a recollection of Mr. Dopp taking the position that he really didn't want to sign the statement; he wanted to go and speak to Cuomo? Was that said in words or substance by Mr. Dopp?

THE WITNESS: Yeah.

MR. TEITELBAUM: At that 22nd meeting?

THE WITNESS: Yes.

MR. TEITELBAUM: He said he didn't want to sign that statement?

THE WITNESS: He said -- well, he said he wanted to go talk to Andrew.

MR. TEITELBAUM: In lieu of signing the statement?

THE WITNESS: I don't know if it was in lieu of signing the statement, but he really wanted to go talk to Andrew. There's no question about that. And it probably was in lieu of signing the statement. But I said to him, I said to him that he should sign the statement and I said to him that he shouldn't go testify given the opportunity -- you know, there was no place to go
testify.

    I said, "There's really -- there's no reason for it. You're only going to get yourself in trouble," because people always do when they go to testify. And you know -- and, again, now, the very next thing that happened was the report came out the next morning so --

    MR. TEITELBAUM: With respect to what had been previously marked as Exhibit 74, the statement of Darren Dopp, prior to signing this statement, did you have a discussion with Mr. Dopp concerning whether he believed everything in the statement was true?

    THE WITNESS: Oh, yeah. I mean, we spent -- we spent the day making sure that everything in the statement was true.

    MR. TEITELBAUM: From his perspective?

    THE WITNESS: Yeah.

    MR. TEITELBAUM: And Mr. Dopp's testimony before the Commission -- on page 64, the question was asked of Mr. Dopp: "Did you say to Mr. Nocenti or Mr. Pope or Sean Maloney that, in fact --"

    MS. SHANKS: What line are you on? Sorry.
MR. TEITELBAUM: 21.

(Continuing) "-- that, in fact, it was appropriate to make the request to the state police?"

"Repeatedly."

Now, do you have knowledge of Mr. Dopp saying to Mr. Nocenti and Mr. Pope or Sean Maloney that from his perspective, his being Mr. Dopp, it was appropriate to make the request for documents to the state police?

THE WITNESS: Would you ask me that question one more time?

MR. TEITELBAUM: Can you repeat the question, please? (Directing to the court reporter)

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

QUESTION: "Now, do you have knowledge of Mr. Dopp saying to Mr. Nocenti and Mr. Pope or Sean Maloney that from his perspective, his being Mr. Dopp, it was appropriate to make the request for documents to the state police?")

THE WITNESS: Yeah.

MR. TEITELBAUM: And did he make that
statement in your presence on the 21st or the 22nd?

THE WITNESS: Again, I don't recall. You know that -- I mean, the subject of making the request to the state police was something we discussed over and over again, you know, in the context of the FOIL requests and who should actually disseminate the information and so forth and so on.

MR. TEITELBAUM: Now, on line 22 of page 61, Mr. Dopp gave testimony to this effect -- not to this effect, but these words: "I knew what I was signing --" meaning 74 "-- but I did not wholeheartedly believe that particular statement, no."

And that particular statement, you can gather from the question that's from 9 to 18 meaning referring the matter to the state police. Was that the truth, that he did not wholeheartedly believe that particular statement, to your knowledge?

MS. SHANKS: I'm going to --

MR. KOENIG: I don't know how he can --

THE WITNESS: How can I answer that?
MS. SHANKS: I'm also going to object that that's --

MR. TEITELBAUM: He could have told you.

MS. SHANKS: Excuse me?

MR. TEITELBAUM: He's already testified to --

MR. KOENIG: Objection.

MS. SHANKS: I'm going to object and direct him not to answer the question, because it's taken out of context unless you give him an opportunity to read the pages before and after. And then if there are other privileged ones, that's a different objection. But I'm also going to object if you're asking him to characterize his mental state at the time.

MR. TEITELBAUM: Show him the document.

MS. SHANKS: But you can read -- I would start reading on page 57, 58. (Directing to the witness)

THE WITNESS: I don't know if I can answer that question. I mean, Darren -- to my knowledge, Darren was telling the truth when he signed his name to this statement designated Exhibit 74.

MR. TEITELBAUM: And to your knowledge, was he telling the truth when he testified on page 61?
MR. KOENIG: He can't answer that. It would be based on what Darren told him.

MR. TEITELBAUM: Mr. Koenig, you and I have a very different view of the attorney-client privilege. My view is that once somebody testifies to something, there's no longer privilege.

MR. KOENIG: Okay.

MR. TEITELBAUM: Do you differ?

MR. KOENIG: I think there are different facts and circumstances. I think in this particular context, I do differ with you.

MS. SHANKS: I also interpose a different objection. It's improper to ask Mr. Kindlon to characterize -- I mean, the two statements can be consistent or inconsistent. I mean, the fact is that if you read the page after the one that Mr. Teitelbaum quoted, he talked about what he means by wholeheartedly; that the statement says "I now recognize that any requests should have been handled through other channels."

He says in there that what he means by wholeheartedly is that that was one option, there were different options, not that he was saying
something untruthful but that there were different
options and either for political reasons or other
reasons, not because it was illegal or improper.

So asking whether or not the two statements
are truthful, they certainly can both be truthful,
and other than going into Darren's heart or mind,
neither of which Mr. Kindlon or anyone else other
than, I suppose, God can do, is not a fair
question.

MR. KOENIG: Can we just try to find out from
Meave where we are time-wise?

MR. TEITELBAUM: We've got some to go, but
we'll try to accommodate.

MR. KOENIG: I've got to leave here in about
10 minutes.

MR. TEITELBAUM: You said 5:30.

MR. KOENIG: 5:15.

MR. TEITELBAUM: Let me just ask this
question and we'll take the matter under
continuation.

On line 21 of page 62 to 63, starting at 21,
"Now, I want to know whether on July 22nd, 2007
when you signed this if that was your genuine view
that this was something you should have done and
you didn't do? And I think you can say yes or no
to that, if you can."

Answer: "Not then and not now."

MS. SHANKS: Can you say yes or no?

(Directing to the witness)

MR. KOENIG: What is the question?

MR. TEITELBAUM: I haven't gotten to my
question yet. That's the predicate.

My question is: Was it your understanding
when Mr. Dopp signed the statement on July 22nd
that it was not his genuine view that he should
have referred the matter to the state police?

MS. SHANKS: I'm going to object to that
question --

MR. KOENIG: Objection to the question.

MS. SHANKS: -- and direct him not to answer.

MR. TEITELBAUM: What's your ground?

MS. SHANKS: My ground is it calls for
speculation. It calls for trying to, you know,
divine what is in someone's heart or mind and, you
know, the statements speak for themselves.

And, also, I would ask that if, in fact,
you're going to ask further questions along these
lines that we be provided with this copy so that
Mr. Kindlon can review Darren's complete answer if you're going to then ask him whether based on something other than Darren's conversations with him, he has some basis for a belief as to whether or not this is a truthful answer.

But the question that you propounded is not a fair one. I don't believe it's a legal one, and I'm going to direct my client not to answer it.

MR. TEITELBAUM: Because it's speculative?

MS. SHANKS: Because it doesn't allow him an opportunity to view the entirety of the answer you're asking him.

MR. TEITELBAUM: Take your --

MS. SHANKS: You're taking out part of it.

MR. TEITELBAUM: Take your time to review it.

MS. SHANKS: Secondly, you're asking him to speculate. And, thirdly, you're asking him to opine about something for which he is not competent, which is what is in the heart -- I mean, an analogy -- I mean, if I say to a child, you know, "Say you're sorry." "Sorry." Did he really mean he was sorry? Well, I don't know. Did he really mean he was sorry? Is that a legal question? I don't know.
MR. TEITELBAUM: I don't have to ask legal questions and I can ask speculative questions.

MS. SHANKS: Well, I'm directing him not to answer.

MR. TEITELBAUM: Very well. You can have an opportunity to read the question if that's the nub of the objection.

MS. SHANKS: I also would like a recess so that he can read the entirety of this transcript or at least several pages before and after --

MR. TEITELBAUM: Take your time.

MS. SHANKS: -- that you're asking.

MR. TEITELBAUM: Take your time.

MR. KOENIG: It's a 400-page transcript.

MS. SHANKS: At least for this purpose, you need to at least read the five pages before and after. (Directing to the witness)

(Discussion off the record.)

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

QUESTION: "My question is: Was it your understanding when Mr. Dopp signed the statement on July 22nd that it was not his genuine view that he should have referred the
matter to the state police?)

MR. TEITELBAUM: I didn't ask what Mr. Kindlon's belief was. I asked him what his understanding was and there's no speculation in that question, counsel.

MS. SHANKS: Well, certainly, there is a genuine belief about what his feeling was when he said it. That would be like me saying if you say have a nice evening when we leave here and, you know, your colleague over here is then asked under oath, "Do you think Mr. Teitelbaum really wanted Ms. Shanks to have a nice evening or not," you know, what would the basis of that be?

I guess does he know you well enough to know whether or not you typically say that? Is it the sort of thing you say every day? Was it your tone of voice? I mean, that's a ridiculous question.

MR. TEITELBAUM: The question stands.

MS. SHANKS: Well, and my direction to my client to not answer it stands.

MR. TEITELBAUM: Off the record.

(Discussion off the record.)

(Thereupon, the following excerpt of the proceedings was read back by the reporter:
QUESTION: "My question is: Was it your understanding when Mr. Dopp signed the statement on July 22nd that it was not his genuine view that he should have referred the matter to the state police?")

MS. SHANKS: I'm directing him not to answer the question.

THE WITNESS: Okay.

MS. SHANKS: We could discuss it and you can ask it as your first question next time and if I have a different view, I will.

(WHEREUPON, at 5:15 o'clock, p.m., the examination of TERENCE L. KINDLON, ESQUIRE, in the above-entitled matter was adjourned, to be resumed on Friday, January 25, 2008 at 3:00 o'clock, p.m.)

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(Continued in Volume II, page 140.)
INDEX TO WITNESS

EXAMINATION BY MS. TOOHER

PAGE 3

INDEX TO EXHIBITS

COMMISSION

EXHIBIT NOS. FOR IDENT.

113 1-pg e-mail 39
114 1-pg e-mail thread 88
115 Early version of statement by Darren Dopp; 1-pg 97

(EXHIBITS WERE NOT PROVIDED TO THE COURT REPORTER.)

REQUESTS FOR DOCUMENTATION/INFORMATION

Pg 11/Ln 3 Copy of notes
Pg 12/Ln 4 Copy of transcript from Griggs's interview

QUESTIONS WITNESS DIRECTED NOT TO ANSWER

Pg 12/Ln 12 "Mr. Kindlon, in the interview that you had with Linda Griggs, just quickly before we discuss this, can you tell me what was said during that interview?"
Pg 53/Ln 7 "And was the position that the Chamber was now taking concerning Mr. Dopp's testimony at odds with your discussion with Mr. Dopp?"
Pg 127/Ln 19 "Was that the truth, that he did not wholeheartedly believe that particular statement, to your knowledge?"
QUESTIONS WITNESS DIRECTED NOT TO ANSWER CONTINUED

Pg 128/Ln 23  "And to your knowledge, was he telling the truth when he testified on page 61?"

Pg 131/Ln 9   "My question is: Was it your understanding when Mr. Dopp signed the statement on July 22nd that it was not his genuine view that he should have referred the matter to the state police?"
STATE OF NEW YORK
COUNTY OF

I have read the foregoing record of my testimony taken at the time and place noted in the heading hereof and I do hereby acknowledge it to be a true and correct transcript of the same.

TERENCE L. KINDLON, ESQ.

Sworn to before me this day of , 2008.

Notary Public
CERTIFICATION

I, THERESA L. KLOS, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

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THERESA L. KLOS

Dated: January 24, 2008.