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STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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In the matter of

An Investigation into the Alleged
Misuse of Resources of the Division
of State Police

=====

Commission on Public Integrity
80 South Swan Street, Suite 1147
Albany, New York 12210-8004

Thursday, October 11, 2007
10:00 a.m.

STENOGRAPHIC RECORD of an Investigative
Interview under oath conducted pursuant to
agreement.

INTERVIEWEE: DARREN DOPP

APPEARANCES: HERBERT TEITELBAUM, ESQ.
Executive Director

MEAVE M. TOOHER, ESQ.
Investigative Counsel

JOAN P. SULLIVAN, ESQ.
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator

TERENCE KINDLON, ESQ.
74 Chapel Street
Albany, New York 12207
(Appearing for the Interviewee)

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter

1 D A R R E N D O P P ,
2 called to testify before the Commission, and being
3 duly sworn/affirmed by the notary public, was
4 examined and testified as follows:

5 EXAMINATION BY MS. TOOHER:

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

8 A. My name is Darren Dopp.

9 Q. Mr. Dopp, where are you currently employed?

10 A. I am currently employed at a company called
11 Pat Lynch Communications here in Albany.

12 MR. TEITELBAUM: Let me interrupt you
13 for a second.

14 (A discussion was held off the record.)

15 Q. For the record, are you here voluntarily
16 today?

17 A. Yes.

18 Q. You are accompanied by your attorney?

19 A. I am indeed, Mr. Kindlon.

20 MS. TOOHER: Will you note your
21 appearance for the record?

22 MR. KINDLON: Terence, T-e-r-e-n-c-e,
23 Kindlon, 74 Chapel Street, Albany, New York.

24 Q. And you are currently employed with Pat

1 Lynch Communications?

2 A. Yes.

3 Q. Where were you employed previously?

4 A. Previously, I was Director of Communications
5 in the Executive Chamber for Governor Spitzer.

6 Q. When did you leave that position?

7 A. I departed last Friday.

8 Q. Prior to last Friday what were your
9 responsibilities in that position?

10 A. Interacting with the media, advising the
11 Governor on matters concerning the media,
12 addressing all manner of external communication
13 and intersection of policy and communication. I
14 wish I could provide a neat description of the
15 role of Communications Director. But at the given
16 moments you could be confronted by a host of
17 issues that you then confer with your colleagues
18 on in terms of the best approach with the media.

19 Q. And you say confer with your colleagues, who
20 would you usually confer with?

21 A. Basically, the individuals that had the most
22 interaction with the Governor: The secretary to
23 of the Governor --

24 Q. That is?

1 A. Richard Baum. The counsel to the Governor,
2 David Nocente. Those three most regularly and
3 most routinely, but beyond that the entire rest of
4 the administration.

5 Q. And, when you say the intersection of policy
6 and communication could you explain that a little?

7 A. When the administration took over we had a
8 set of, you know, policy goals that we wanted to
9 implement. A big part of your success in
10 implementing those goals involves the
11 communication of your goals. And some people it's
12 all in the communication. But, you know, we set a
13 set of goals and try to implement them both with
14 strategies to interact with the media, the public
15 and lawmakers who ultimately have the decision as
16 to whether or not to approve those policies.

17 Q. Your role in that was the communication
18 aspects of the policy?

19 A. Again, it is not a four-corner type
20 situation, you know. We would consult internally
21 will about the best approach. And, sometimes, as
22 a communications director you sort of recommend
23 possibilities and options for the group to
24 consider. I always considered it my role -- and I

1 thought I was good at it -- in terms of saying if
2 we do this, this might result. If we do that,
3 that might result. I was able to do that based on
4 20 years in government as a communications
5 director and as a journalist.

6 Q. And, when you say -- I am going to
7 paraphrase a cause and effect: If we do this,
8 then that might result, who would you be having
9 that communication with?

10 A. The trio; Mr. Spitzer, Mr. Baum and Mr.
11 Nocente.

12 Q. Who was your direct report in the executive
13 chamber?

14 A. I guess if we had to draw a flow chart it
15 would be Mr. Baum. But in reality it was Baum,
16 Spitzer and Nocente who formed the trio. Baum,
17 Spitzer and Dopp formed the trio that had been
18 with the Governor as Attorney General since the
19 beginning.

20 MR. TEITELBAUM: You mean Baum, Spitzer
21 Nocente and yourself.

22 INTERVIEWEE: Baum, Nocente, and Dopp
23 were the trio in the Attorney General's Office and
24 then became the same in the Governor's Office. It

1 is not an exclusive process, obviously, when you
2 have others: Policy director, director of
3 administration, you know, other counsel. You
4 know, it was not as though decisions were made by
5 that group alone. Budget Director, obviously, as
6 well, Paul Francis, another key player on just
7 about everything we worked on.

8 Q. What was your relationship with Christine
9 Anderson?

10 A. My employee, my press secretary?

11 Q. Yes.

12 A. The press office is organized as
13 communications director, press secretary, deputy
14 press secretary, and then press officers. She
15 would report to me.

16 Q. What was her title?

17 A. Press Secretary.

18 Q. And, she would report directly to you?

19 A. That's right. Lines of reporting frequently
20 weren't like so rigid. If Christine learned of
21 something that was essential to bring to the
22 attention of the Governor she would do so and
23 apprise me as well. It wasn't so rigid that
24 everything had to come through me. It was rather

1 informal, as a matter of fact.

2 Q. What about Marlene Turner?

3 A. Marlene Turner, Director of Administration.
4 Truthfully, she is kind of like the den mother of
5 our office, you know, someone who was responsible
6 for Mr. Spitzer's schedules and a host of other
7 activities that spoke to administration. She
8 performed the same function in the Attorney
9 General's Office and moved with us to the
10 Governor's Office.

11 Q. Did you work with her on any policy issues?

12 A. Marlene Turner wasn't generally involved in
13 policy discussions. She would have been involved
14 extensively in scheduling decisions; where the
15 Governor goes, what and how events were planned.

16 Q. What about Paul Larabee?

17 A. Paul Larabee was our Deputy Press Secretary
18 in the chain of command. It was Dopp, Anderson,
19 and Larabee in the press office.

20 Q. What were his duties?

21 A. Paul's duties would probably be described as
22 the immediate interface with reporters. When
23 calls came into the press office, you know,
24 frequently the secretaries would consult Paul as

1 to who should handle a given inquiry. If it was
2 something that was important, dicey, problematic,
3 he would come to me saying: Who do you want to
4 handle this? Do you want to handle it? That kind
5 of thing. He would come to me and say: Here's
6 this inquiry. Who should be handling it? And
7 Christine and I would decide who to hand it off
8 to.

9 Q. How would you make that determination?

10 A. Again, it's hard to generalize for you. The
11 way I structured the press office is to give each
12 press officer an area of specialty and -- not to
13 provide like too much of a tutorial, but you have
14 63 state agencies and authorities. You have press
15 personnel, public information officers in each one
16 of those agencies that I would have hired those
17 individuals. And I had sort of set up a situation
18 with the eight press officers. The eight press
19 officers had a group of public agencies that they
20 would be responsible for. It just so happened that
21 one of Paul's agencies for which he was
22 responsible was everything in the law enforcement
23 and security area, including the State Police.

24 Q. So, Paul Larabee handled all law enforcement

1 issues?

2 A. Not all. Well, yes. He would be involved
3 in all. But, as I said in the beginning, it was
4 like when there is a problematic one or
5 potentially one that could rise to the level of
6 having the Governor's attention, he and I would
7 work on it together. Many times he handled things
8 on his own, but he always apprised me of it and I
9 would say sure, take care of it.

10 Q. How would you define a problematic area
11 worth bringing to the Governor's attention?

12 A. This issue is a case in point.

13 Q. When you say "this issue" --

14 A. Use of state aircraft. And the reason for
15 that is probably three-fold. Number one, there is
16 a little bit of a misnomer in terms of people
17 think the State Police control the state aircraft.
18 The administration controls the state aircraft.
19 We had a situation set up in the beginning of our
20 term where anyone who wanted to use it had to
21 attest the use is for official business. That,
22 you know, was a policy discussion early in the
23 administration. The reason we set that up is
24 because I and others wanted to avoid controversial

1 aspects that occurred in previous administrations.

2 Q. And, so, the issue of the state aircraft was
3 a "dicey" issue, to use your word?

4 A. Potentially so. I knew it could be
5 problematic for the Cuomo administration when I
6 served in the Cuomo administration. I knew it to
7 be problematic for Governor Pataki.

8 In the first four months of the year
9 heading into this particular situation, I had a
10 series of inquiries about aircraft usage that
11 were, again, problematic. Was Mrs. Spitzer on the
12 aircraft and, perhaps, misusing it? Was Governor
13 Pataki's previous use of it with regard to charter
14 flights something that we should have done
15 something about? Was the Governor improperly
16 using it by going on fundraising trips? In my
17 statement to the predecessor group I sort of tried
18 to set out four separate occasions that were
19 specific inquiries about this. I recognized it as
20 a problem and I had an interest in avoiding an
21 "air Spitzer" controversy akin to the
22 controversies that occurred for Governor Pataki
23 and Cuomo.

24 Q. And how did you learn of these things? Were

1 you contacted by reporters or --

2 A. Very much so. I mean part of your job as
3 communications director is to interact with
4 reporters. They were coming to my office. I had
5 an open door policy and I would walk up to the
6 Legislative Correspondents Association where they
7 reside. Whatever was on their mind I tried to
8 engage them about. In the course of those
9 discussions you try to represent the interests of
10 your principal, the Governor, recognizing problems
11 and, you know, trying to present your person in
12 the best light possible.

13 Q. Were there particular reporters who were
14 interested in this issue?

15 A. Basically, all of them in specific periods,
16 but some more than others.

17 Q. Who might those be?

18 A. Mr. Dicker of the Post; Mr. Odatto of the
19 Times Union. Jim is someone I knew for long time.
20 And if I felt it of use to the Commission I can
21 provide a whole host of stories. I had a file on
22 Jim's interest in aircraft. He had written a
23 number of them, broke a lot of stories.
24 Specifically, he was among those asking pointed

1 questions about whether the Governor took the
2 aircraft on political fundraising trips. So, Jim
3 -- you know, some people with the New York Sun,
4 people with the Daily News. A host of the LCAers
5 had inquiries about it at some point or another.
6 Some had an avid interest in it.

7 MR. TEITELBAUM: Can you make a copy of
8 that available? I would appreciate it.

9 INTERVIEWEE: Yes, will do. The
10 interest in it goes back to 1995, actually goes
11 back before that to the time when I was at
12 Governor Cuomo's Office, and I was answering
13 questions about aircraft usage then.

14 Q. You indicated there was a policy discussion
15 about the aircraft early on in the Spitzer
16 administration. Can you tell me about that?

17 A. When Mr. Spitzer was elected there was a
18 period between November and January when we talked
19 about how we were going to comport ourselves with
20 regard to the media, Mr. Nocente, Mr. Baum, Mr.
21 Spitzer and myself. I had raised at that time,
22 you know, the issue of aircraft usage. The
23 catalyst for that was the Hevesi matter, and we
24 all sought to avoid any appearance of impropriety.

1 So, Mr. Nocente actually developed the disclaimer
2 process that I think you are familiar with.

3 Q. Can you describe the disclaimer process, as
4 you call it?

5 A. My understanding may not be perfect. But,
6 you know, someone else would like describe the
7 exact way it came down. But I was among those
8 saying, hey -- short digression. I'm not an
9 expert in any one area; I have a lot of knowledge
10 about a lot of the areas. I would have said in my
11 typical informal way: Hey, we really have to
12 avoid Air Cuomo, Air Pataki jackpots. Let's not
13 have an Air Spitzer jackpot. That would have been
14 the catalyst idea for Nocente and Baum to develop
15 the disclaimer process which was simply a sheet of
16 paper in which anybody using the aircraft was
17 required to state the purpose of their business
18 and attest in writing that it was for official
19 business only. What we had sought to avoid was
20 improper use of the aircraft. And the rationale
21 then and now for trying to ensure there was proper
22 use was three-fold. One, we control it. We have
23 to sign off on it. That's just policy and
24 practice. Number two, it costs a heck of an a lot

1 of money to operate, \$10,000 to \$20,000 a pop
2 every time it goes up, and that's taxpayer money.
3 And the third real compelling rationale in my mind
4 is use of the aircraft is not meant for
5 politicians. It's meant for emergency personnel.
6 And every time a politician uses the aircraft,
7 that means potentially an emergency personnel
8 cannot use it. And I will give you an example.
9 If there's a shooting of a state police officer in
10 Margaretville or someplace out west, the
11 superintendent and his emergency personnel need to
12 get to that site immediately. That's what the
13 helicopter and the aircraft are for. They're
14 really not for convenience travel or elective
15 travel by public officials. When they are not in
16 use and there is an appropriate reason for a
17 public official to use it, you know, we are in the
18 habit of approving it.

19 Previous administrations -- when I was
20 with the Cuomo administration we routinely said no
21 to certain requests because we were afraid we
22 might need it at a given moment. So, that was the
23 overall chain rationale at the time in January --
24 actually, in December, when we set the new policy.

1 Q. And, did you have a discussion concerning
2 verification on the use of the aircraft and the
3 materials you might use for that?

4 A. Not at that time, no.

5 Q. Did you ever discuss ground itineraries at
6 that time?

7 A. No, not at the time.

8 Q. Did Mr. Baum ever relate to you a
9 conversation he had with Ken Riddete over at the
10 Senate concerning ground itineraries?

11 A. I am not aware of any such conversation.
12 The only relevant thing that I heard early in the
13 process -- and I would say in January -- was
14 Majority Leader Bruno saying to Eliot -- the
15 Governor -- you are not going to mess around with
16 me over of the aircraft; are you? George was
17 constantly doing that. And Eliot related that
18 story to me saying it was a sore point. But
19 beyond that, I know of no Senate administration
20 contacts over the matter.

21 Q. You were not aware that Mr. Baum had a
22 discussion with Mr. Riddete, Senator Bruno's
23 counsel, wherein he had relayed a desire for
24 ground itineraries to confirm use of the aircraft?

1 A. This is the first I am hearing that. Can
2 you tell me the time period was?

3 Q. It was early in the administration when you
4 are discussing the change to the aircraft form.

5 A. I was not aware of any of that.

6 Q. And, did Mr. Baum relate to you that the
7 Senate's position was that due to the separation
8 of powers they would not provide ground
9 itineraries and he had said that was acceptable?

10 A. No. I am not aware of that, no.

11 Q. Did you have any discussions with Mr.
12 Nocente about the provisions of ground
13 itineraries?

14 A. No. I mean later on I did, but not in the
15 early part.

16 Q. Early on in the administration?

17 A. No.

18 Q. So, Mr. Nocente didn't discuss Mr. Baum's
19 conversation with Ken Riddete with you either?

20 A. No. This is the first I am aware of it.

21 Q. Did you have any of meetings with Marlene
22 Turner early on in the administration about the
23 administration of the aircraft?

24 A. No, not me.

1 Q. Did you have any discussions with Bill
2 Howard concerning the aircraft early on in the
3 administration?

4 A. No. Once, you know, we had taken office,
5 you know, and there were sort of some media
6 requests for aircraft information I would have
7 talked to him about helping me meet those
8 requests. I would have made requests for the
9 information through Bill, but I didn't have any
10 procedural or policy discussions, no.

11 Q. What is your working relationship with Bill
12 Howard, or what was your working relationship with
13 Bill Howard?

14 A. He is one of the Deputy Secretaries to whom
15 as a communications person I would turn for
16 information, parallel for you all, if I could be
17 so bold, Walter. I'm Walter for --

18 Q. That's Walter Ayers?

19 A. Right, yes. I am Walter for the
20 administration. I don't want to diminish myself,
21 but I know only what I am told. And on a given
22 matter I reach out to somebody in Health, Economic
23 Development, Security, or any other matter when a
24 question comes in. I go to them to provide

1 guidance in providing an answer to the media, so a
2 good working relationship. A little bit of an
3 aside, he was a carryover from the previous
4 administration. I knew him from before that as an
5 honorable person. And we came somewhat friendly
6 because he has an interest in history and the
7 Civil War. And my eleven year old is an avid
8 Civil War buff. I don't know if you would see in
9 the communications every once in awhile Bill would
10 send me a trivia question for my son Owen. And,
11 then, Owen would send Bill a trivia question back
12 through me. And they tried to stump one another
13 on arcane developments from the Civil War. So, a
14 good working relationship and I would say -- I
15 mean we didn't socialize together, but had some
16 rapport.

17 Q. You had a cordial relationship?

18 A. Very much so.

19 Q. You don't recall meeting with Bill Howard
20 concerning the certification or change in the
21 aircraft form early on in the administration?

22 A. No. I was not a part of the actual
23 implementation of any new policy. Again, a press
24 officer is confronted by a thousand things. And,

1 while I have interfaced with some policy matters I
2 wouldn't have been at the table figuring out the
3 policy.

4 Q. And, do you recall a request of early on
5 from Fred Dicker concerning airplane information?

6 A. Yes. Forgive me for like being informal,
7 but Fred is very aggressive. I was very friendly
8 with him. I go way back with him, some twenty
9 years. And he had a number of requests early on.
10 They were pointed requests about whether Governor
11 Pataki was using the aircraft properly. And he
12 would be fairly aggressive even though he was my
13 friend. He would be fairly aggressive towards us
14 sort of saying we were covering up for Governor
15 Pataki. And I think you see that in the
16 correspondence where he asks for information.
17 What do I do when I receive such an inquiry? I
18 turn to Bill to say, "How do we respond? What's
19 the story? How do we respond?"

20 Q. Were you familiar with a request that Mr.
21 Dicker made in March of the State Police for
22 information?

23 A. I became aware of it. He would frequently
24 -- I talked to him regularly and he told me about

1 it. And he was a little bit agitated because his
2 view was: You guys came into office promising not
3 to jerk us around. This is clearly public
4 information. Why can't I get it?" And I said,
5 "Fred, I'll take care of it." And it was at that
6 point I turned to Paul saying, "Can you help him
7 out? Figure out what the right thing to do is and
8 square it away."

9 Q. What was your understanding of what was
10 happening with that request? And I'm going to put
11 a time frame of mid March.

12 A. I know that he was looking for flight
13 manifests. And flights manifests had been
14 routinely released through the years. And I had a
15 conversation with Paul saying let's not jerk him
16 around. Talk to the State Police so they don't
17 have a problem, and just give him the materials.
18 Who uses the state aircraft and when and how is
19 clearly a public record. And I had released that
20 information, not countless, but numerous times in
21 the Cuomo administration, and I was committed to a
22 policy of openness in the Spitzer administration
23 where those public records would be made
24 available.

1 Q. I am going to show you what has been
2 previously marked as Commission's Exhibit 6. And,
3 this is an e-mail from Glen Miner. Do you know
4 who Glen Miner is?

5 A. I'm sorry. I was thinking of Glenn Valle.
6 Glenn Valle is counsel, and Glen Miner is the PIO.

7 Q. To Paul Larabee?

8 A. Right.

9 Q. Have you seen this e-mail before?

10 A. I have not, no.

11 Q. Do you want to take a minute to take a look
12 at it?

13 A. Sure. It's consistent with what I have been
14 describing. We came in -- and, again, I'm not
15 sure if you can appreciate it. We never trashed
16 our predecessor, but in this venue -- I hope
17 you'll allow me to provide a little background and
18 not think I'm doing what I promised not to do.
19 They had a very adversarial, contentious
20 relationship with reporters. And Mr. Spitzer and
21 I were committed not to have that same
22 relationship. On matters that were clearly public
23 documents we sort of made a commitment to them
24 that we wouldn't jerk them around and make them go

1 through a FOIL process. And this was one such
2 thing. Flight manifests had been released since
3 time immemorial. I felt -- and I wouldn't want to
4 ram this down anybody's throat. I would have just
5 said: Look. Flight manifest we be have been
6 releasing sine time immemorial. Unless they have
7 a big problem with, it just obtain it and give it
8 to them. That's the guidance I would have been
9 giving to Paul.

10 Q. So, the e-mail here from Mr. Miner was to
11 Mr. Larabee indicating that the State Police
12 process for a FOIL was to get a written request?

13 A. Right.

14 Q. And you were aware of this discussion
15 between Mr. Miner and Mr. Larabee?

16 A. Yes. Paul apprised me of it and so did
17 Dicker.

18 Q. And, your direction to Mr. Larabee was to
19 get the documents from the State Police and
20 provide them directly to Mr. Dicker?

21 A. What I think I said is, "Look. Let's not
22 jerk him around. Unless the State Police really
23 object for some specific reason, let's just give
24 it to him because they are clearly public records

1 we have already provided in the past."

2 Q. But the State Police here is relying on a
3 FOIL process?

4 A. Right.

5 Q. Did the executive chamber at this point have
6 a FOIL process in place?

7 A. No, nothing in writing. It was rather ad
8 hoc and informal. Elements of it included -- you
9 get deluged with FOIL requests frequently, you
10 know. For instance, Mr. Nocente with Ms. Treisman
11 who would be the official FOIL officer would come
12 to me saying this is an onerous FOIL request. Can
13 you talk to the reporter and see if you can get it
14 scaled back? See if you can find out what they
15 are really looking for. I would to do so
16 endeavoring to them a lot of work, endeavoring to
17 meet the needs of the reporter without creating a
18 lot of work for the administration. That was one
19 aspect of the FOIL -- informal FOIL policy we had.

20 The second aspect of it was if a
21 reporter was asking for something that was, in my
22 judgment, clearly a public record clearly subject
23 that I released numerous times in the past, I
24 wouldn't require them to FOIL it. I would say,

1 hey, don't worry about it. I will just provide
2 it.

3 Q. When you say "clearly a public record" how
4 would you make that determination?

5 A. Policy and practice, you know, in the
6 Governor's office, for Governor Cuomo, for Mr.
7 Spitzer's Attorney General's Office and Mr.
8 Spitzer's gubernatorial administration were: You
9 want to know a salary for a public official?
10 Clearly, a public record. Do you want to know Mr.
11 Spitzer's schedule, that kind of stuff? Where he
12 went, what he did? Clearly, a public record. Do
13 you want to know about our use of taxpayer money?
14 As long as it's easily accessible and not
15 something overly broad, I will get it for you.

16 Q. You mentioned Governor Spitzer's schedule is
17 a public record. Isn't it true Governor Spitzer
18 has more than one schedule? There's a public
19 schedule and then there's what I will call an
20 in-house schedule?

21 A. Whenever I asked for scheduling information
22 from Marlene Turner she would provide to me what I
23 believed was the comprehensive schedule. Now,
24 sometimes when she provided it to me she would X

1 out something and it would correspond to Eliot's
2 doctor's appointment or Eliot's parents-teacher
3 conference.

4 Q. Something in his private life that would not
5 be made part of his public schedule?

6 A. Right -- right. As a general rule I was
7 providing his private schedule as well as.

8 Q. You would provide information concerning his
9 private appointments to the press?

10 A. Yes. Open door in that regard. We didn't
11 have anything to hide and that was what we wanted
12 to do.

13 Q. Then why was Ms. Turner crossing these items
14 out?

15 A. Every once in awhile there was something
16 there that she would say something to me about:
17 Look. This is Eliot's doctor's meeting. It's
18 like he has a cosmetology appointment because he
19 has a mole that he has to get rid of. That was
20 it. And, you know what? The reporter would say,
21 "What was here?" And I would say, "Look, a
22 private doctor's appointment" and they would be
23 fine with it. So, it wasn't so rigid. We tried
24 to be as open as possible. That's the way the

1 Governor and Attorney General had always been.
2 Keep in mind as well that on Friday of every week
3 I was in the practice of advising for the next
4 week everything that the Governor was doing, every
5 public event the Governor was holding. And when
6 there was a scheduling request I always honored
7 it. Really, the only time I would require a FOIL
8 or suggest a FOIL was if they said: Tell me
9 everything that he's done for the last nine
10 months. Well, that was ridiculous. Most of the
11 time scheduling information was like, okay, he
12 went to California that day. Can you give me the
13 schedule? Sure, I will go get it for you. It's
14 one page, two pages, something like that. And I
15 would provide it.

16 Q. When you were providing these documents did
17 you consider this responding to a FOIL request?

18 A. No, not necessarily. Just that, you know,
19 my business is to provide public information. I
20 am a public information officer; I believe in
21 that.

22 MR. KINDLON: Can I just say something?
23 Your explanation only dealt with, clearly, public
24 information. We are dealing with documents less

1 than public.

2 INTERVIEWEE: Yes. Having worked in a
3 law enforcement office for eight years I knew
4 basically, you know, the areas that I needed to
5 avoid: Work product, case or confidential
6 information. To me, that was crystal clear. But
7 I offer this to you as well. I never would have
8 made these decisions unilaterally. I would
9 double-check. I would have said, you know: A guy
10 wants this. Do you have a problem with it; I have
11 done it before. Is this okay?

12 Q. When you say you would have checked. Who
13 would you have checked with?

14 A. Marlene and Rich, generally. Sometimes
15 Nocente.

16 Q. And, how would you make the determination as
17 to who to check with?

18 A. We have morning staff meetings where I would
19 usually would have raised it. And they would have
20 been seated around the table. Again, I would just
21 routinely know who to check with after working
22 with these guys for a decade. Sometimes even
23 Eliot, you know. Basically, Most of the time it
24 was Eliot as well. If someone was asking for

1 flight information about Silda, you know, assuming
2 she might be misusing the state aircraft, I most
3 assuredly would tell him.

4 Q. And, you indicated that you went to Bill
5 Howard for information on the plane. What is the
6 earliest you recall doing that?

7 A. When we took over -- before we took over in
8 December. Mr. Dicker -- this is part of the
9 e-mail -- the article package that I will provide.
10 Fred had a real problem with the Governor's use of
11 the aircraft, Governor Pataki's use of the
12 aircraft. And, right when we walked in the door
13 there was this issue. And I think you see it in
14 e-mail correspondence, the previous governor's use
15 of charters. And that would have been something
16 -- that would have been my first contact with
17 Bill. And I would have gone to him to said,
18 "What's the deal on this? What should we be
19 saying? Fred's asking" -- blank.

20 Q. Why would you go to Bill Howard?

21 A. Remember who he was, was Acting Director of
22 Administration for the previous administration.
23 And we had retained him as an expert in security,
24 public safety. And he was the main guy for

1 interacting with the state police. He and the
2 rest of the state police worked hand in hand for
3 twelve years. He is pretty much the lone person
4 we retained, and we retained him for his
5 institutional knowledge, an honest, forthright guy
6 who had knowledge and a wide range of information
7 an a whole range of topics.

8 Q. Were you aware of his familiarity with the
9 topic of the aircraft and use of them?

10 A. That's why I went to him.

11 Q. How did you know that?

12 A. I knew it because when I first turned to him
13 to say, "Billy, what's the deal on this? I have
14 got this inquiry." I would have shown him
15 Dicker's inquiry. "How do we respond to this?"
16 And, he would have explained the issue. He would
17 have explained what was happening as a result.

18 Q. He would have explained or did explain?

19 A. On any matter that concerned aircraft and
20 State Police Bill was my source of information.
21 And he would and did explain.

22 Q. Did you go to him with Dicker's request?

23 A. Yes.

24 Q. And did he provide you information in

1 response to that?

2 A. Yes.

3 Q. What did he say to you?

4 A. Forgive me for being difficult, but you have
5 to be specific. Is it is about charters?

6 Q. In this instance the charters, yes.

7 A. We had a big problem over this, you know. I
8 am arguing with him as we speak. The Comptroller,
9 I believe, has rejected it and we think it should
10 be reimbursed. But Bill was at the time talking
11 to Governor Pataki's representatives in a little
12 bit of a dispute over whether it was an official
13 trip or not and whether it should be reimbursed or
14 not.

15 Q. Had you discussed the use of the aircraft
16 with Bill Howard prior to the Dicker incident?

17 A. Not in any over action way. It would have
18 only been when I had had a media request and I
19 could think more about it and figure out whether
20 anything came in front of the Pataki charger
21 flight issue. But I don't think so. I think the
22 Pataki use of the aircraft was my first
23 interaction with Bill on aircraft usage. But,
24 again, remember, we have a media interest in use

1 of aircraft. And in my statement I said like on
2 at least four other occasions -- one was the
3 Pataki charger. Number two was Spitzer
4 fundraising trips. Three, Silda's use of the
5 aircraft. And, four was some blog items about
6 Eliot was possible using the aircraft. So, those
7 four episodes in the first four months of the
8 administration were all things that I would go to
9 Bill and say: What do we do? What do we say?
10 And, then, I would take the information from Bill,
11 go back to Rich, David, and Eliot and say: Here's
12 the situation. Here's what Bill recommends. What
13 do you want to do?

14 Q. Did Bill share with you his feelings on the
15 use of the aircraft?

16 A. Yes. You know, he would offer -- I would
17 ask him, "Is this right?" And he would say, "I
18 don't think so." And I think you see that in some
19 of the e-mail correspondence. What he was talking
20 about is something happened at the tail end of the
21 Pataki administration when -- and there's a
22 specific e-mail in the pile about this. What you
23 see from me is a generalist, so I can't explain in
24 detail his concern about it except that he thought

1 the administration didn't properly split the bills
2 as a way of getting under -- the previous
3 administration -- as a way of getting under a
4 requirement that they do an RFP for the contract
5 for the flight. I am like -- I mean that was one
6 of the things we discussed.

7 BY MR. TEITELBAUM:

8 Q. Mr. Dopp, I have a few questions on the
9 testimony you have given so far this morning. You
10 seem to be reading from a document. What is that
11 document?

12 A. Oh, I'm sorry. I had submitted this to the
13 Ethics Commission in response to your letter to
14 me.

15 Q. May I see it?

16 A. I'm not sure it's the final copy, but it's a
17 draft that I worked on. When I received the
18 letter from Ethics they invited me to submit a
19 response, a written response. And that is the
20 response I sort of penned with Terry. I made some
21 notes. It's the things I wanted to underscore
22 with you all.

23 (Commission Exhibit 73 ws marked for
identification.)

24 INTERVIEWEE: Do you want me to refer to

1 it or --

2 MR. TEITELBAUM: Absolutely. I have
3 some questions about it.

4 MS. TOOHER: Do you want me to make a
5 copy?

6 INTERVIEWEE: Forgive me for being
7 forward, you understand what that was. They asked
8 me for a written response and I submitted a
9 written response to them. But I was never sure.
10 I assumed you received it, but maybe not.

11 MR. TEITELBAUM: We did. Off the
12 record.

13 (A discussion was held off the record.)

14 BY MR. TEITELBAUM:

15 Q. You had described an early conversation --
16 when I say early, I mean early in the
17 administration -- with the Governor in which he
18 related his conversation with Senator Bruno
19 concerning the use of state aircraft. And you
20 testified -- and I think I've got it right; tell
21 me if I don't -- that the Governor had indicated
22 that Bruno might be a source of some conflict.
23 That's my word.

24 A. No. What the Governor had indicated to me

1 was that it was a source of concern for Mr. Bruno.

2 Q. I see. What else was said between yourself
3 and the Governor during that conversation?

4 A. I don't have a significant recall of it. It
5 would have been in a session where we were
6 describing a whole host of issues and, you know,
7 nothing really beyond that. It was an offhand
8 comment from Eliot. It just made an impression on
9 Eliot that it was important to Joe.

10 Q. You also talk about and identify persons
11 with whom you would consult regarding the release
12 of documents to the media and others I suspect.
13 You didn't mention the FOIL officer. I am
14 wondering why.

15 A. The FOIL officer -- like I don't mean to
16 diminish what she does. She's a junior random
17 attorney. While she handled a score of FOILS she
18 would apprise me of, she would sometimes come to
19 me and say, "Can you get this scaled back?" But
20 the vast majority of FOILs I look at and say, eh,
21 and not divert a ton of time to. In this
22 particular matter it's like it was handled a
23 little differently than a normal FOIL, but
24 remember how it came down; reporters coming to me

1 and I am bringing -- I'm consulting the personnel
2 on the second floor that are relevant. And I get
3 some information and take that information to
4 everybody on the second floor that I think is
5 relevant. When I obtained the materials from Mr.
6 Howard that had to do with airplane use for Mr.
7 Spitzer and for Bruno, what did I then do with it?
8 I am only as good my interaction with the people
9 on staff. I don't make unilateral decisions. I
10 take the information and go to Rifkin, your
11 predecessor, and the Ethics Commission former
12 director, to Pope, former Inspector General, to
13 Nocente, the guy who wrote the statute authorizing
14 this commission, to Spitzer, the nation's foremost
15 reformer and to Baum. I have an interaction with
16 all of them saying: Here's what so-and-so said
17 about it. Here's what I think we might want to
18 do. And that is what we did with this particular
19 process. So, if someone is suggesting, for
20 example, proper FOIL procedures weren't followed
21 in this particular matter that, to me, is
22 incredulous because we discussed this matter more
23 than any FOIL had ever been discussed. I went to
24 every single relevant person and sat down with

1 them and showed them the document and said, "What
2 do you think we ought to to do?" There were
3 divergent opinions that present ethical issues
4 that we needed to confront. I maintain to you
5 that I did the right thing in interacting with all
6 of these people and then we did the right thing in
7 tackling the ethical issues at the time.

8 Q. I'm sure we are going to get to those
9 conversations with the cast of characters you
10 identified. What I am trying to nail down now is
11 the role of the FOIL officer. Did you ever go to
12 her when a request was made of you?

13 A. I forwarded lots of FOIL requests to her,
14 yes.

15 Q. And is what you are saying that for FOIL
16 requests that were of really no significance in
17 your mind you would send them on to her, but if
18 there was a FOIL request that had some
19 significance she would not be consulted? Or is
20 there another protocol that you were following?

21 A. I wish I could describe to you like a hard
22 and fast rule in that regard. There were some
23 matters that I recognized as issues that I should
24 tackle and I should tackle consulting with the

1 senior staff. There were other issues that I
2 recognized and I would look at them and say I
3 don't know anything about that and that's
4 obviously something that the lawyers are going to
5 have to decide, right. I'm not like thinking as
6 clearly as I could to like give you ten examples.
7 But there are matters that involve agencies:
8 Matters of law, matters of policy that are
9 technical in detail that Mariah handled and I
10 would just look at and say -- I wouldn't know what
11 it was. A reporter wants to get, for example, the
12 documents that went into the creation of the
13 Burger Commission Report. Now, I'm not a health
14 policy expert. I'm not, you know, someone who is
15 terribly familiar with that particular dialogue.
16 But, for some reporter that was a big deal. I
17 would give it to Mariah and send her a note and
18 say, "We should probably talk about this when it
19 comes down the road," because I am dealing with a
20 lot of Burger Commission pushback. That was one
21 where if I wasn't versed in the topic I let her
22 handle it exclusively asking her to come back to
23 me because of media interest. But a matter like
24 this with aircraft which was so common over my 20

1 years, I was like -- I apprised Mr. Nocente, her
2 boss, of the matter. And I assumed he was
3 consulting with her on it. It might have been a
4 bad assumption on my part. But on something like
5 this which since the start of the administration
6 had been so routine -- four months, four separate
7 inquiries -- I tried to present to you the topic
8 of our interview, the degree to which we were
9 concerned about Air Cuomo, Air Pataki, we didn't
10 want Air Spitzer. But maybe you will identify
11 this as a weakness. I think in retrospect we
12 could have had a firmer FOIL policy. But I don't
13 think it affects the outcome at all because
14 whether it went from Mariah to me or went from me
15 directly -- this is what we are tackling. I
16 brought it to the group as opposed to Mariah
17 bringing it to the group.

18 Q. Putting aside for a moment the matter about
19 which we are having this session, when you would
20 go to the senior staff, as you described it, on an
21 issue of whether we are going to release one
22 document or another that you would think merits
23 their consideration, would that happen once a
24 week, once a month over the course of the

1 administration? How frequently was this
2 happening?

3 A. Not terribly frequently, but with some
4 regularity; a couple of times a month, perhaps.
5 Just to provide perfect clarity, again, Walter
6 doesn't say anything to the media on any matter
7 before the commission without talking to you and
8 Meave.

9 Q. Walter Ayers?

10 A. Right. I'm kind of the same way. I'm not
11 going to be a lone ranger. That's absurd. I mean
12 I didn't survive in a law enforcement agency for
13 eight years talking about legal cases. And I
14 don't talk about policy decisions for the
15 administration or matters confronting the
16 administration without engaging them. And,
17 truthfully, if you sat around the table we would
18 vet the words that I would use because it makes
19 all the difference, you know. You're playing high
20 stakes. It's a ton of attention and you have got
21 to be right about what it is that you are doing.

22 Q. When you approached one or more of the
23 senior staff during those occasions when you
24 thought it was appropriate to get their input on

1 whether to release documents, did you show them
2 the documents that you were contemplating
3 releasing?

4 A. I showed it to them or described them. We
5 would have a fair amount of discussion, sure. You
6 wouldn't blind side anybody. It was my obligation
7 to ensure that they were operating from full
8 knowledge. And it was difficult at times because
9 we had a ton going on. And this particular matter
10 -- this was like I know the perception on the
11 outside is that this is what we were engaged in.
12 But we were trying to get our legislative agenda
13 passed.

14 Q. When you would come to a member or members
15 of the senior staff with documents that you had
16 questions about releasing, did it ever occur that
17 the documents were redacted by the senior staff
18 people?

19 A. Yes, sometimes. Sometimes, you know, when
20 there was an issue of redaction that was usually
21 the result of, you know, Mariah and the lawyers
22 examining it and concluding that this was
23 problematic or that was problematic, but we can
24 still release it minus these things. But that

1 usually was the case when you were talking about
2 some legal issue or some other issue with
3 overriding confidentiality concerns.

4 Q. So that the record is clear on this, is this
5 the way it would happen? You would present
6 documents to a senior staff person that you had
7 questions about concerning releasing and, on
8 occasion, those documents would be reviewed by
9 counsel, including Mariah, and then they would
10 come back to you either without redactions or
11 without redactions?

12 A. It happened in that way almost exclusively
13 in the prior administration when we were with the
14 Attorney General's Office because we were dealing
15 with legal matters. On this front, when you're
16 talking about the areas that I identified:
17 Salaries of public officials, duties of public
18 officials -- I mean administration members, you
19 know, minority members -- that I've got to know
20 how many minority members, I go in and get the
21 breakdown, there would be no need for addressing
22 issues of redaction in that regard because it's
23 all clearly public information. But if there is a
24 problematic inquiry, an inquiry that involves

1 something that would need to be redacted, then
2 most assuredly that would be the route things
3 would take. But, again, it may seem like an
4 arbitrary distinction to you all, but these
5 matters, or this particular matter, redaction
6 issues are not particularly relevant because use
7 of the aircraft is -- you are an open book on use
8 of the aircraft. You're an open book on salaries
9 and appointments and that kind of stuff in the
10 administration.

11 Q. Could you give us the kinds of items that
12 were redacted over the course of time that you
13 were serving in the administration as the
14 communications person?

15 A. I can be responsive if I had some time to
16 contemplate it and recall previous FOIL issues.
17 Off the rip, I have a little difficulty doing it.
18 Forgive me for not having my total recall.

19 Q. Give me some examples.

20 A. Remember, we are just four months into the
21 administration at this point, so there weren't a
22 ton of FOILs. But here's an issue that I presume
23 we will get to at some point soon. Mr. Odatto very
24 much wanted a list of member items proposed by the

1 lawmakers. This list was submitted to the
2 executive for its contemplation. This list is
3 relevant later on when I say: I'm going to ask
4 Jim a favor. The favor was for him to stand down
5 on that particular request. But on this
6 particular matter I go to Mr. Mr. Nocente. And
7 the letter should come to Treisman directly and
8 they had come to me saying: Can you get him to
9 stand down because that is terribly problematic
10 for us if we do release it without be redacted.
11 And I'm like, okay. Why would that be the case
12 since we're talking about expenditure of taxpayer
13 resources on capital projects. Well, it's a work
14 product at this time and we have to redact who
15 sponsored it and how much it costs. I gave a
16 little bit of pushback because I was getting
17 pushback from the reporter. Why wouldn't that be
18 public information, taxpayers money? But that was
19 a classic example of a FOIL that came to me and
20 came to Mariah and something that they felt they
21 wanted to hold in confidence and that if you did
22 advance would have to be redacted. I can't
23 explain the rationale for that because, frankly, I
24 pushed back a little bit internally about that. I

1 want to be open. I mean, "How in the world can
2 you not release such information?" is what I said
3 to David and Mariah.

4 Q. I am inferring from your testimony that when
5 the issue of redaction would arise you would be
6 participating in whether to redact or not; /STHRA
7 is that fair?

8 A. Not really.

9 Q. It would just come back to you from the
10 attorneys as a fait accompli?

11 A. Pretty much. I would ask about it, what was
12 there and why. Why would I do that? Because a
13 reporter most assuredly would ask me that.
14 Sometimes they told me; sometimes they didn't.

15 Q. But you didn't question the bona fides of
16 the redaction?

17 A. Mr. Mr. Nocente is my brother. There is not
18 a more honorable guy in public service, no
19 individual's judgment I trust more.

20 Q. Was Nocente involved in each instance in
21 which there was a redaction in the matters that
22 you were going to the senior group?

23 A. Right.

24 Q. So, when you went to the senior group are

1 you saying that in every instance Nocente was
2 involved?

3 A. I believe so, yeah.

4 MR. TEITELBAUM: Give me one minute.

5 INTERVIEWEE: Sure. Is it okay if I
6 make a pit stop?

7 MS. TOOHER: Absolutely.

8 (Recess taken)

9 BY MR. TEITELBAUM:

10 Q. Take a look at Commission's 73, which is a
11 document we have been referring to or reading from
12 your prior testimony. Tell us what this document
13 is.

14 A. I was invited to submit a letter in response
15 to a letter that I received on August 23rd from
16 the States Ethics Commission. And in this letter
17 I attempt to make a few points that were
18 responsive to Attorney General Cuomo's report.

19 Q. Tell me if I have got this right. 73 is
20 your response to what is commonly referred to as a
21 15-day letter?

22 A. Yes.

23 Q. Other than the handwriting that is on the
24 letter, is this the letter that you submitted?

1 A. I will double-check.

2 Q. And you can consults with Mr. Kindlon.

3 A. We might have made a tweak or two here.

4 Q. It's a draft but it's close to the final?

5 A. Yes, correct.

6 Q. And the handwriting is yours?

7 A. It is mine.

8 Q. I see on page two you have in the margin a
9 line on the top of that paragraph beginning, "In
10 retrospect." And, then, you have something
11 handwritten on the bottom. Would you read that
12 for us?

13 A. "I was asked to say this. And it's
14 disingenuous. We, meaning the administration,
15 controls the aircraft. We are responsible for its
16 proper use, not the state police. It would be
17 weird to have the state police announce what we
18 decided."

19 Q. Actually, it doesn't say "state police"; it
20 says S.P. but that is what it refers to?

21 A. Right.

22 Q. Tell us what you mean when you are saying,
23 "I was asked to say this and it is disingenuous."

24 A. Throughout the whole process I believe I

1 have been like completely candid on the whole
2 thing. When -- and Terry will help me with this
3 -- it's like when I was asked not to go -- I
4 wanted to talk to Andrew Cuomo, a personal friend
5 of long acquaintance. I was convinced there
6 wasn't a single e-mail or single action that I
7 ever took that I couldn't provide a compelling
8 rationale that was both legal and ethical. I was
9 convinced of it and I was convinced that he, as my
10 friend, would listen to me.

11 They didn't want me to talk to Andrew
12 Cuomo.

13 Q. Who said that you couldn't talk to him?

14 A. The administration, Peter Pope and Sean
15 Maloney. There was a critical moment where it was
16 conveyed to me that: You can't do it. He is not
17 going to listen. And I objected. And I want to
18 turn to Terry. I didn't have counsel when those
19 discussions were underway. When I finally
20 obtained counsel we just didn't have the time to
21 sort of interact with Andrew. So, the best course
22 was I reluctantly agreed to it; that the best
23 course was to submit a statement in which I said
24 this. And I said it at the time, but it bugged me

1 at the time. And the more and more I thought
2 about it, this was the administration's belief
3 that: You should have let the state police handle
4 this. But the people urging me to say this -- I
5 go back twenty years. I served in the previous
6 administration. They didn't understand; it's my
7 humble belief. My own people didn't understand
8 the degree to which we control the aircraft, not
9 the State Police. We sign off on its use. We're
10 responsible for its use not only for Mr. Spitzer
11 for everybody else. And to sort of pretend, oh,
12 Darren -- this is what they tell me. There's an
13 appearance problem. You didn't do anything wrong,
14 Darren but there's an appearance problem here.
15 You should have let the State Police handle it. I
16 thought then, as now, it's disingenuous to pretend
17 the administration was not controlling the
18 aircraft and making the decisions as to who would
19 use it, but to instead let the State Police
20 announce our decisions on use of aircraft. Why
21 would the State Police in my mind be the source of
22 information on this matter when we controlled it?
23 That's what I wanted to convey to him. And I
24 think my people, if I ever had to do it again, I

1 would talk to him. I have talked to nobody since
2 this happened, and I was an always frustrated why.
3 What the heck happened? We didn't do anything
4 wrong. Everything was ethical; everything was
5 legal. Everything occurred in a way we always
6 handled it; we, being the previous administration.
7 And this was the stumbling point with my friends,
8 my dear friends and colleagues in the
9 administration. Can kept telling me: You should
10 have let the State Police handle it. And I kept
11 saying back, "But we controlled it." That's what
12 I want to like -- if it came up. I didn't mean
13 for this to be an issue in this moment in our
14 exchange. But, since you looked at it, it was
15 something that I wanted to raise at the end of it.

16 Q. I believe it's obviously important to you to
17 get it out on the table.

18 A. I don't want to say that -- I don't want to
19 be like in some way passing the buck or saying
20 anything that is untoward toward the
21 administration. I think we did the right thing.
22 It's just that at strategic moments there were
23 some mistakes. Not unethical or illegal mistakes,
24 but errors of judgments. And this is one; right?

1 To suggest that this all could have been handled
2 differently and the State Police would have
3 handled it -- if the State Police handled it, to
4 me doesn't make sense. I'll give you one aside.
5 I am drifting a little bit and I apologize for
6 doing so. If it was as it was in the old days,
7 that the Department Environmental Conservation
8 controlled the State Aviation Unit or housed the
9 State Aviation Unit there wouldn't have been a
10 controversy because no one would have said, "You
11 sicced EnCon on Joe Bruno. You had EnCon spy on
12 Joe Bruno. It just doesn't have the same feel.
13 State Police, at some point in the Pataki
14 administration they switched the Aviation Unit
15 from EnCon to the State Police. And this is well:
16 Why did you talk to the State Police? Because the
17 State Police are the only repository for
18 information as a result of that switch. You could
19 turn, I could turn to nobody else but the State
20 Police for information on use of the aircraft.

21 Q. Just so the record is clear, you had said --
22 you made reference to the prior administration.
23 That wasn't the Pataki administration; that was --

24 A. No. Pataki shifted it from Environmental

1 Conservation to State Police.

2 Q. I didn't want to interrupt you, but I think
3 that you were referring to Attorney General
4 Spitzer's administration but the records will --

5 A. Remember, I served six years as a press
6 officer and senior official in the Cuomo
7 administration.

8 Q. I understand. When we talk about the prior
9 administrations it would be helpful that you
10 identify the specific administration.

11 A. Sorry.

12 Q. You are saying that -- When did you begin
13 engaging the services of your present counsel?

14 A. Terry?

15 Q. Yes.

16 A. It was awkward. He was the first person I
17 could get a hold of when they advised me that
18 their interests and mine might diverge. I had him
19 for only a short amount of time, twenty-four hours
20 when we were forced to make this call about
21 engaging Andrew Cuomo. That was the frustrating
22 thing because even Terry said, "Why the rush?"

23 Q. So, you engaged Terry on -- was it July 28?

24 MR. KINDLON: I can clarify. As I said

1 to you before we went on the record, my wife and I
2 had gone London. And she went on to Israel and I
3 came back to Albany. I was walking through Albany
4 Airport having just flown in, and I just turned my
5 cell phone on. And it was about 6:30 at night and
6 I received a telephone call from Judith Enck
7 (phonetic) who works in the executive chamber.
8 And I have known Judith -- I did a same sex
9 marriage case and an appeal in that case. She
10 said to me that one of her colleagues need help,
11 could I help. I said, "Sure. I'm just a little
12 jet lagged right now, but have the person call
13 me." And, quite frankly, I thought it was
14 somebody who had done something inappropriate with
15 an underage girl. I had no more information than
16 one of our colleagues needs counsel.

17 I was in my car driving away from the
18 airport and Darren called. And I said to Darren
19 -- and we didn't discuss the facts at all, just,
20 name, rank, serial number. I said, "Where are
21 you?" And he said, "I'm at the Capitol." I said,
22 "I will just drive downtown and I will meet you,"
23 because my family was away. So, we met like in a
24 spy movie on a park bench across from Sheridan on

1 his horse. And we had a very brief conversation
2 and agreed to get together the following day. So,
3 the following day was Saturday and we spent some
4 time on Saturday. And I asked Darren to get me
5 some records.

6 MS. TOOHER: The date on this, Terry,
7 Saturday --

8 MR. KINDLON: Saturday was the 21st.
9 Sunday was the 22nd. On the morning of the 22nd,
10 Sunday, Darren came down from Saratoga County and
11 I drove out to Wolf Road and we met, not exactly
12 in the middle but sort of in the middle, and
13 Darren gave me some records which I then took home
14 and read. It was that afternoon, Sunday afternoon
15 that we found out that the Cuomo report was in the
16 can. It was done. And it was just after he had
17 -- just as he was coming to have counsel. I
18 didn't really understand all of the facts yet. I
19 had no prior knowledge of this, so I had to start
20 from scratch. By the time I was just beginning to
21 understand it, it was too late for us to speak to
22 Cuomo or anyone else. It was a done deal.

23 INTERVIEWEE: They had given me a list
24 of attorneys and I called the three names on the

1 list and Terry was the first one.

2 MS. SULLIVAN:

3 Q. "They"?

4 A. Yeah, Mr. Pope and Mr. Maloney, the
5 Governor's Counsel, Special Counsel designated to
6 review the matter. And I called all three names
7 on the list and, thankfully, Terry got back to me.

8 BY MR. TEITELBAUM:

9 Q. Let me take you through the document that
10 you submitted to the Attorney General.

11 A. Okay.

12 Commission Exhibit was marked for
13 identification.)

14 Q. Mr. Dopp, we have what has been marked as
15 Commission's 74. It's a copy of a document. Can
16 you tell us what the document is?

17 A. This is a statement that I was asked to
18 submit to conclude the Attorney General's inquiry.

19 Q. And, it has the name Darren Dopp and a
20 signature. Is that your signature --

21 A. Yes.

22 Q. -- or a copy of it. And, on the bottom,
23 "sworn to before me this 22nd day of July 2007."
24 Do you recognize the signature of the notary?

1 A. Yes.

2 Q. Whose signature is that?

3 A. Counsel to of the Governor, Mr. Nocente.

4 Q. You swore to the truth of the document to

5 Mr. Nocente?

6 A. And others who were present at the time.

7 Q. Who was present when this document was

8 signed?

9 A. Mr. Maloney, Mr. Pope, Mr. Nocente, and Mr.

10 Kindlon.

11 Q. And can you tell us how this document came

12 to be?

13 A. It was drafted for me and I signed it

14 because I was urged to do so and believed at the

15 time that it would be in the interest of the

16 administration and myself.

17 Q. Did this document go through a prior draft?

18 Is this a one-shot deal, as it were?

19 A. They put it in front of me I read it and

20 signed it.

21 Q. Who was the person who put it in front of

22 you?

23 A. Mr. Pope and Mr. Maloney. I think Mr.

24 Maloney actually handed it to me.

1 Q. You had an opportunity to discuss with Terry
2 whether you should sign it before you signed it?

3 A. A brief opportunity, yes.

4 Q. And, what was said to you by persons whom
5 you described who were present other than Mr.
6 Kindlon concerning this document?

7 A. If I did so, the matter would be concluded.

8 Q. Who said that?

9 A. Mr. Maloney and Mr. Pope.

10 Q. Did Mr. Nocente say that?

11 A. No.

12 Q. Did Mr. Nocente say anything?

13 A. When I protested -- I'm sorry. When I
14 protested at this session and expressed the belief
15 that I had nothing for which I should be ashamed
16 and I was convinced I could speak in a way that
17 would be compelling to Mr. Cuomo -- I said I can
18 talk to him. I can convince him that nothing
19 inappropriate happened. He interjected that they
20 were -- they didn't believe us and they were
21 intent on, you know, prosecuting us; that the
22 Attorney General's office wanted to prosecute me
23 for a chime, and that this was best for all
24 concerned that I did sign it.

1 Q. There was Mr. Nocente?

2 A. This was Mr. Nocentie. He said, "Andrew is
3 a moderating influence and this is best, Darren."

4 Q. What did you understand Mr. Nocente to mean
5 by Attorney General Cuomo being a moderating
6 force?

7 A. I kept saying to him that I don't believe
8 that that is what the situation is. I believe in
9 my heart that if I talk to Andrew and explain what
10 happened and why, that they're not going to do
11 this. And they said it won't do any good.

12 Q. The term "moderating influence," I am having
13 difficulty understanding. What was your
14 understanding of what was meant?

15 A. I looked at them and said, "Andrew wants to
16 prosecute me for this?" And they said, "His
17 people do." And I said, "And, he's behind that?"
18 "Well, he's trying to moderate them," is what he
19 said to me.

20 Q. What else did Mr. Nocente say?

21 A. That was the extent of that session. They
22 expressed, you know, concern about what a
23 difficult decision it was for me. It was written
24 on their faces. But, again, I think our

1 recollections are the same on this. It was sort
2 of: Do this. Terry's comment was, "It's like a
3 non-apology apology. It doesn't box us in in any
4 way down the road. But if, indeed, this wraps up
5 the case and this wraps up the inquiry, it's up to
6 you." And I said to him I just -- every time in
7 my life that I haven't gone to the people involved
8 and laid it all out and told the truth but instead
9 stood down because it might be an awkward
10 discussion or anxiety ridden discussion, I have
11 gotten into trouble. And, man, was that ever
12 true.

13 Q. When you say you said to "him" you mean Mr.
14 Kindlon?

15 A. Yes. All of them were there at that time.

16 Q. What did Mr. Pope say?

17 A. I don't recall him saying anything. He just
18 had that look on his face.

19 Q. What did you interpret the "look" to convey
20 to you?

21 A. Kind of pity and sympathy that I reacted so
22 negatively. And it's like he's my friend and good
23 friend over the last decade. And I just kept
24 saying to them it's like these are lawyers.

1 Forgive me for insulting each one of you, but
2 lawyers don't understand communication issues
3 sometimes. And I said this isn't going to make
4 this issue go away and you are dreaming if you
5 think so.

6 Q. Did Mr. Pope tell you this issue would go
7 away if you signed 74?

8 A. He had they were animals and we couldn't
9 reason with them.

10 Q. Mr. Maloney was present, too?

11 A. Mr. Maloney was in and out dealing with
12 telephone calls, but he agreed.

13 Q. He said the same thing, in substance, that
14 Mr. Pope was saying?

15 A. Yes; that they wouldn't be reasoned with,
16 that they weren't listening to us.

17 Q. And if you signed 74 the matter would go
18 away?

19 A. Right.

20 Q. And did Mr. Kindlon speak at that meeting
21 with the other lawyers present?

22 A. He had a couple of questions, as I recall,
23 about the substance of it. I don't recall the
24 exact details. He was being supportive of me.

1 And, you know, his counsel at the moment was "It's
2 a non-apology apology. It doesn't box you in
3 moving forward."

4 Q. Did anybody make reference to the Governor
5 at this meeting?

6 MR. KINDLON: I don't think so.

7 A. I don't recall it. I take it back. I said,
8 "Is this good for the Governor?" And the answer
9 was, "If we wrap up the investigation you are
10 going to take a professional hit, but we'll all
11 live to fight again." And this is what I was
12 doing, you know. (Indicating)

13 Q. You said you were saluting?

14 A. I just believed it was the right thing to do
15 for the administration.

16 Q. Metaphorically, you were saluting? You
17 were being a good soldier; is that fair to say?

18 A. I am not at this moment going to be anything
19 other than that. This is a heavy-duty game.
20 There is a tremendous political battle underway.
21 I was always prepared. You know, you live in this
22 business knowing that at some point it can come
23 back to bite you. But it's just in this matter I
24 don't believe I did anything wrong. And I didn't

1 have the opportunity to explain that. And I had
2 to shut up pretty much for two months when I got
3 kicked around in the media. I was a plotter, a
4 leaker, a liar, misuser of the State Police, and
5 all of these things. And at this moment I am
6 thinking, okay, I guess this concludes the matter.
7 But I had a gut feeling that it wouldn't and bad
8 things would happen and they most assuredly did.

9 Q. I am going to ask you some questions about
10 if the last sentence in this Exhibit 74. You say,
11 "I now recognize that any requests for State
12 Police records relating to those travels should
13 have been handled through other channels." Listen
14 to my question, if you would. Did you in fact
15 genuinely recognize that any requests for State
16 Police records relating to those travels should
17 have been handled through other channels when you
18 signed 74 and had it notarized on July 22nd?

19 A. Can I consult with Terry on the matter?

20 Q. Unless there is privilege I would like to
21 have your answer.

22 A. I knew what I was signing, but did I
23 wholeheartedly believe that particular statement,
24 no.

1 Q. When you say "wholeheartedly" I want the
2 record to be clear for all of our benefits here
3 because, really, what I am asking you -- and it
4 boils down whether that part of the sentence was
5 truthful. Do you, in fact, recognize that any
6 requests for State Police records relating to
7 those travels should have been handled through
8 other channels? Was it, in fact, truthful that
9 you recognized it or were you being pressured?

10 A. I apologize if that's the way I come off,
11 but I certainly recognized that as an option. It
12 was an option to use other channels. I did not
13 use other channels, but it certainly most
14 assuredly was an option for us to let the State
15 Police handle any inquiry regarding Senator Bruno.

16 Q. I don't think this is a quibble, so I think
17 we need to get this very clear. There is a
18 difference between using other channels as an
19 option and the words "should have been handled."
20 You are saying here that you should have done
21 this? Now, I want to know whether on July 22,
22 2007 when you signed this; that that was your
23 genuine view that this was something you should
24 have done and you didn't do it. And I think you

1 can say yes or no to that, if you can.

2 A. Not then and not now.

3 Q. And the second part says, "and I regret any
4 appearance of impropriety that was created by the
5 manner in which this information was sought and
6 obtained." And I ask you the same question. On
7 July 22, 2007 when you signed 74 did you in fact
8 regret any appearance of impropriety or -- let me
9 withdraw that. On July 22, 2007 did you think
10 that there was an appearance of impropriety in
11 what you did?

12 A. I didn't think when properly explained there
13 would be any appearance of impropriety. But
14 remember what transpired in the days leading up to
15 this. A furor, a "scandal" that brought state
16 government to a halt. That's a sincere statement.
17 I have been maligned, vilified. My family
18 suffered. That's one thing. The other thing is
19 the fact that I'm involved with something that
20 ruined state government, set aside every
21 meaningful progress. So, that's a sincere
22 statement that I regret everything that has
23 happened. But the statement that comes before, I
24 still -- I mean I did it. I signed it. I am not

1 apologizing. I can't hold back from it because I
2 did it. But I didn't sincerely believe it at that
3 moment or now.

4 With regard to the second part, do I
5 regret what has transpired, the appearance of a
6 scandal and all the things that have come about?
7 It has ruined my career in public service, nothing
8 I value more than that, and brought state
9 government to a halt.

10 Q. In 74 when you referenced "appearance of
11 impropriety," did you believe when you signed this
12 that there was an appearance impropriety that had
13 been committed by you?

14 A. No, I don't believe I did anything improper.
15 But it was clear to me from reading the newspapers
16 that it had been established as egregious
17 misconduct. I misused the States Police. We
18 spied. We did all of these things. It's like
19 wait a minute. No, we didn't. But it was, you
20 know, it was out there.

21 Q. Did you say to Mr. Nocente or Mr. Pope or
22 Sean Maloney that, in fact, that, in fact, it was
23 appropriate to make the request to the State
24 Police?

1 A. Repeatedly.

2 Q. And you indicate to them that it was your
3 view that that was the proper channel?

4 A. Yes.

5 Q. And you said that to them on or before July
6 22nd?

7 A. Yes, when they were conducting their
8 internal review. And at any tried to support that
9 by giving them the history of how this matter had
10 been handled previously and that there was no
11 alternative but consulting the State Police.

12 Q. Did you indicate -- did you indicates to any
13 of those three people that I just named at or
14 before the time that you signed this -- forgive my
15 loose language -- that it was your view you were
16 taking a hit by signing this document?

17 A. I didn't say that.

18 Q. In words or substance; those are my words.
19 Do you understand what I mean when I say "taking a
20 hit"?

21 A. They said that I would have to do that and I
22 was prepared to do that.

23 Q. They said you would have to take the hit?

24 A. Right. It was couched as: You are going to

1 take a professional hit here, but this is the path
2 to closure.

3 Q. Did you tell them you didn't want to do
4 that; it was you are preference not to do it?

5 A. Saying it in that manner I believe would
6 have been disloyal. Instead, I said: If we
7 explain this no one will have to take a hit.

8 Q. Who typed Exhibit 74?

9 A. I can't -- I don't know the answer to the
10 question.

11 Q. Do you remember the person who had it in his
12 hand that gave it to you?

13 A. I think it was Mr. Pope.

14 Q. I was curious about this and I would like to
15 you to explain this to me. Is that weeks after
16 you swear to what is contained in 74 you submit a
17 statement to the Ethics Commission, referring now
18 to 73, which is pretty close to the final -- do we
19 have the final? Let's mark the final.

20 (Commission Exhibit 75 was marked for
21 identification.)

22 Q. 75 is the final version of the statement
23 that you submitted to the Ethics Commission, if we
24 can represent that to you. But take your time and

1 read it to double-check us if you like?

2 A. Yes.

3 Q. You say in the last paragraph on page two of
4 75 -- that is a copy of your signature; right?

5 A. That's correct.

6 Q. This was reviewed with your counsel before
7 you submitted it?

8 A. Yes.

9 Q. Did he edit it at all?

10 A. He made a few suggestions, yes.

11 Q. You say, "In retrospect, however, it is
12 clear that given Albany's poisoned political
13 atmosphere, I should have referred reporters to
14 the State police for any and all information on
15 Senator Bruno." Now, in your mind tell me the
16 difference between that statement and the last
17 sentence in Exhibit 74.

18 A. There is not a dramatic difference. It
19 would have provided a little more "cover" in the
20 parlance if it was the State Police answering the
21 question. But the reality, again -- and the
22 reality is that it might or might not have had an
23 impact. Maybe having the State police being the
24 source of information on Bruno -- if you take a

1 look at the documents it's flight manifests and
2 it's the travel itineraries. To me, when I looked
3 at them, three or four sentence -- no big deal.
4 Flight manifests since time immemorial have been
5 released. The itineraries were new. But maybe
6 having the State Police be the source of
7 information would have somehow mitigated Bruno and
8 Spitzer's opposition to sort of say it was a kind
9 of, you know, orchestrated effort to smear him.
10 Maybe, maybe not.

11 Q. When you say in 74, "I now recognize that
12 requests for State Police records relating to
13 those travels should have been handled through
14 other channels," was that in your mind
15 substantively the same as "I should have referred
16 reporters to the State police for any and all
17 information on Senator Bruno?"

18 A. Yes.

19 Q. Do you genuinely believe that?

20 A. Again, maybe it would have made a
21 difference. Maybe not. I don't think so, though.
22 I don't think so. I don't think it would have
23 made one whit of difference.

24 Q. I want to be frank with you. My concern on

1 74 is that you were pressured into signing it,
2 and I want you to tell us whether, in fact, from
3 your perspective you were. And I want you to be
4 frank with me.

5 A. I served the man for a long time. And they
6 were my friends and colleagues. And I don't want
7 to be placed in a situation where I am perceived
8 as disloyal because after getting hammered the way
9 I have, there is one thing that I have left. And
10 that's like the sense that I wasn't disloyal. And
11 you are coming close to like stripping that from
12 me, and I don't know how to respond to it.

13 Q. Our discussion here, Mr. Dopp, is really not
14 about loyalty or disloyalty. And, I am not trying
15 to -- believe me, we are not trying to establish
16 that you were disloyal in any way, because this is
17 a sworn-to document. And I think for everyone's
18 benefit I want to make sure that you have the
19 opportunity to provide the full context of how
20 this thing happened. And when I say "this thing"
21 I mean 74. So, if in your view you were pressured
22 to do it, or somebody said, for example: Listen.
23 You can sign it, not sign it, that would be okay.
24 But your testimony up until now --

1 A. I apologize, yes.

2 Q. No, no. You don't need to apologize. You
3 don't need to apologize. I understand there is a
4 reluctance because of the issue of loyalty. But I
5 think it's important, I think, for everybody the
6 clarity of this. And it's really not disloyalty.
7 It's what the truth is. And I want to know the
8 truth on this. Did you feel pressured?

9 A. I wanted to testify before the Attorney
10 General. I was encouraged not to. I was told
11 that if I said certain things the matter would go
12 away and that it was best for all concerned.

13 Q. And, the "certain things" is the last
14 sentence in 74?

15 A. Exactly.

16 Q. Had you testified before the Attorney
17 General would you have said what is in the last
18 sentence of 74?

19 A. I would have engaged him about that topic.
20 I would have said: The State Police are the only
21 people, the only entity you can turn to for this
22 information. Say act of inquiring about airplane
23 use from them is accurate, ethical, appropriate.
24 And, then, secondarily when it comes to having the

1 State Police answer to a decision made by the
2 executive, it wasn't the State Police's role to do
3 so. I mean it's like the point that I was unable
4 to impress upon anyone in the administration was
5 that we control the aircraft. We should answer
6 for its use, not the State Police, because they
7 take their direction from us. The Secretary to
8 the Governor, Mr. Baum and Marlene Turner sign off
9 and they can refuse. In previous administrations,
10 the Cuomo administration we routinely said no to
11 the Majority Leader at the time. No, you can't
12 use the aircraft because we don't think it's an
13 appropriate use. So, this is the position of the
14 administration that I should have used the State
15 police to address these kinds of questions.
16 Internally, I said that doesn't make any sense,
17 but I am a press officer. I don't call the shots.
18 I have the ability to respectfully register
19 concerns and bring things to their attention, but
20 I don't call the shots.

21 Q. That was the perspective of the
22 administration, I take it, and the position of the
23 administration is articulated by the three
24 persons, David Nocente, Mr. Pope and Mr. Malone.

1 A. Yes.

2 Q. But that was not your perspective; correct?

3 A. As we delve further into it you will see me
4 explaining that I really think we ought to do an
5 internal review. I agreed, at least at this
6 moment, with Peter Pope who said we ought to refer
7 it to the Inspector General. But, again, they
8 give me the ability and they listened carefully to
9 me, but decided otherwise.

10 Q. I want to get an answer to my question. My
11 question is: You said from the perspective of the
12 administration is that it should have been
13 referred to the State Police --

14 A. Yes.

15 Q. That was not your perspective?

16 A. Yes. I had a different review.

17 Q. And you articulated a different view at or
18 before the time you signed 74?

19 A. Yes.

20 Q. And let me tell you the difference that I
21 see between the first sentence of the last
22 paragraph of 75 and the last sentence on 74, and
23 you tell me if I have got this right. The last
24 sentence on 74 you seem to be saying that you

1 should have referred the reporters to the State
2 Police because that would have been more -- more
3 responsive to the "poisoned political atmosphere
4 in Albany"?

5 A. Well, from a communications standpoint it
6 might have had an advantage in providing a little
7 bit of insulation against those accusations.

8 Q. But in 74, that's not what you're saying.
9 In 74 you are saying that you, in fact, recognize
10 that this should have been handled through other
11 channels. And what you are saying to us -- and I
12 want to get it straight -- is that that wasn't
13 your belief.

14 A. I kicked it around a lot. I couldn't
15 imagine another channel that was appropriate, if
16 not the State Police. I said could we maybe have
17 somebody else do it, and the answer was no.
18 That's why in the process I was among those
19 advocating for referral to an outside agency.

20 BY MS. SULLIVAN:

21 Q. On 75, the last paragraph you, "I should
22 have referred reporters to the State Police for
23 any and all information on Senator Bruno." Had a
24 reporter gone directly to State Police would they

1 have received the information in response?

2 A. That's the kicker. The State Police would
3 have come back to us.

4 Q. How so?

5 A. We were the ones to sign off. They would
6 have checked with us. And we would -- remember,
7 we were the ones that approved it; right? And
8 they would have had to turn back to us and say:
9 Do you want us to release this information? And
10 we are announcing your decision to sanction.

11 Q. The reporter was asking for ground
12 itineraries of Joseph Bruno, not just --

13 A. And manifests and the flight approvals.

14 Q. But the itineraries, they were asking for
15 itineraries from the State Police?

16 A. That part of the package would have come
17 directly from the State Police.

18 Q. But the itineraries that were turned over
19 didn't exist at the time.

20 A. Is this the moment that I sort of broach
21 that issue? I don't know that to be a fact. To
22 the contrary, I was told records exist going way
23 back. And I think you saw the Times Union this
24 weekend sort of corroborating that they did exist

1 going way back. So I was under the impression
2 after being informed on this specific point from
3 Bill that those very records did exist. So, I
4 mean -- you are absolutely correct in saying the
5 State Police could have and perhaps should have
6 been the source of that particular information.
7 But everything else, you know, again, would have
8 come through us. So you have to understand the
9 degree to which the State Police and us work
10 together.

11 MS. SULLIVAN: We will come back to this
12 later.

13 BY MS. TOOHER:

14 Q. We're a little out of sequence. I am going
15 to ask you to go back -- I think it's important
16 especially in light of our discussion -- that we
17 look at the facts and circumstances leading up to
18 what is now Commission 74. When we started off or
19 left off we took up the issue that we have with
20 Commission 74. We were talking about your
21 practices in the chamber in responding to requests
22 for information concerning the airplane. And the
23 last we spoke you had indicated when we were
24 speaking about that you were in contact with Bill

1 Howard about a request from Fred Dicker concerning
2 the flight manifests --

3 A. Right.

4 Q. -- just taking you back a little bit. And,
5 in response to that request I believe you
6 testified earlier that you reached out to Mr.
7 Howard concerning information; am I correct?

8 A. Correct.

9 Q. And, that was concerning the Pataki
10 administration?

11 A. That's right.

12 Q. Was there a point in your discussions on the
13 Pataki charter that you turned your focus to
14 Senator Bruno?

15 A. Not at all. It never came up.

16 Q. I am going to show you what has previously
17 been marked as Commission's 58 and ask you if you
18 recall seeing this document before.

19 A. I do.

20 Q. Can you identify this document?

21 A. Mr. Howard is writing to me explaining the
22 past use of the aircraft according to the Pataki
23 policy.

24 Q. I am going to direct your attention to the

1 last line of this e-mail. It says, "I'm getting
2 more information on the specifics of today with
3 the passengers, et cetera." And the date the May
4 17, 2007. Do you know what he is referring to
5 there?

6 A. I think there was another trip by Senator
7 Bruno on that day, another aircraft trip.

8 Q. Why is Mr. Howard making that reference in
9 an e-mail that is otherwise pertaining to the
10 Governor's trips?

11 A. I think simply because we commenced the
12 process of reviewing both the Governor's use of
13 the aircraft and Senator Bruno's use of the
14 aircraft. And we did that earlier in the month
15 and this is May 17th, the middle of the month.

16 Q. When you say you had commenced the process
17 of reviewing both the Governor's and senator's
18 use, can you explain?

19 A. The end of April, beginning of May, there
20 were reporters' questions about both Eliot's use
21 and Joe's use of the aircraft. It was at that
22 point that I turned to Mr. Howard and informed him
23 of those inquiries. I also told Eliot, told Rich,
24 and told others on the second floor that there

1 were requests for information about the use of the
2 aircraft. This presented a problem for us
3 because, as I described, we control the use of the
4 aircraft and we were responsible for appropriate
5 use by Eliot and everyone else. The review that
6 followed from that was a close examination of
7 Eliot's use of the aircraft and Senator Bruno's
8 use of the aircraft and anybody else who might
9 have used it.

10 Q. Now, when you had this discussion about
11 reviewing the use of the aircraft who did you have
12 this discussion with?

13 A. Initially, I informed the Governor's
14 Secretary -- Secretary to the Governor and
15 counsel.

16 Q. When you say you "informed" them, did you
17 actually discuss it all of you together? Did you
18 send an e-mail?

19 A. I talked to them verbally. And then later
20 on we had a series of meetings about the topic.

21 Q. I just want to put this in a time frame. Is
22 this prior to the 17th?

23 A. One of those meetings would have occurred
24 prior to the 17th and others occurred after.

1 Q. The meeting prior to the 17th, who was
2 present at that meeting?

3 A. It would have been at our normal staff
4 meeting. We have an early morning staff meeting,
5 and it would have come up several times in the
6 beginning of May that reporters were interested in
7 use of the aircraft.

8 Q. And, they were interest in Governor's use of
9 the aircraft?

10 A. Yes. And, you remember the sort of sequence
11 for the context for it, just a ton of media
12 interest on just the Governor's trips to Florida
13 and California for fundraising purposes. And, you
14 remember -- or maybe you don't remember -- Senator
15 Bruno was criticizing him intensely for leaving
16 the state and leaving the state for raising funds
17 at a time he is advancing campaign finance as a
18 priority.

19 Q. So, would it be fair to say that the press
20 interest was in the Governor and your interest at
21 his point is in both the Governor and Senator?

22 A. Early in May the senator's use of the
23 aircraft was also broached by reporters.

24 Q. Who broached that topic?

1 A. A number of them. And I can't explain the
2 exact catalyst for that. There were a couple of
3 web blog items noting he was traveling to New York
4 City for a fundraiser. They actually advertised
5 their big event and it was noted. The question
6 came to me: Was Joe using the state helicopter to
7 go to the event?

8 Q. How did that question come to you?

9 A. Verbally by a couple of reporters. And,
10 again, the blogs were the initial catalyst. But
11 you'll see me sometimes, and even in my e-mails,
12 conveying information, hunches, ideas. I think
13 what was going on, I think the Senate Minority was
14 looked in a death match with Joe Bruno. They were
15 telling people: Joe's jetting off. Joe's a
16 hypocrite. At the time he's jetting off he's
17 criticizing Eliot for fundraising and he's
18 fundraising himself. So, someone on the other
19 side was working it and trying to get reporters
20 interested in it because on a given day I had
21 maybe three or four inquiries from reporters all
22 saying the same thing.

23 Q. Were you in communication with the Senate
24 Minority at that time on this issue?

1 A. No, never.

2 Q. Have you ever been in communication with the
3 Senate Minority on this issue?

4 A. No. I don't recall.

5 Q. You don't recall discussions with Senate
6 Minority staff concerning Senator Bruno's use of
7 the aircraft?

8 A. Never.

9 Q. And, after you have these meetings and there
10 is this inquiry do you take any action in that
11 regard?

12 A. If you can forgive me, it's an
13 anxiety-ridden event to be here. But you cast
14 Herb a look that was kind of strange. Do I have
15 the ability -- does somebody?

16 MR. TEITELBAUM: Let me tell you what
17 "the look" was. I can understand the anxiety.
18 Ms. Toohar looks at me to see if I have any
19 questions.

20 INTERVIEWEE: Gotcha. Forgive me.

21 MR. TEITELBAUM: That's the signal.
22 So's it's all above-board.

23 MS. SULLIVAN: We have anxiety, too.

24 INTERVIEWEE: I just had this vision

1 that someone in the Senate Minority is claiming
2 that I -- Nothing of the kind ever happened.
3 Forgive me for the digression.

4 MS. TOOHER: Could you read back the
5 last question?

6 MR. KINDLON: Complete with "the look."
7 (The pending question was read.)

8 INTERVIEWEE: Could you rephrase it for
9 me?

10 Q. After these meetings, the initial meetings
11 in mid May and you are reviewing the Governor's
12 use of the aircraft and you indicated Bruno's use
13 of the aircraft, did you take any actions
14 concerning that area?

15 A. I, myself, no. You know, we have to sort of
16 delve into what was being discussed on the 17th.
17 And you see an e-mail here where I suggest that we
18 conduct an internal review. There was a lot of
19 discussion about that. It has been portrayed as
20 though the news release was my suggestion, and I
21 said no.

22 Q. We will get to the news release. But, prior
23 to that conversation --

24 A. No action except the initial one which was I

1 wanted to -- I asked Bill Howard: What would you
2 have responsive to FOIL requests on this matter?

3 Q. You asked Bill Howard -- I'm sorry. Could
4 you repeat that?

5 A. The catalyst for the whole thing was
6 reporters asking me the questions. I turned to
7 Bill. I apprised my people and then I turned to
8 Bill and said, "What do you have that would be
9 responsive to a FOIL request on use of the
10 aircraft for the Governor and Joe?"

11 Q. The last line in Commission's 58 is in
12 response to that? I am getting more on the
13 specifics of today with of the passengers"?

14 A. No. I think that would have been the flight
15 Joe took on that particular day. He was getting
16 more information on the specifics of that day's
17 flight. There was an earlier flight, and this was
18 a second flight that was a source of concern.

19 Q. The earlier flight is the May 3-4 flight?

20 A. Yes.

21 Q. You specifically said to Mr. Howard, "What
22 can you get in response to a FOIL request on the
23 May 3-4 flight?"

24 A. I wouldn't have phrased it like that.

1 Q. How would you have phrased it?

2 A. I would have said we got a bunch of
3 inquiries on the use of the aircraft by Joe and
4 Eliot. What would be responsive -- What do you
5 have that would be responsive to a FOIL request on
6 this? We would have subsequent dialogue about
7 manifests, schedules.

8 Q. Did you have subsequent dialogue?

9 A. Oh, yes.

10 Q. What was the subsequent dialogue?

11 A. Just, you know, I would have said: What do
12 you have? Reporters want to know about schedules,
13 manifests, any other information. What do you
14 think is available? I didn't have the answer when
15 the reporter originally asked it, but I turned to
16 Billy and he said, "I don't know, but I'll see. I
17 think I know but I'll see." And he came back a
18 couple of days later and said, "It's all the
19 manifests you have seen, Darren." And I said,
20 "Yeah, yeah, yeah. Anything on Bruno's schedule
21 or itineraries?" And he said, "Yes. The records
22 exist going way back."

23 Q. Let me show you what has previously been
24 marked as Commission Exhibit 59 and ask you if you

1 recall receiving this document.

2 A. On that particular day, that trip, he had a
3 meeting with C.V. Starr.

4 Q. "He" being --

5 A. The Senate Majority Leader. He had two or
6 three meetings. And the question was what's this?
7 Is this government business?

8 Q. How did you know he had the meeting?

9 A. I was given the itinerary. I had been given
10 what was actually faxed over. Bill provided to me
11 what was faxed over from Bruno's office. This is
12 what I would have received at the time.

13 Q. (Indicating)

14 A. Yes.

15 Q. I have provided you with a copy of
16 Commission's Exhibit 5. Are you familiar with
17 Commission's Exhibit 5?

18 A. Yes.

19 Q. When did you first see this?

20 A. I can't give you an exact date, whether it
21 would have been somewhere near before the 17th,
22 maybe a day before that.

23 Q. I am going do show you another exhibit
24 marked Exhibit 16, which is another e-mail between

1 yourself and William Howard. Do you recall
2 receiving this?

3 A. Yep.

4 Q. And in this e-mail you refer to, again, C.V.
5 Starr at 12:30, and 3:30 at the Sheraton.

6 A. Bill refers to it, not me.

7 Q. I'm sorry, Bill refers to it -- which
8 appears to mirror the information in Commission's
9 Exhibit 5.

10 A. Yes.

11 Q. Are you saying that you received
12 Commission's Exhibit 5 prior to these e-mails?

13 A. I can't recall which one came first.

14 Q. Did they come in proximity to each other?

15 A. I think so. I think they came on the same
16 day.

17 Q. And, you received Commission's 5 from
18 William Howard?

19 A. Yes.

20 Q. How did you receive it?

21 A. He handed it to me.

22 Q. So, he walked into your office and handed
23 you Commission's Exhibit 5?

24 A. That's what I recall. I think so, yeah.

1 Q. And, did you ever any conversation about the
2 information contained in the e-mails, C.V. Starr
3 and Bruno's meetings?

4 A. Yeah. Like, "What do you think, Billy? Is
5 this governmental business here?"

6 Q. What was his response?

7 A. At the time he didn't know what C.V. Starr
8 was and he said he would check.

9 Q. It appears from Commission's 59 that the
10 information on C.V. Starr that Mr. Howard relayed
11 to you is at 12:20, prior to the more detailed
12 information in Commission's 16. Do you recall how
13 that happened?

14 A. Forgive me for not understanding what it
15 was. I mean maybe it was a situation in which
16 Bill handed me this.

17 Q. "This" being Commission's 5?

18 A. Yes, 5. And, then, maybe I said: Did it
19 actually happen, and then maybe he went back to
20 check if it actually came off as planned. But I
21 can't explain that. I just don't recall.

22 Q. Is your testimony clear, however, that you
23 received Commission's 5 at or about the same day
24 as the prior e-mail on C.V. Starr?

1 A. I just don't recall for sure, but I think
2 so, yes. I couldn't tell you precisely when I
3 received it. It would have been about that time
4 because I would have then commenced the dialogue
5 with Rich and others about the need for a possible
6 internal review.

7 Q. And, if Mr. Howard testified that you had
8 asked him about C.V. Starr out of the blue and he
9 responded with Commission's Exhibit 59 would that
10 be accurate?

11 A. I don't know. I don't know how or why I
12 would come to have an inquiry about C.V. Starr
13 unless there be some basis there. I wouldn't just
14 like ask him what about C.V. Starr. It wouldn't
15 have made any sense.

16 Q. So, you had no familiarity with C.V. Starr
17 prior to your familiarity with Senator Bruno's
18 schedule in Exhibit 5?

19 A. I basically knew it was a big time insurance
20 company, one of the biggest I think there is.
21 But, beyond that it would be like asking about IBM
22 or asking about something else. I don't know how
23 or why I would come to it. I just don't believe I
24 went to him to say: Tell me about C.V. Starr. I

1 would have said: C.V. Starr, what's that? Is
2 that the insurance company?

3 Q. Did Mr. Howard ever indicate to you where he
4 got Commission's 5?

5 A. I don't recall him specifically saying where
6 he got it. I just assumed it was from the State
7 Police. But he pointed out to me the header which
8 I think unfortunately y'all have cut off.

9 Q. The header being --

10 A. One second. I'll show you. It was faxed
11 over from Bruno's office, and your copy doesn't
12 show that, but -- and I know I am jumping ahead a
13 little bit but itinerary information. I asked
14 Bill at one point why does it look different? Why
15 does this look like this and this look like this?
16 And he said, "Sometimes they are in the habit of
17 calling over the information and they take it down
18 in longhand. Other times they actually fax over
19 an itinerary. I mean that kind of -- I never knew
20 about reconstructed records. No one used the word
21 "reconstructed" until I saw it in the newspaper.

22 Q. We will get to that, I'm sure.

23 A. I said, "Billy, you are giving me two
24 different things. Why does this look like this

1 and this look like this?" And he said, "This is
2 faxed over directly.

3 Q. You are pointing to documents that we
4 actually have in the record at this time but not
5 in that version. Do we have copies of Commission's 1,
6 2, 3 and 4 as well?

7 A. 5 looks a little different from the others.

8 Q. May I take a look at those?

9 BY MR. TEITELBAUM:

10 Q. Do you have documents you would like to
11 share with us?

12 A. It's basically part of the FOIL package that
13 you already have. I would like to be able to
14 write a note for follow-up and elaborate on a few
15 points on this.

16 BY MS. TOOHER:

17 Q. Mr. Dopp, I am going to give you a stapled
18 package that's marked Commission's 1 through 4.
19 The documents that you were referring to, you have
20 Commission's 1, Commission's 3, and Commission's
21 5. I have already given you Commission's 5.

22 A. They correspond exactly except you have an
23 extra one for the 27th that wasn't a part of the
24 official package. And you lack on your version of

1 Exhibit -- actually, you lack you know --

2 Q. What is Commission's 5?

3 A. In this package.

4 Q. So, the documents that you have in your
5 possession in your folder are Commission's 1,
6 Commission's 3, and Commission 5; is that correct?

7 A. Yes. And those are the documents that were
8 released to reporters at the time.

9 Q. At the time you received Commission's 16 you
10 were only in possession of Exhibit 5; is that
11 correct?

12 A. And the one for the 3rd. I was in possession
13 of two, the one for the 3rd and the one for the
14 17th.

15 Q. So, you already had Commission's 1 --

16 A. Yes, I think so.

17 Q. -- in this form?

18 A. I take it back. No. He would have provided
19 that later. The only -- the first one -- He told
20 me the records existed going way back. And I
21 said, "Could that be part of the FOIL package"
22 because it's a public document. And he said,
23 "Yes. I'll see what I can do to go get it."

24 Q. I understand, and we are very eager to hear

1 your story. But if hope don't keep it in a
2 chronological order it gets very difficult to get
3 it all on the record.

4 A. Sorry.

5 Q. You indicated that after receiving
6 Commission's 5 and the itinerary you prepared a
7 statement?

8 A. Yes.

9 Q. And what was the purpose of preparing that
10 statement?

11 A. It was evident from that document,
12 Commission's 5, that there might be an issue, you
13 know. And what I thought was as a result of this
14 information really being dumped in our lap we
15 should at least review it.

16 Q. When you say you thought there might be an
17 issue, what did you think the issue was?

18 A. Bill was saying he might not be living up to
19 the spirit of the disclaimer, the spirit of the
20 disclaimer that only official business would be
21 pursued.

22 Q. When you say "Bill was saying" -- did he
23 volunteer this information? Did you meet with
24 him?

1 A. When he dropped it off I said, "What do you
2 make of it?" He said, "Well, it does raise the
3 question of whether he's doing official business
4 or not."

5 Q. And, what brought up the subject of the
6 disclaimer?

7 A. One just follows from the other. Remember
8 what our charge is. Our charge is to ensure the
9 use of the aircraft is proper. And if there is a
10 question about whether it's proper or not. We are
11 obligated, a serious obligation to sort of review
12 it.

13 Q. What is your understanding as to proper use
14 of the aircraft at this time when you are first
15 speaking with Mr. Howard about the 17th?

16 A. The spirit of the disclaimer and the spirit
17 of the policy we put in place is that it should be
18 official business only.

19 Q. Was that your understanding?

20 A. Yes.

21 Q. And did Mr. Howard explain that was his
22 understanding?

23 A. I don't think I ever really discussed it
24 with Bill in any great detail. But we discussed

1 it when it was brought to the group.

2 Q. I am going to show you what has been marked
3 as Commission's 41. Have you seen this document
4 before?

5 A. Yes. I wrote it.

6 Q. When you say you wrote it, the top of the
7 document contains an e-mail from Richard Baum to
8 you and then below is a statement by Darren Dopp.

9 A. Yes.

10 Q. You wrote the statement?

11 A. I wrote the statement. And what I am doing
12 here is saying perhaps we should conduct an
13 internal review this response to the media
14 inquiries. We could if y'all think it's an
15 appropriate thing, put out a statement like this.

16 Q. Who are "y'all"?

17 A. Sorry. It would be Mr. Nocente, Mr. Baum,
18 Mr. Spitzer, and I think Marlene was in the mix as
19 well. But, basically, it's like Rich, Eliot, and
20 David.

21 Q. So, May 17th at the time of this e-mail you
22 are discussing the statement contained in
23 commission 41 with Mr. Nocente, Mr. Baum, Mr.
24 Spitzer, and you believe somewhat with Marlene

1 Turner?

2 A. I think she was in the room as well.

3 Q. When you say "in the room" this meeting took
4 place face to face?

5 A. In Rich's office, where we frequently met.
6 It wasn't like a formal sitdown or anything, but
7 we sort of gathered around the table. And I said
8 questions raised, you know. This is one avenue
9 that we could pursue. We could handle it in this
10 fashion.

11 Q. Did you present the statement by you
12 contained in 41 to this group?

13 A. Yes.

14 Q. What was the response to that?

15 A. We talked about it. Each person had a
16 separate view.

17 Q. What did Mr. Baum say?

18 A. Can I go to Mr. Nocente first? Nocente was
19 like, oh c'mon, Darren. You know, of course, he's
20 just going to say that it was government business
21 was conducted.

22 Q. He, being Senator Bruno?

23 A. Right. And I said, "Yeah, probably." And,
24 then, Mr. Baum said, "You wonder. You wonder what

1 he is doing, but without having a schedule how
2 would we know?" Now, I think at some point, you
3 know, Eliot might have come in or we discussed it
4 with Eliot later on. And he, too, was of the
5 notion that without having access to Joe's
6 schedule you just didn't know whether government
7 business was being conducted or not.

8 Q. Did you have Commission's 5, Senator Bruno's
9 schedule, during this discussion?

10 A. Yes. We had this itinerary.

11 Q. Commission's 5?

12 A. Yes, we had 5. But, again, separate an
13 itinerary from, you know, a schedule. And the
14 review of the itinerary here as Commission's 5
15 shows C.V. Starr. And we all sort of looked at it
16 and said, yes, it's a business. He could have
17 been conducting business there.

18 Q. At the conclusion of this meeting was there
19 any direction from any of those present?

20 A. We all reached the same consensus that we
21 would not proceed in this fashion, stand down, and
22 continue to monitor in this fashion.

23 Q. When you say "not proceed in this fashion,"
24 what do you mean?

1 A. We wouldn't conduct an internal review and
2 not release a statement of this kind.

3 Q. Were you advised by Mr. Baum or Mr. Nocente
4 that that this was a non-issue; that there was no
5 problem with the senator's using the plane in this
6 fashion?

7 A. Nothing leak that ever occurred. We didn't
8 know. And we left it without knowing Joe's
9 schedule, how would we know? Nobody said
10 "non-issue," never mind. That has been
11 misrepresented, I'm afraid.

12 Q. Was there ever any direct instruction to you
13 to get Senator Bruno's schedules?

14 A. No, not specifically. Just that when the
15 reporters' inquiries began in the beginning of May
16 and I told everybody we are going to ask Billy for
17 the records that would be relevant, I did so. So
18 it was not like -- nobody said: You go get those
19 records. But I said, "What do you want to do? I
20 will ask Bill for the records." And Bill produced
21 the records thereafter.

22 Q. When you say you said, "I will ask Bill for
23 the records," was that during your meeting on your
24 statement?

1 A. No, that was much earlier.

2 Q. So following the meeting on the statement
3 contained in Commission's 41 did you then have any
4 records in your control?

5 A. Just Commission's 5. And, then, we sort of
6 agreed not to pursue in this manner, but monitor
7 the situation through Bill.

8 Q. What was monitoring the situation through
9 Bill going to provide you?

10 A. Just -- it's just watch and see what
11 develops. It raised a concern, but it didn't rise
12 to the level of we should conduct an internal
13 review. They concluded otherwise about all that.
14 I said to him, "Look, remember you're on the hook"
15 you, Rich, you proved these things. And somebody
16 at some point, someone in the media is going to
17 get this information because they always do. They
18 routinely engage on who's using aircraft for what
19 purposes. And I reminded them of our obligation
20 to ensure it was properly used, and they said, "We
21 know. Let's just continue to monitor."

22 Q. Did anyone ever relate to you that as long
23 as Bruno signs the form, that's sufficient; you
24 don't need to look at this any further?

1 A. Rich was nervous about it. And I said,
2 well, you are doing your due diligence by
3 requiring him to sign appropriately. I don't
4 think you will get too much of a whack for not
5 doing more because you are making him attest. So
6 that's covered for any kind of charges that you
7 were not doing proper due diligence.

8 Q. Was there a discussion at that time about
9 getting ground itineraries or more information
10 concerning Senator Bruno's schedules?

11 A. Just that we would continue to monitor.
12 And, to the extent we had the ability to determine
13 what was going on on the ground, that was
14 appropriate.

15 Q. Was there discussion about how you were
16 going do determine what was going on on the
17 ground?

18 A. Nothing -- not really. Just -- we would
19 work through Bill to continue to monitor.

20 Q. Did you say to Mr. Nocente, Mr. Baum,
21 Governor Spitzer that you would be asking Bill
22 Howard for these records?

23 A. It was clear. I didn't like state it in
24 that particular fashion. They knew that I

1 requested documents from him after the original
2 request. And, "continue to monitor" meant watch
3 and be apprised.

4 Q. How would they know?

5 A. We had discussed that. Remember, reporters'
6 inquiries come in. I am apprised of the
7 reporters' inquiries. We talked about how to
8 proceed, and the conclusion was: We have to get
9 the information. Darren, can you do that? Sure.
10 I'll ask Bill.

11 BY MR. TEITELBAUM:

12 Q. May I ask a question? What did you
13 understand "continue to monitor" to mean when it
14 was said to you?

15 A. We really just like if Joe is taking a
16 flight or if anybody else was taking a flight just
17 sort of make sure they sign the disclaimer and
18 make sure they were attesting that the purpose was
19 appropriate. And, then, because the State Police
20 were keeping records on that, we would have access
21 to those records.

22 Q. Was that a charge to you at that meeting
23 that you should do it or that you should be
24 involved in that effort to monitor?

1 A. See, I had begun the effort. I had begun it
2 the outreach through Bill Howard for information
3 on it. And it was apparent to me that I should
4 continue to work with Bill to continue to monitor
5 on the use.

6 Q. Getting back to your understanding of the
7 charge to continue to monitor, wasn't that within
8 the jurisdiction of Marlene Turner?

9 A. She was in the meetings in the room. And,
10 yes, it would have been like a dual -- Marlene
11 would have a heightened awareness of the issue and
12 Bill would supply us with whatever documentation
13 was appropriate. And we would all reconvene to
14 discuss it at a later date.

15 Q. The document on which Senator Bruno would
16 represent that the purpose for which the aircraft
17 was being used, would that go to Marlene Turner?

18 A. I think it goes directly to Marlene.

19 Q. Why was Bill Howard being engaged with
20 respect to that document?

21 A. He was not being engaged with respect to
22 that document. That came from Marlene. Bill was
23 responsible for the documents coming from the
24 State Police.

1 Q. And, what was your understanding about
2 continuing to monitor with regard to what Bill
3 Howard was going to do?

4 A. Just that if there were future trips he
5 would apprise us of what the upshot of what those
6 trips were. He's going to New York again. The
7 guys on the ground faxed over this itinerary.

8 Q. When was this meeting?

9 A. I think we are talking about the 17th.

10 Q. So, on the 17th you are all in Baum's
11 office; right?

12 A. I think so, yes.

13 Q. And, the Governor is there?

14 A. He stopped in for two seconds. He wasn't
15 in.

16 Q. When you say two second, literally, he was
17 in and out?

18 A. That's the way the boss is. He comes in and
19 figures out what we're talking about, adds a
20 comment or two and departs.

21 Q. Was he present when you were told to
22 continue to monitor?

23 A. I don't believe so.

24 Q. Who told you to continue to monitor?

1 A. It was not like a directive: Darren you go
2 do that. It was kind of what do we want to do?
3 Stand down from the internal investigation but
4 we'll continue to watch it. Does that make sense?
5 I don't recall who actually said that, but we all
6 sort of nodded. And that was the extent of it.

7 Q. Was the Governor present when that was said?

8 A. No.

9 Q. And continue to watch it, who said is that?
10 Did anybody say it?

11 A. It might have been Rich. It might have been
12 me. But, basically, it was like, okay. What do
13 you want to do?

14 Q. And, when there was this agreement that you
15 would continue to watch it, was there discussion
16 that Bill Howard would be part of this effort?

17 A. It was understood because he was the liaison
18 with State Police.

19 Q. When you said at that meeting that Bill
20 Howard was going to be continuing to get
21 documentation from the State Police; that would be
22 what would follow?

23 A. Everybody understood that would occur.

24 Q. How are you able to tell us that? Did his

1 name come up?

2 A. Yes. Where did this come from? Remember, I
3 would have apprised him when the first reporters'
4 inquiries occurred that I would engage Bill to
5 figure out what we could learn from that side of
6 it. And, periodically, as this matter arose for
7 discussion, it's like: And Bill provided this and
8 Bill provided this, and Bill says this.

9 Q. Was the subject of receipt of ground
10 itinerary by the executive chamber raised during
11 this meeting?

12 A. I don't recall it. We spoke about what
13 documents would be available. If that came up and
14 we certainly said here's one.

15 Q. Meaning Exhibit 5?

16 A. Right, I'm sorry. 5 is available and 5
17 indicates something. But, again, the reason for
18 not proceeding with the internal investigation was
19 nothing was really clear. More to the point --
20 and I'll make this point again in the future. The
21 ground itineraries show the venues where he could
22 have been conducting state business. So, the
23 notion that the whole thing is a plot to smear
24 him, the product of the so-called plot, the ground

1 itineraries actually shows where he could have
2 been doing government business.

3 BY MS. TOOHER:

4 Q. Let me show you what has been marked as
5 commission Exhibit 76.

6 Q. (MR. TEITELBAUM) before we get to 76, at
7 that meeting did the Governor say anything?

8 A. Again, I think he would have reminded us of
9 Joe's interest in using the helicopter. He would
10 have told the story again.

11 Q. Is that what you recall him doing?

12 A. Yes.

13 Q. When you say "the story," the earlier
14 discussion between the senator and the governor?

15 A. My recollection is that Eliot told the story
16 to the group, then told it to me. And it was just
17 like there was no animus. There was no sense that
18 something big was going on. It was just like --
19 remember, at the time we have got a main concern.
20 And that was: Is Eliot's use appropriate? And
21 that was our overriding concern at the time.

22 Q. The "story" that you are referring to is the
23 conversation between Governor Spitzer and Senator
24 Bruno where Senator Bruno had urged the Governor

1 not to give him any problems with respect to use
2 of the aircraft, and that took place early on
3 which you already testified to; correct?

4 A. Correct.

5 BY MS. TOOHER:

6 Q. Commission's 76 is an e-mail from Mr. Baum
7 to you. Can you identify this document?

8 A. Rich is writing to me.

9 Q. This is on May 17th?

10 A. That's right.

11 Q. On the subject line: Re: E.S.?

12 A. Eliot, the Governor.

13 Q. "Wants to talk to you ASAP." This is you
14 writing to him first, and "wants to talk to us
15 ASAP" and Mr. Baum writes back, "Okay. Call me on
16 my cell." This is on the 17 at 2:17. Do you
17 recall what this is in reference to?

18 A. I don't think it is pertaining to the travel
19 thing. I think it was something else at the time.
20 And, remember, the moment where we're trying to do
21 to do what we call unifying the office to field
22 theory. We were trying to have the Senate meet
23 the Senate's need for congestion pricing and the
24 Assembly's need for campaign finance and our need

1 for some capital projects. We were linking the
2 two and we were engaged in how to outreach to
3 lawmakers to sort of set the stage. This stuff,
4 forgive me for saying so, we talked about it. But
5 the business of the day is the legislative
6 session.

7 Q. But Mr. Baum's e-mail to you originally
8 concerning your statement in Commission's 41 is at
9 1:54. This is some 20 minutes later. When did
10 the meeting occur following Commission's 41?

11 A. Forgive me for not really understanding --
12 if I thought about it, I could try to parse it
13 through. I just don't have the recall of it right
14 now. I just don't remember that day in that great
15 detail. I could have been involved in the thing
16 but I don't think so because Eliot was not that
17 involved in the initial discussion other than:
18 Put out the news release and conducting an
19 internal review. That was me, Rich, and David,
20 basically.

21 BY MS. SULLIVAN:

22 Q. In the May 17th meeting on Commission's 5 is
23 there any discussion amongst the group about that
24 document being a public document; that being

1 Commission's 5?

2 A. No. We kind of assumed that it was.

3 Q. Based on Mr. Howard's statement to you?

4 A. Based on two things, really. It's like,
5 number one, remember what the original request
6 was: What do you have that would be responsive to
7 a FOIL request? That triggers a process within
8 the State Police that they wouldn't give us
9 something unless they concluded it was public.
10 And Billy Howard got it, and I assume that he
11 reviewed it and I assume that it's okay to give to
12 Darren. Because if you give something to Darren
13 he is most likely going to give it to a reporter
14 because it's a public document. And we sort of
15 looked at it. It really just comports with our
16 schedules with less detail. It's a schedule with
17 less detail than I was routinely releasing. So,
18 nobody really questioned whether it was a public
19 document.

20 Q. Is the discussion that you had with Mr.
21 Howard in which you said to him: Give me what you
22 have subject to FOIL, is that clear in your mind
23 that that is what you said to him?

24 A. Yeah. That's what I do. When I go to --

1 whether it was Bill or any other Deputy
2 Secretaries, it's in response to media inquiries.
3 I am asking them: What do you have? What
4 information is available? What are you saying?
5 That's who I am. That's how I operate.

6 BY MR. TEITELBAUM:

7 Q. Why did you mention FOIL?

8 A. Because in my conversations with reporters
9 it was kind of a broad extensive request: Who's
10 using the aircraft since the 1st of the year?
11 That, for me, triggers a kind of process whereby
12 are you asking for a day, or even a week, for use
13 first aircraft, that's fine. But if you are
14 asking for a comprehensive accounting, put it in
15 writing. That's what I would always tell the
16 reporters. And, again, it's like it might seem
17 arbitrary to you but it's an easy thing to get a
18 schedule for the day. It's an easy thing to get a
19 manifest for a specific flight. But when you're
20 talking about everything that happened, then you
21 have got -- somebody has to sit down and somebody
22 has to bring it all together. And I have had
23 these conversations with reporters from the
24 beginning of May when they said: What have you

1 got that's available? And I would have said: The
2 manifests that you guys have seen before and all
3 of Eliot's schedules. And they would have said:
4 What else you got for Bruno's and his use? And:
5 I don't know but I'll check. And I talked to
6 Billy, and Billy came back with: This is what
7 you're after.

8 Q. Is that what reporters do say?

9 A. Yes.

10 Q. What reporter?

11 A. Mainly, Mr. Odatto because he is an
12 extraordinary individual with an avid interest in
13 aircraft. And the package of articles that I will
14 provide to you demonstrates this. He was the one
15 who broke the story about Eliot obtaining a plane
16 ride from a person who is a lobbyist.

17 Q. Did he mention FOIL to you?

18 A. He would have said: What do you have that
19 is available?

20 Q. Is that what he did say?

21 A. Yes. I don't think that FOIL actually came
22 up at that particular moment. This is me doing my
23 job. When he's inquiring in that fashion and it's
24 clear to me that he's going to make a

1 comprehensive request, I immediately start
2 thinking: Yes, here's my jackpot. Is Spitzer
3 using the plane properly and are we being proper
4 stewards of the aircraft. I better find out. So,
5 I turn to Bill -- apprise the others and then turn
6 to Bill and say: What do you have in response to
7 a FOIL request? My fault, perhaps, because
8 there's a little bit of discrepancy. I didn't
9 say, "but I don't have it in my hand right now."
10 I just said, "What do you have that would be
11 responsive to a FOIL?" So, that act of commencing
12 the review before actually receiving the FOIL,
13 lawyers might perceive as somehow irregular. Any
14 communications director worth his salt recognizing
15 exposure, recognizing potential jackpots, would
16 commence a review and bring it to the attention to
17 his principal for discussion.

18 Q. What is a "jackpot"?

19 A. A problem, a matter that could result in
20 negative media attention. Sorry about that.

21 BY MS. SULLIVAN:

22 Q. At the May 17th meeting when you showed
23 Commission's 5 to Mr. Baum did he react in any way
24 to where you had received that information?

1 A. Not to where I received it. It was sort of
2 understood. Nobody raised a concern about
3 production of documents, how the process was
4 operating. It was just like they knew I made a
5 request for public documents through Bill. They
6 knew the State Police had considered the matter,
7 supplied something that Bill looked at and I then
8 looked at and I was presenting to them. No,
9 nobody looked at this and said: Oh, my gosh.
10 This is a security concern, or this might not be
11 appropriate. We shouldn't release this. The
12 truth is we discussed it numerous times. None of
13 that ever came up because everybody recognized
14 that. The information that we provided in terms
15 of Eliot's schedule, this pales in comparison. 5
16 pales in comparison to the level of detail that we
17 were providing about Eliot.

18 Q. There has been testimony that the Senate
19 counsel expressed concern that the executive
20 chamber not receive the Senator's schedules. So,
21 now, when Commission's 5 appears on the table
22 there was no concern raised?

23 A. Sorry, but I have like -- I feel very
24 confident in saying I was never aware; that nobody

1 apprised me of such concern. It would have been a
2 red flag as would if somebody said to me, oh,
3 these documents are phony and were reconstructed.
4 Had I heard something like that, most assuredly I
5 would have sensed that it could create a problem
6 for the administration and raised the problem with
7 the group to figure out what to do. But what you
8 describe is brand new to me. And, if so, I'd be a
9 little bit miffed that no one raised it in our
10 discussions of the matter.

11 BY MS. TOOHER:

12 Q. When you finished your discussion of this
13 matter of Senator Bruno's use of the aircraft on
14 the 17th and you leave that meeting, what do you
15 think you are doing from that point on?

16 A. Standing down, continuing to monitor but
17 standing down; not doing anything in particular.

18 Q. So, you are not gathering additional
19 information?

20 A. No. Bill would be apprising me of
21 additional developments as they occurred.

22 Q. Are you responding to the FOIL? Are you
23 discussing the concept of the FOIL?

24 A. I discussed in this particular meeting

1 releasing information to the media. Remember, my
2 press statement was a response to those media
3 inquiries. And what was sort of posed to me is,
4 look, do you have to get back to the reporter
5 right now? And, he said: Dude, I know there's a
6 lot going on. I can wait and probably buy us some
7 time in that regard because so much else is going
8 on. Remember the sequence. They asked me in
9 early May --

10 Q. Who asked you in early May?

11 A. Reporters.

12 Q. Which reporters?

13 A. Odatto, Gershman, Dicker, but not in a
14 pointed way. It was basically Odatto. He's the
15 one pushing it the most. "I want to know,
16 Darren."

17 Q. And they are asking you specifically what?

18 A. Was the Governor using the aircraft for
19 fundraising and what do you know about Senator
20 Bruno's use of the aircraft?

21 Q. Had you gotten any type of FOIL request at
22 this point?

23 A. No, just -- as I was trying to explain to
24 Herb, it's like any guy worth his salt hearing the

1 conversations and being peppered with questions
2 from reporters, as Communications Director would
3 commence this process because of the exposure. I
4 won't use the word "jackpot" again, but because of
5 exposure to the administration.

6 Q. So, you don't have an actual FOIL request at
7 this point?

8 A. That's why I say to Billy, "What do you have
9 that would be responsive to a FOIL request? I
10 think it's coming."

11 Q. Did you say that to Howard, "I think it's
12 coming"?

13 A. I don't think I used those particular words.
14 What I said to Bill was, "I have media inquiries."
15 I take it back -- no. I have got media inquiries.
16 And, basically, I said to Bill, "What do you have
17 that is responsive to media inquiries?" And I
18 said that to Bill. Bill then says to Preston, and
19 Preston, in your testimony says, "Yes. I heard
20 there is a FOIL request." It's a little bit
21 disjointed there. He thought that there was an
22 actual FOIL request, but I said "anticipated" FOIL
23 request.

24 Q. "He" being --

1 A. The Superintendent of State Police. I never
2 had a conversation with him, never talked to him.
3 I am just reading in subsequent testimony.

4 Q. You are just surmising from what you have
5 read that Superintendent Felton --

6 A. Believed that there was a FOIL request. And
7 for all intents and purposes, my intents and
8 purposes there was. And, based on what I was
9 hearing from the reporters I knew it was coming.

10 Q. Did you ever say anything to Bill Howard
11 about an oral FOIL request?

12 A. I didn't specify it. I just said, "Billy,
13 what do you have that would be responsive to a
14 FOIL request? I have got reporters questions."
15 And that was it.

16 BY MR. TEITELBAUM:

17 Q. Did Odato ask you for types of documents or
18 particular information?

19 A. Yes. Odato would have said, "What would I
20 get?"

21 Q. Not what he would have said. What did he
22 say?

23 A. He said, "What am I going to get here?
24 What's available?" And said, "Well, I know for

1 sure what's available on the Governor. I can give
2 you manifests and I can give you his schedules
3 which amount to an itinerary, complete schedules
4 and manifests." And he said, "Well, what does
5 that show?" And, I said, "Dud, you've seen these
6 things before. It's everybody who's on the
7 aircraft, where it's going, where it took off and
8 where it landed." And on schedules, I said,
9 "You've seen that before, everybody who's meeting
10 him. We are committed to giving you all of that
11 stuff." We talked about a few other things, and
12 he said, "What about for Joe?" "I know for sure
13 there will be the manifests. But I don't know
14 what else is there. I'll find out." And that's
15 when I turned to Bill and said, "What do you have
16 that would be responsive?"

17 Q. So, you explained to Howard what Odatto was
18 asking for?

19 A. Yes.

20 Q. And with regards to Senator Bruno --

21 A. Sir, I don't think I would have used Odatto's
22 name, or any individual reporter's name because,
23 again, the way I do my job is a bunch of reporters
24 come into my office or I walk upstairs where the

1 LCAers gather and they descend upon me. And
2 there's a bull session and I meet with all kinds
3 of inquiries. And Odatto grabbed me aside and he
4 said, "Can I talk to you more about that?" And
5 later on, he came down and we had the discussion.

6 Q. So, when you spoke to Mr. Howard after Odatto
7 had this conversation with you with respect to
8 Senator Bruno what were you asking Howard to give
9 you?

10 A. I wasn't asking him to give me anything. I
11 said, "What's available pursuant to a FOIL?" And
12 I may have said to him: We will probably be
13 supplying manifests and schedules for the
14 Governor. Does the same thing exist for Joe? And
15 it was at that point he said, "I'll come back to
16 you on that, but the records exists going way
17 back." And I didn't know exactly what records
18 exist, but I took that to mean not the manifests
19 that do go way back because you have to have
20 those, but some type of schedule or itineraries
21 because that was the specific request from Odatto.
22 Remember, I said to him, "I'll give you manifests
23 and I'll give you schedules," and he said, "Is
24 that same thing available for Bruno and can I get

1 it?"

2 Q. You said I think that the subject of FOIL
3 didn't come up at that point in your conversation
4 with Odatto. Is that what I heard?

5 A. Not specifically. I just interpreted it as
6 interest to produce a FOIL at some point.

7 Q. Did you thereafter have a discussion with
8 him about a FOIL request with respect to the
9 documents that you asked Bill Howard to see if
10 they were available?

11 A. Some time passed. Jim would have asked
12 again, and I said, "They're working on it. But
13 because you're asking for so much, I would like
14 you to put it on paper. Again, my code -- forgive
15 me -- this is how I interact. That's code for:
16 You really should FOIL for that since it was such
17 a comprehensive request and since it would involve
18 a lot of people sitting down and trying to collect
19 the documents.

20 Q. How soon after the first conversation you
21 had with Odatto concerning what documents might be
22 available regarding Senator Bruno did you have the
23 conversation in which you told him you wanted it
24 in writing?

1 A. I said to him "I'll figure out what's
2 available." Well, he raised it again in a couple
3 of weeks. He raised it periodically because he
4 has an avid interest in it. You remember, he
5 writes all the Abbruzzese stuff about Joe. And
6 understand there's a real interest in the Senate
7 Majority leader's travels in many capacities. I
8 think it would have been ten days, inside -- from
9 a week to ten days.

10 Q. The second conversation you would have asked
11 for the request to be put in writing, which is
12 your code for get a written FOIL request.

13 A. Yes. But something intervenes, the dynamic
14 end of the legislative session and he doesn't get
15 back to me for an extended period. And it's at
16 that point I just let it lie pursuant to the
17 direction I would have been given from the group:
18 Let's not encourage this, but if he comes back
19 we'll cross that bridge when we come to it.

20 Q. You're saying those were the instructions
21 you were given?

22 A. Yes. Nobody says: Darren, you do this.

23 Q. I am not inferring from the instructions
24 that anybody was waving a finger or being

1 dictatorial, as it were. Someone was telling you
2 what was expected, let me put it that way.

3 A. Basically, they were telling me stand down
4 for now. We will cross that bridge when we come
5 to it if the reporter comes back.

6 Q. With whom was that conversation?

7 A. Rich, Nocente, and others in the room as
8 well. I don't remember. Marlene Turner might
9 have been there.

10 Q. It's not the same conversation that you
11 testified earlier was in Baum's office; is it?

12 A. The same one.

13 Q. The same one; on the 17th?

14 A. Yes.

15 Q. So, by the time the 17th rolls around you
16 have asked Odatto via code to give you a FOIL
17 request.

18 A. I didn't ask him, you know. That would be
19 wrong because I am not trying to jazz this up.
20 But I am saying: If you want that, you really
21 ought to put it in writing.

22 Q. That's before the 17th?

23 A. Underscore one point? Tremendous exposure
24 to Eliot. This is something I'm trying to avoid,

1 not jazz up. I think so.

2 Q. On the 17th, you receive -- it's the sense
3 of the group so I used the word "instruction." The
4 sense of the group is that you are going to stand
5 down until this is raised again --

6 A. Right.

7 Q. -- by Odatto?

8 A. Or somebody else coming back and asking for
9 it. I did apprise them, though, that these issues
10 are hot, and sooner or later somebody is going to
11 come back.

12 Q. So, you stood down?

13 A. Yes.

14 Q. Did you tell Bill Howard to stand down?

15 A. I went back to Billy and said, "Let's
16 continue to watch the situation, you know. We
17 don't want to do anything at this time."

18 Q. What did you mean by "watch the situation"?

19 A. Just remember, we had this serious
20 obligation to ensure that everybody is using the
21 plane appropriately. We didn't have enough to go
22 on to conclude definitively that he was misusing
23 it, but we would watch in the future, you know.
24 If you had an itinerary or information that he was

1 going to a fundraiser and nothing else, we had an
2 obligation to act. We would be watching to ensure
3 that didn't happen.

4 Q. So, watching and obtaining information from
5 the State Police?

6 A. Watching would be Bill interacting with the
7 State Police to make sure the use is appropriate
8 and him alerting us in case it wasn't.

9 Q. My question is: If you would be getting
10 information from the State Police "watching" would
11 mean you would continue on an ongoing basis to get
12 information from the State Police?

13 A. That most assuredly would.

14 Q. Did Mr. Nocente know that was happening;
15 that on the 17th that while you were being asked
16 to stand down, you were telling Howard to continue
17 to get information on Senator Bruno from the State
18 Police?

19 A. He was, yes. That would have been the
20 upshot of the session. Having said that, I don't
21 think anybody would have, you know, in their
22 wildest imaginations would have viewed what was
23 going on as in any way unusual or that information
24 would be obtained improperly. To this day I still

1 don't know that information was obtained
2 improperly, but people allege it was. In our
3 sessions we just assumed Bill is the liaison to
4 the State Police. You're going to do what's
5 appropriate. We trusted him and trusted the State
6 Police.

7 Q. So, Mr. Nocente knew while you were being
8 asked to stand down, Bill Howard was going to be
9 instructed to continue to get information from the
10 State Police; is that correct?

11 A. Yes, I think so.

12 Q. Is that also true with Mr. Baum?

13 A. I knew more assuredly that Baum knew it than
14 Nocente did.

15 Q. Why is that?

16 A. My familiarity with the two guys. And
17 David's role as counsel is just extraordinary in
18 terms of volume. I don't know that David fully
19 appreciated what was going on. I don't know that
20 Mr. Baum did, but I was pretty sure that he did.

21 Q. When you say "appreciated everything that
22 was going on," that Howard would continue to get
23 information from the State Police?

24 A. Right.

1 Q. My understanding is that you didn't tell
2 them that Howard would continue to get information
3 from the State Police?

4 A. It came up in the session. And, then when
5 we said we would continue to monitor, that was
6 implicit. We had a serious obligation to ensure
7 the use was proper.

8 Q. Is it your testimony that the interaction
9 between Bill Howard and the State police was usual
10 and not extraordinary; in other words, the
11 communication was just the means of operation that
12 was standard?

13 A. I knew of no difficulties in that regard,
14 and I assumed it was totally standard. And that
15 was the impression I got from Bill.

16 Q. Bill Howard gave you the impression that he
17 was receiving information on an ongoing basis on
18 the travels of Senator Bruno in connection with
19 his role in the executive chamber. Is that what
20 you are saying?

21 A. He didn't say it in those particular terms.

22 Q. In substance?

23 A. In substance. I understood that he would be
24 in communication with the State Police on that

1 topic.

2 Q. On an ongoing basis?

3 A. Yes, and that he had been and would continue
4 to be.

5 Q. What was your understanding of Howard came
6 to be that that would be his role? Was it as a
7 result of what you said to him or somebody else
8 said to him, or that nobody said to him? How did
9 it come to be?

10 A. It's really through his job title. He is
11 the liaison to the State Police and he would be
12 the only person responsible for such a --

13 Q. You are telling us that in his capacity as
14 liaison to the State Police one of his functions
15 was to receive on an ongoing basis information
16 concerning the travels of Senator Bruno? IS that
17 what you're saying?

18 A. If there was a question about it, yes. And
19 the question did arise.

20 Q. From the group on the 17th?

21 A. Yes. Well, prior to that with my request
22 prompted by the reporters.

23 Q. On the 17th, that question persisting and
24 as a result, you are saying, of that question

1 persisting, it was your understanding that Howard
2 would continue to do what he had been doing which
3 was on an ongoing basis receiving information from
4 the State Police with respect to the travels of
5 Senator Bruno?

6 A. We, being the group, had to know and wanted
7 to know.

8 MR. TEITELBAUM: Okay.

9 BY MS. TOOHER:

10 Q. And, after this meeting do you have any
11 feelings about where this is going in terms of the
12 statement itself and your work with looking at the
13 use of the state aircraft?

14 A. Somebody said I was upset about it. And I
15 said I have got a thousand things going on. And
16 it's like remember, guys, you have a little bit of
17 exposure here. Someone else is going to ask us
18 some day about our stewardship of the aircraft. I
19 kind believed that the appropriate thing to do
20 would be review it internally. Now, what they
21 didn't want to do at the meeting was, they didn't
22 want to have a confrontation with Joe. And any
23 internal review would necessarily entail double-
24 checking to be sure the information on the

1 disclaimer is being followed and was accurate.
2 "Legislative business meetings" is what Joe would
3 say and. If you are going to conduct a meeting
4 for internal review you had to go to him and say:
5 Now, what meetings are you engaged in? What are
6 you really doing? I sort of reminded them in
7 previous administrations we pretty much did that.
8 But when we all came to the conclusion: Let's not
9 go down this path at this moment based on the fact
10 we have no clear evidence of wrongdoing and we are
11 trying to get the guy to come to the table to
12 negotiate a resolution in the interest of all New
13 Yorkers. Let's just not do it. And I agreed
14 completely that that was the overriding concern.

15 Q. Now, Commission's 41, your statement appears
16 to be a statement to the press; is that correct?

17 A. That's right.

18 Q. That doesn't look like an internal review.

19 A. Some people have concluded that. But you
20 would only do that subsequent to receiving the
21 information that the action is necessary and
22 appropriate based upon an internal review. Please
23 don't hold me to this particular thing. I wrote
24 that in maybe fifteen minutes knowing that a

1 meeting was coming up. I sat down and ripped it
2 off. And it's not like a work of art. It's just,
3 guys, if we are going to conduct an internal
4 review it has utility for me because I can then
5 get the reporters to back off. They were hitting
6 me with the questions. And I can say: Questions
7 have come up from you, being your inquiries, and
8 we are going to review them. That's what that was
9 all about. This is what this is about, but we
10 decided not to do that.

11 Q. But that was intended, Commission's 41 and
12 the statements contained therein, was intended as
13 a public statement?

14 A. All I care about is responding to the media.
15 And they are having questions about it, and this
16 is my responsibility. This would have gotten me
17 out of this.

18 Q. "This" being Commission's 41?

19 A. Yes. This would have answered the reporters
20 and bought me a ton of time to put those inquiries
21 at bay. How and why? Well, they are asking: Is
22 he using it? Is he using it appropriately? And
23 we are saying: Well, we don't know but we are
24 going to review it.

1 (Commission's Exhibit 77 was marked for
2 identification.)

3 Q. Showing you what has been marked as
4 Commission's 77, can you identify this document?

5 A. It is to me from Christine, I believe, as
6 opposed to the other away around. But I'm not
7 positive about the distribution at the top.

8 Q. I believe it's Darren Dopp to Christine
9 Anderson. Again, the May 17th date. May 17 is
10 below and the subject is, "Argh."

11 A. I just was apprising her of the discussion.
12 It wasn't something that she was participating in.
13 She was my new press secretary and relatively
14 young. And I always went out of my way to let her
15 know everything we were discussing in the
16 so-called inner circle.

17 Q. Well, "argh" relays something to me. What
18 did it relay from your perspective?

19 A. I wish I could give you some definitive
20 answer. I don't know what "argh" would have
21 entailed. It's like: Oh, well. I wouldn't even
22 want to project. I don't know exactly.
23 Truthfully, there is nothing like nefarious about
24 it.

1 Q. It's just frustration, disappointment. It
2 doesn't seem like a positive connotation. But I'm
3 asking you. You don't relay anything else in the
4 e-mail besides the statement.

5 A. Respectfully, I wouldn't read too much into
6 it. I don't believe I had some virulent reaction
7 at the time. Part of me thought we had an issue
8 that we should address ethically. When you know
9 that there is a possible misuse of something you
10 should address it in some fashion. The group
11 didn't want to. But did I have like aggressive
12 feelings about it? Mild feelings that we really
13 should do it.

14 Q. I think in the D.A.'s report Christine
15 Anderson says you were upset following the May
16 17th meeting.

17 A. I disagree with that. I didn't have
18 intensely strong feelings about it. To the extent
19 that during this process I did have strong
20 feelings about it, they are influenced by
21 something we will get to in a minute which is
22 Peter Pope's advice.

23 MS. TOOHER: Shall we break for lunch?
24 If you want to finish your thought, go ahead.

1 MR. TEITELBAUM: Go ahead.

2 INTERVIEWEE: Basically, to the extent
3 that anyone would suggest that I was upset, it's a
4 function of, you know, two things -- three things:
5 The history of my involvement with the issue going
6 back to the Cuomo era. The fact that I believed
7 in like public disclosure of these matters, and
8 the fact that Mr. Pope -- again, my friend -- he
9 comes and sits down on my desk and he dials up the
10 I.G.'s web site and says I have an obligation, a
11 legal obligation to refer the matter to the
12 Inspector General. And, you know, this is what we
13 get to. First, I said maybe we should conduct an
14 internal review. Later on, I convene the guys and
15 say, "Peter really thinks we should refer to the
16 I.G. And I said -- I told them he went to the
17 section of the law showing me the penalty for not
18 doing so. My guys' response to that, Nocente's,
19 Baum's, and to an extent even Eliot's, is to
20 poo-poo it, sort of in a friendly way make fun of
21 Peter's prosecutorial impulse.

22 BY MR. TEITELBAUM:

23 Q. Who is telling you the Governor and Nocente
24 is poo-pooing it? Are you getting it is directly?

1 A. I took it to them. This is after the 17th
2 meeting where they stood down from the internal
3 review. Then, after I talked to Peter, and Peter
4 and Rifkin were both kind of adamant that: You
5 really should do something with this, Darren.
6 That's when I took it to them again individually
7 to say: You won't believe what Peter did. And
8 each had like humorous comments to dismiss that
9 notion.

10 Q. What did they say?

11 A. "What is he, nuts?" And Baum's comment was
12 like -- Nocente's comment was, "Come on. You have
13 to report it in a timely way." And he said, "Come
14 on, Darren. The I.G. doesn't have any involvement
15 or influence over legislative officials. And,
16 further, Peter doesn't know what he's talking
17 about." That's Mr. Nocente. Baum: "What is he,
18 nuts? We don't know without seeing the
19 schedules." When I told Eliot that, he was sort
20 of, "What do the others say?" And I told him what
21 they said, they dismissed it. And, he said,
22 "Yeah. That's not the way to go." And,
23 subsequently Rifkin and others said what about
24 other entities?" And, again, I took it back to

1 each one and said: What about this? What about
2 this? What about this? And, what about Andrew?
3 What about giving it to the Attorney General?
4 Bringing it to the D.A.? What about Ethics? What
5 about Legislative Ethics? Pope came back to me a
6 third time to say, "We can give it to the Feds."
7 And that's one of those e-mails I'm sure we'll get
8 to later on.

9 With regard to the Feds, there's a big
10 story about the Feds investigation of Abbruzzese
11 and Bruno air travel. And what Peter suggested to
12 me is that this would fit into that mix. If
13 they're looking at air travel, maybe they want to
14 look at Bruno's air travel.

15 Q. What did they say about referring it to the
16 Attorney General?

17 A. They didn't trust him. They didn't want to
18 go down that path.

19 Q. Who said that?

20 A. Pretty much Baum and Nocente at that time.
21 Why would we want to do that? There was a little
22 bit of irony and antagonism there.

23 Q. Between --

24 A. The Governor and Andrew, the Attorney

1 General. I'm the intermediary there. Remember,
2 he's my friend. I worked for his dad and who's
3 the one that brought them together and always
4 tried to minister in these relations. If you want
5 a kicker on the whole thing, I informed Andrew in
6 May of these inquiries.

7 Q. Of the inquiries --

8 A. From reporters about use of the aircraft. I
9 told them: Something weird. I can't quite figure
10 out. Something weird. I can't quite figure out
11 whether Joe is misusing it. We've got some
12 jackpots, too. I told Andrew that earlier.

13 Q. What did Andrew say?

14 A. In what respect? I started off by saying to
15 Andrew, "You don't use the aircraft; do you?"
16 "No, no. I don't touch that. You remember the
17 old days." Well, I've got this issue. We kind of
18 debriefed weekends. And I was endeavoring to keep
19 Eliot and me close together by informing him. It
20 was like sanctioned activity. I kind of -- again,
21 he's my friend. I don't want to say anything bad
22 about anybody. But I had from the conversation
23 that he had some preconceived notions about going
24 into this matter.

1 Q. Who did?

2 A. Andrew.

3 Q. What were the preconceived notions?

4 A. The second floor is reviewing Senator Bruno
5 travel for an extended period. And, basically,
6 that was true. But his mind worked in a way that
7 was kind of suspicious.

8 Q. He thought there was something wrong with
9 the second floor doing that?

10 A. No. I think he thought we thought we had
11 some way to discredit Joe. And I'm like: No, I
12 told him I am more concerned about Eliot's
13 exposure because he did take trips that were
14 political. One everybody knows about it, and
15 another nobody knows about.

16 Q. What was that one?

17 A. It wasn't like a missing itinerary or
18 anything like that. It's just that we reimbursed
19 for one of the trips. We were so concerned about
20 the perception of doing things by the book that
21 one of the trips from Albany to Teterboro we
22 reimbursed because that was the famous California
23 trip. He took a plane from Teterboro to
24 California. And, under the law and under the

1 policy you're supposed to go back to your home,
2 not someplace else. So, we thought that the leg
3 Baum thought the leg ought to be reimbursed for
4 any loss. And that was it.

5 Q. Is that the incident that has not been made
6 public?

7 A. Yes. No one knows that we were so concerned
8 about misuse that we reimbursed for one of the
9 legs of the trip.

10 BY MS. TOOHER:

11 Q. That's Eliot's use?

12 A. Yes.

13 BY MR. TEITELBAUM:

14 Q. What was said about referring to the D.A.?

15 A. Hands full, buried, steroid probe, and a
16 host of other things.

17 Q. Which District Attorney?

18 A. Soares. He's overwhelmed; he has too much
19 stuff going.

20 Q. Was there anything referring to Bob
21 Wolenkamp? (Phonetic)

22 A. No, not until later; not at the moment.
23 They would have held him in high regard given Mr.
24 Spitzer's connection to it. But, again, absent

1 the schedule, nobody, myself included, thought
2 there was any definitive proof. But I truthfully
3 believed we should have reviewed it, and I
4 expressed that.

5 Q. And the Legislative Ethics Committee, what
6 would you do there?

7 A. I hate to be derogatory but they all laughed
8 at it as an ineffectual and moribund body.

9 Q. The New York State Ethics Commission?

10 A. It's not for them. It had no jurisdiction
11 over Joe. And the Feds, you know, when Peter made
12 that suggestion, it wasn't a federal crime. What
13 is he thinking? Pope, rigid, a prosecutor's
14 prosecutor who said whenever you had a question,
15 dump it. Give it to someone to investigate. I
16 was influenced by him because he's my buddy and
17 sits down at my desk saying, "You could be
18 criminally liable for not doing so." So, my point
19 it to the extent along the process that anybody
20 sort of thought that Darren -- forgive my French,
21 but Darren had a hard on for this guy and wanted
22 to do something, it's because Peter told me that.
23 And it's like: You've got to do this. And when I
24 related it to the others, they said: Don't worry

1 about it, stand down. And we did. We stood down
2 waiting for another media inquiry that came once
3 the legislature session was concluded.

4 MR. TEITELBAUM: Is this a good time to
5 break? Shall we resume in 45 minutes?

6 (Luncheon recess)

7 AFTERNOON SESSION

8 MS. TOOHER: Back on the record.

9 BY MS. TOOHER:

10 Q. Mr. Dopp, before we move off the 17th, I
11 just wanted to ask you one additional question on
12 what has been marked as Commission's 77 concerning
13 your statement. In this instance, the statement
14 on Commission 77 says: Statement by XXX.

15 A. Yes.

16 Q. In the prior version it indicated Darren
17 Dopp.

18 A. You sort of have a number of options for
19 disseminating information whether Darren was the
20 person disseminating it, Eliot, or somebody else.
21 And it merely was a recognition of in the
22 discussion where we sort of like cast -- well,
23 maybe we'll have somebody else make the statement.
24 Maybe you should say it. Maybe Eliot should say

1 it. It was just a range of options discussed as
2 to how we put it out.

3 Q. So, Commission 77 is a version after those
4 discussions?

5 A. Yeah. But, again, it was sort of like
6 resolved and I'm not sure when exactly when it
7 would have been sent.

8 Q. The time on the e-mail is 4:41 p.m.

9 A. That would have been in the evening, and the
10 original version with my name on it would have
11 been from earlier in the day. I just would have
12 sent it to Christine afterwards to apprise her of
13 the developments. And at that point the issue had
14 already been decided. So, it was whatever I -- I
15 can't really explain what the upshot is. It's
16 just that I'll do that when there's a question
17 about who is issuing it with no particular
18 significance other than that.

19 Q. So, it is reflected at that point that if
20 this is going to be issued, there is no indication
21 who it would come from? There's no decision at
22 this juncture?

23 A. It might have been as simple as me writing
24 from my computer on a side screen before I put in

1 my name. I just don't recall. I can't relate a
2 specific significance beyond the fact that we
3 discussed who might release it if it wasn't me.

4 Q. Following the meeting on the 17th did you
5 have further discussions with Bill Howard
6 concerning Senator Bruno's activities?

7 A. Yes. He came back fairly quickly, probably
8 the next day to say: What are we going to do? Is
9 there going to be an internal review or are we
10 going to release it to the media? It was at that
11 point I said, "Stand down." I just wanted to
12 respond to the situation.

13 Q. So, Mr. Howard came back to you and
14 specifically inquired on the issue of what was
15 going to happen?

16 A. What was decided, he asked.

17 Q. Had you discussed with him the potential at
18 that junctures for releasing it to the media on
19 the 17th?

20 A. I would have said to him: We are going to
21 being talking about it. I don't know that I would
22 have delved into how, what the options were at
23 that point. I don't think I talked to Billy to
24 say we are thinking about doing an internal review

1 or we're thinking about releasing it to the media.
2 I can't remember. He was responding to my
3 original inquiry of him, you know, that I have got
4 reporters' questions. What have you got? We will
5 decide and maybe the senior staff.

6 Q. So, and did you discuss what he should do in
7 the future about Bruno's itineraries?

8 A. Not in great detail, just the notion of the
9 group, the consensus of the group that we continue
10 to monitor. And it wasn't attached to: And I
11 want regular reports or anything like that. It
12 was just: Let's just watch the situation.

13 Q. Did you specifically ask him to provide you
14 with information?

15 A. I don't recall doing so. I don't recall
16 saying I want it on a regular basis. It was just
17 like: Let's continue to monitor. He accepted
18 that, and that was the end of the conversation.
19 Then, we moved onto like three other topics that
20 we had.

21 Q. Did you say anything to him about getting
22 additional documents from the State Police at that
23 time?

24 A. No, but that was pretty much the

1 understanding. He was implicit in: Let's
2 continue to monitor.

3 Q. Because he had been previously providing
4 documents?

5 A. Yes, that's right. I would have conveyed to
6 him and said we decided to stand down for now, and
7 I think he would have understood that it was not
8 like a hard and fast decision; that for now, we're
9 standing down means we decided not to conduct an
10 internal review. We decided to let it lie for the
11 time being, but want you to continue to watch.

12 Q. That was your understanding on May 17th as
13 to the status of this?

14 A. Yes.

15 Q. Did he provide you additional information?

16 A. He did periodically come back and say he
17 understood another trip was planned for -- blank.
18 Remember, in the intervening time I had a couple
19 of additional questions from reporters. I don't
20 really recall exactly what they would have been
21 precisely, but he would have been keeping me
22 informed as to any developments that came up and
23 he would have been responding to any question I
24 would have had on this matter nature and other

1 matters.

2 Q. And in your discussions as to standing down
3 on this now and continuing to monitor, was the
4 Governor part of those discussions?

5 A. Like I said, he came in. And for a moment
6 he was just like "Eh," without knowing what's on
7 the schedules we really don't know. But, the
8 Governor was not there when the group decided:
9 Let's officially stand down for now and continue
10 to monitor. No, he wasn't standing there when
11 that was decided. I think Baum -- Rich might have
12 conveyed that to him that that was our discussion.
13 But I just sort of let the matter lie at that
14 point knowing I would be back to them at some
15 point. Sometimes he asked a questions about where
16 is that? Whatever happened to -- other times I
17 said, "Hey. There's another trip," or "There's
18 another inquiry, or: We've got to be especially
19 careful given the scrutiny.

20 Q. It was your understanding that the Governor
21 was aware of the status as far as standing down
22 and continuing to monitor?

23 A. Most assuredly, he said: Nah, I don't want
24 to go that route. And that was clear from his

1 testimony to the D.A., the news release he was not
2 specifically aware of, I don't think. But he was
3 aware of the notion that we would do something
4 internally to review the senator's use. I know
5 that for a fact because I mentioned it to him.

6 Q. You mentioned what to him?

7 A. When he asked me again about what was going
8 on with the aircraft again, I said we just decided
9 to hold off and that was it. Hold off for now.

10 Q. When was the next time? When you say when
11 he asked you again when was that?

12 A. In the days that followed, close to the
13 17th, a few days afterwards. I think the catalyst
14 for that was Rich telling him. It might have been
15 the 18th. Rich probably would have told him:
16 We're not going to do that. Instead, we are just
17 going to watch things.

18 Q. Do you know that Rich told him that?

19 A. I assumed so, because when Eliot came back
20 to me it was with the understanding that we had
21 stood down.

22 Q. And, was it with the understandings that you
23 were continuing to monitor the situation?

24 A. He didn't say that specifically, but it was

1 all kind of implicit. He didn't say again -- He
2 didn't directly do anything in particular. Put it
3 that way.

4 Q. Do you recall what he said?

5 A. He was really quick and really kind of
6 cryptic. It's just like: Anything doing on the
7 aircraft issue? And it's like, no. I think we
8 have conclusively concluded that with the
9 exception of two trips for you we should be okay.
10 And then: Well, what about Joe? Well, we're just
11 going to watch it. And that was it.

12 Q. And when does Mr. Howard next come to you
13 with information on Senator Bruno after the 17th?

14 A. I wish I had immediate recall of it. It's
15 probably an e-mail or a note that he would have
16 sent to me which is in your packet. But it
17 doesn't occur to me what the next thing was.

18 BY MR. TEITELBAUM:

19 Q. What was the conversation just before with
20 the Governor?

21 A. Probably the 18th or 19th, shortly
22 thereafter, a quick one. I mean you have to
23 understand, I'm like with him throughout the day
24 numerous occasions, so --

1 BY MS. TOOHER:

2 Q. Let me show you what has been marked as
3 commission Exhibit 62, and I ask you if you
4 recognize this document.

5 A. I do recall seeing it, yes.

6 Q. Can you identify this document?

7 A. I think Bill is forwarding it to me and it
8 is representing something that Felton was
9 forwarding to him.

10 Q. At the body of document, Commission Exhibit
11 62, the e-mail from Felton to Howard: "Just
12 received another request for ground transportation
13 from that same individual we had last week in New
14 York City." Do you know who that is referring to?

15 A. I would assume Joe Bruno, the Majority
16 Leader.

17 Q. And, when this was forwarded to you from
18 William Howard to Darren Dopp, he indicated:
19 Another request had been made. And who did you
20 think that referred to?

21 A. I assumed it was the Majority Leader.

22 Q. What was the nature of that request?

23 A. Asking for use of the aircraft and ground
24 transportation.

1 Q. Is that the only type of information that
2 Mr. Howard is providing to you at this juncture
3 from the State Police?

4 A. Yes. Pretty much that's all he ever did. I
5 would occasionally ask the question in response to
6 an inquiry about background information, but
7 beyond -- he never provided me with anything other
8 than that.

9 Q. Did you get additional information from Bill
10 Howard?

11 A. Bill Howard, really just like anecdotal
12 stuff about like what transpired in the previous
13 administration. Sometimes they were humorous
14 stories. Sometimes they were: How did you handle
15 the issues? Part of what I always endeavored to
16 do is make sure our actions sort of comport in a
17 well with what others might have done. So, at one
18 point I said, "How did you guys handle these
19 situations?"

20 Q. What was his response?

21 A. I think you saw the e-mail that sort of
22 explained how they handled the Governor. But when
23 it came to Joe's use of, you know, ground
24 transportation and use of the helicopter I kind of

1 got an earful.

2 Q. Could you give us a synopsis of the earful?

3 A. There were flash points. They grounded him
4 at one point.

5 Q. This is during the Governor Pataki
6 administration?

7 A. Correct, all during the Pataki
8 administration. And Bill relates these stories in
9 ways that were -- he is taciturn, not like an
10 excitable person. He relays them in ways we
11 really had some issues here. And at one point we
12 grounded him, and at another point he was awfully
13 angry at me. He told me a story that at one point
14 the State Police called up because Joe wanted
15 lights and sirens. At another point the State
16 police called up and Joe had made a specific
17 request for a specific type of vehicle. And Billy
18 sort of relayed that this was a source of internal
19 discussion in the previous administration about
20 procedures necessary, lights and sirens. It's
21 like Bill said the lights and sirens he put a stop
22 to, and that made Joe angry and he called to
23 Cahill to complain about Bill's directive. Again,
24 it wasn't not -- like Bill kind of chuckled about

1 it. We didn't like think a great deal of it. I
2 go way back with Joe. I know he has a strong
3 desire to get from Point A to Point B on time.
4 When we took office in the administration I said,
5 "I want to be like Joe. I want our news
6 conferences to go off at 1:00 as opposed to like
7 1:30. There was a joke in the LCA about "Pataki
8 time." You set a one o'clock news conference and
9 it doesn't go off until 2:00. Those are the kinds
10 of things that I want to change. And when Billy
11 was describing this about Joe, I just said I kind
12 of thought that's Joe. And that's kind of
13 admirable in a certain way.

14 Q. Did you get the impression that Mr. Howard
15 had strong feelings about Senator Bruno's use of
16 the aircraft?

17 A. That's a really good question. The notion
18 -- I think he said, "Yeah, he even tried to get me
19 fired once." And I relay that to you because it
20 sticks in my mind.

21 Q. You are saying Mr. Bruno tried to get Mr.
22 Howard fired?

23 A. Over this very point if he said no to having
24 the lights and sirens on. And I say this in

1 defense of Bill. That might have led to somebody
2 thinking, you know, I am getting to get that SOB
3 for what he tried to do to me. That wasn't Bill.
4 I'm fairly confident of the guy's mindset. He
5 wasn't like that at all. He kind of chuckled
6 about it. But he did relay the story in the
7 context of telling me about the difficulties they,
8 meaning the Pataki administration, had with the
9 issue previously.

10 Q. The issue of the aircraft?

11 A. And ground transportation.

12 Q. And, following Commission's Exhibit 62 which
13 you have in front of you concerning ground
14 transportation, did Mr. Howard provide you with
15 additional information on that ground
16 transportation he speaks of?

17 A. He must have. I don't have a recall for it,
18 but I don't believe I responded to this. I could
19 be wrong. I just don't recall responding to it.
20 He was so quick after the 17th, and in my mind it
21 wasn't that which of a deal. The only thing I do
22 recall with some clarity as more information
23 became available including stuff like this, I then
24 made another round a second time with the relevant

1 people on the second floor to show them the
2 documents and asked what they thought we ought to
3 do. It was at that time Mr. Pope said, "You
4 really ought to refer it." And Rifkin at one
5 point like he said: This is an issue. And the
6 next point after studying it, a couple of days
7 later came back to me saying: I don't think so.

8 Q. "He" meaning who came back to you?

9 A. Rifkin. His initial take was given our
10 policy, if he's conducting, you know, other
11 business he might have a problem. Now,
12 subsequently, Rifkin came back and said, "You
13 know, Darren, I need to remind you that I wrote
14 the policy that Pataki was going by. And you
15 remember" -- and it was a recitation of what we
16 talked about on the 17th meeting, which is
17 Rifkin's exact words: As long as there is an
18 ounce of governmental it covers a pound of
19 political.

20 Q. And do you recall when he said this to you?

21 A. Sometime after the 17th, I know as a result
22 of me going back to my people the second time to
23 say: Here's some additional information. He has
24 used it on at least two times that we know of.

1 And, again, you know, it's like I just want to
2 double-check because we are standing down. We are
3 in stand-down mode on this. But Mr. Pope says we
4 might want to refer it. What do you think? I
5 queried everybody about Pope's notion that we
6 refer it.

7 Q. That included Rifkin in that?

8 A. Yes. Remember, I said at the top that I'm
9 only as good as my ability to interact with people
10 and gain their knowledge. I had three guys that
11 are extraordinary. Not to be insulting, but they
12 rival your experience in ethical matters, with
13 Rifkin Nocente, Pope, and Spitzer. So, it wasn't
14 a situation in which I'm like doing anything other
15 than trying to glean their best intelligence on
16 what to do. And they were all forthcoming about
17 it. It wasn't as though they like dropped
18 everything to review it and search statutes and
19 did a research project, but they gave me the
20 benefit of their off-the-rib thinking.

21 Q. Part of the benefit of Richard was he
22 relayed to you that he had participated in forming
23 the policy?

24 A. Richard was: Let me think about it. And I

1 came back to him a couple of days later and he
2 said, "I looked at the statutes and I need to tell
3 you this." And that was the pounds versus the
4 ounce comment.

5 Q. And that was based upon the policy as put
6 forth from the Ethics Commission?

7 A. Then I kind of challenged him: Does it make
8 a difference that we have instituted a disclaimer
9 policy that says otherwise? And he said, "I want
10 to think about that a little bit, too." A couple
11 of days later I sort of reminded him of it but he
12 hadn't had a chance to sort of delve into it.
13 Having known him, he's is in middle of a NYRA
14 negotiation and he was a little preoccupied. He
15 was in contradiction. There's a little bit of
16 contradiction. He was all pound of political
17 versus ounce of governmental versus this notion
18 that you're only supposed to be government. And
19 when I did press Richard on it, he said it would
20 only be a problem if there was absolutely no
21 governmental whatsoever. That drove us back to
22 what we had in the itineraries, which is clearly
23 there are venues for it.

24 Q. Venues for what?

1 A. Venues for governmental activity taking
2 place. In each of the itineraries that were
3 produced there were clear things that said, you
4 know, meeting with Mayor Bloomberg covers
5 governmental. Oh, meeting with C.V. Starr; that
6 covers governmental. I can't remember what the
7 third itinerary showed, but each of them showed
8 clear cover for Joe, that he was doing things
9 legally. We sort of took it all with a grain of
10 salt. Obviously, he could point to those things
11 which I said before sort of kind of speaks to if
12 the product of a so-called plot is the travel
13 itineraries, but they show the venues where he was
14 possibly was doing government activities. So, how
15 could we be scheming to damage and smear him when
16 everything we're producing could clear him. That
17 was always like -- I was trying to make people
18 understand that, but nobody seemed to understand
19 it.

20 BY MR. TEITELBAUM:

21 Q. When did the conversation take place between
22 you and Rifkin?

23 A. After the 17th.

24 Q. How soon after?

1 A. A few days after. I can't nail it down
2 precisely.

3 Q. Within a week?

4 A. Yes. I consult him fairly regularly because
5 -- I don't know if you know him, sir. He's what
6 -- there are three guys with institutional
7 knowledge; me, Nocente, and Rifkin. We are the
8 only ones that really served in the administration
9 before. We brought in a ton of very smart lawyers
10 with no context of things that we were doing. So,
11 I frequently relied on him.

12 BY MS. TOOHER:

13 Q. I am going to show you what has been marked
14 as Commission's 34 and ask you if you can identify
15 this document.

16 A. Again, it looks as though Bill is keeping me
17 apprised of what he is hearing from Preston and
18 others regarding the senator's travels.

19 Q. And your understanding of what is contained
20 in this e-mail, the bottom half from Anthony
21 Williams to Preston Felton as per Leslie with a
22 schedule below it, whose schedule is that?

23 A. I would assume it's the Senator's schedule.
24 And what was described to me was that the State

1 Police really didn't concern themselves with who
2 or what he was doing. They just needed to know
3 where he was going so their investigators --
4 Actually, it was a key point because that was
5 another sore point that Bill relayed about the use
6 of ground transportation by Senator Bruno was he
7 had asked for investigators to travel around and
8 specific investigators sometimes. So, I maintain
9 to you that this wasn't spying. It's just what
10 was essential for the investigator to do his job
11 of providing transport services. We don't know
12 who he was meeting with. We don't know what he
13 was doing. We only know the places he was driven.
14 And, you know, that's why when these travel
15 itineraries and this information came up it didn't
16 strike me as at all problematic or extraordinary
17 because what is it that I turn over to the
18 reporters: Who, what where, when, and why for
19 what Eliot Spitzer is doing. What I was preparing
20 to turn over to reporters regarding Mr. Bruno was
21 just what the State Police did in taking him to
22 various locations, the use of a vehicle as opposed
23 to a schedule. That's why, again, absent knowing
24 was his real schedule was -- Russo's Restaurant,

1 that could be a dinner or a meeting in the back
2 room. The Sheraton, that could be like, you know,
3 a fundraiser or that could be meeting in a suite
4 on official business. And we wouldn't have any
5 way of knowing that.

6 Q. Did you do anything to determine what these
7 activities were?

8 A. No. Again, it's like we would have and
9 could have through internal review. What you
10 could have done at that point it to say: Joe, the
11 itinerary from the State Police shows you were
12 here and here. You are conducting official
13 business; aren't you? And that was, you know, we
14 had that conversation on the 17th as to how you go
15 about it. And it was at that point that I said,
16 you know, that is what you did in the old days.
17 That's what you did under Cuomo, Mario. The
18 version of Marlene Turner was Pamela Brodt at the
19 time. Pamela would have called up and just
20 double- checked. It's like: Guys, it's not
21 anything frivolous; it's real stuff, right? And
22 they would have said: Yeah. We were doing blank
23 and blank. And, so matters were resolved in that
24 fashion.

1 Q. To your knowledge, did Marlene Turner do
2 that?

3 A. As of the 17th we just decided to stand down
4 and watch and, I think, monitor. In retrospect
5 it's a little too strong of a word because it
6 involves active review. It was just: Keep us
7 apprised.

8 Q. Now, we are at the 23rd?

9 A. Yes.

10 Q. And, this appears to be another trip by
11 Senator Bruno?

12 A. Yes.

13 Q. I am going to show you what has been marked
14 as Commission's 63. And, again, this is the 23rd.
15 There's a note from William Howard, at the top:
16 Fort Drum today. Meeting with Bloomberg added to
17 Bruno. A little further down the thread, Felton
18 to Howard: Note change in schedule.

19 A. That kind of reassured us that probably
20 wasn't going to be to issue simply because it
21 wasn't clearly official business going on. But,
22 again, remember, continue to watch the situation,
23 continue to monitor. And, to the extent we now
24 know he is meeting with Mayor Bloomberg it's like,

1 okay. It appears that throughout the process we
2 go kind of back and forth. Sometimes we think
3 there really might be something going on here that
4 we might want to look into. Then, other times,
5 obviously he's meeting with the mayor. That's
6 cool.

7 Q. When you say "we go back and forth," who are
8 you referring to?

9 A. The whole group. Remember, I take to
10 Nocente and Baum and, to a certain extent Spitzer,
11 the comments of Howard, Pope, and Rifkin. And I'm
12 a catalyst for kind of internal discussion, but my
13 stock and trade is accurately reporting what my
14 people are saying so that the Governor and our
15 collective group that's the decision making body
16 has good information from which to decide what to
17 do.

18 Q. Did you take the information contained in
19 Commission's 34 and 63 to those people?

20 A. I don't think I actually handed them -- put
21 that in front of them.

22 Q. Did you give it to any of them?

23 A. I don't think so. I just would have said:
24 There's additional trips but they look okay.

1 BY MR. TEITELBAUM:

2 Q. You say that you would communicate with Mr.
3 Nocente and Mr. Baum and the Governor the
4 positions being put forth by Rifkin and Pope.

5 A. Right.

6 Q. Now, as of the 23rd what was Pope's position
7 that you were communicating to Mr. Nocente, the
8 Governor, and to Baum?

9 A. We had -- Pope began with the notion that I
10 really should refer to the Inspector General. He
11 didn't change his view, and I reporter that. He
12 didn't change his view on referral until another
13 story appears where the Times Union writes about
14 flights that Bruno is taking with Abbruzzese. It
15 was at that point that he stopped by to say, "I
16 have links to the feds". He didn't describe which
17 feds, but, "We could refer to them."

18 Q. We are going to get to that. So, as of the
19 23rd, at least, your testimony is that Pope
20 continued to press for the referral to the
21 Inspector General?

22 A. Peter wasn't actively involved in the
23 discussions with the group. I consulted him
24 because I valued his opinion and I'm pretty sure

1 that he maintained that view.

2 Q. You were communicating his views to three
3 other people. Was that the view that your counsel
4 communicated that he continued to want the
5 referral?

6 A. Yes.

7 Q. The same thing regarding Rifkin, what was
8 Rifkin's view that you were communicating to the
9 Governor and to Nocente and Baum as of the 23rd?

10 A. It's hard for me to nail it down in that
11 period because, remember, Richard had two
12 different views. First, he was of the notion that
13 it really should be.

14 Q. Should be referred?

15 A. Yes. And, secondly, he said, "I really
16 don't" because, you know, remember, the ounce -
17 pound comment. So, I can't remember when I would
18 have brought that to people, but I would have
19 noted it at some appropriate point when we were
20 discussing it.

21 Q. That Rifkin was holding within his head two
22 positions that might be contrary to one another?

23 A. At one meeting I would have said: Pope and
24 Rifkin both think blank, and now Richard doesn't

1 think so anymore.

2 Q. "Blank" meaning referring to the Inspector
3 General?

4 A. Right.

5 Q. You testified that the idea was that on the
6 17th you were to stand down.

7 A. Yes.

8 Q. And Bill Howard was going to continue to
9 receive information from the State Police; right?

10 A. Correct.

11 Q. And, at least as of the 23rd, you also
12 received information from Rifkin that an ounce of
13 state-related business can justify a pound of
14 non-state related business with respect to the use
15 of aircraft; correct?

16 A. Correct.

17 Q. You also testified that you can't tell from
18 these itineraries whether state business as being
19 done or not?

20 A. That's correct.

21 Q. So, why are they being collected?

22 A. We had an obligation to ensure appropriate
23 use of the aircraft.

24 Q. How are you doing that?

1 A. Well, I mean, as I sort of related to you
2 before, I thought the best way of doing that would
3 be conducting a review, but we didn't choose that.
4 That's what I sort of advocated and continued to
5 believe. I think you could read from my continued
6 desire to relay information from others on staff
7 that I thought it was not sound long term strategy
8 to let it lie. But, again, it's like -- forgive
9 me. I don't want to sound wishy-washy. But once
10 the decision was made to stand down I wasn't going
11 to, like: Okay. Yes, sir. That's what we will
12 do.

13 Q. Why are these documents being collected?
14 These documents, as you pointed out, Mr. Dopp,
15 these documents -- and I'm referring now to 34 and
16 63 -- tell you nothing about the nature of what is
17 going on. For example, at 6:00 p.m. reading from
18 34, now, a meeting in Russo's Restaurant; right?

19 A. Correct. Those particular ones tell us
20 little. They're not useless, but that doesn't
21 like -- if you have the obligation to ensure that
22 the aircraft is being used properly and the only
23 source of information is these things, you don't
24 simply discontinue a review. It's like you have

1 to continue to monitor.

2 Q. Why? Why is what you are receiving
3 meaningful information given what you have
4 testified?

5 A. Well, I mean it wasn't particularly -- it
6 wasn't compelling for those two. But what about
7 something in the future? And, then, you'd have to
8 act on that in the future.

9 Q. You mean if there were itineraries that
10 said, for example, Russo's Restaurant: Raising
11 money?

12 A. Yes, exactly.

13 Q. Do you have any itineraries that say those
14 kinds of things?

15 A. As a matter of fact, yes, the Sheraton.
16 Look at the Sheraton restaurant. That's the same
17 event where he's holding the annual Republican
18 fundraiser. That's one of the catalysts. That's
19 why it's raising our eyebrows.

20 Q. That's on Commission's 5?

21 A. That would be Commission's 5, right. That's
22 the thing faxed over from Bruno's office. They
23 told us little, but I maintain to you that we
24 still had an obligation to at least consider what

1 they were telling us.

2 Q. Well, forgive me but you, yourself, point
3 out you didn't know what was going on with C.V.
4 Starr; correct?

5 A. Correct.

6 Q. And C.V. Starr he may have been conducting
7 government; right?

8 A. Correct.

9 Q. And, if he was, then the use of the aircraft
10 was okay according to what you were told by
11 Rifkin; correct?

12 A. Exactly.

13 Q. At the Sheraton New York hotel which is
14 referenced here, I mean it may have been a
15 fundraiser; correct? It may have been also doing
16 government business there?

17 A. Correct. That's what he maintained after
18 the fact. But it was the site of his big
19 fundraiser.

20 Q. I understand that, but he could also have
21 been doing government business there for all we
22 know.

23 A. Absolutely.

24 Q. Unless you look behind it, you will never

1 know; correct?

2 A. You would have a hard time establishing it
3 for a fact, yes.

4 Q. It would be insufficient, certainly, to be
5 condemning it?

6 A. Yes.

7 Q. So, I come back to my suggestion to you --
8 and I am not being critical, understand -- but
9 without going behind what is contained in these
10 itineraries to find out what actually was
11 happening at these various venues these documents
12 are completely irrelevant, are they not, to make a
13 determination as to whether state business was
14 taking place?

15 A. I disagree with the notion that they are
16 irrelevant. They can give you a sense, but they
17 are not conclusive.

18 Q. How does "C.V. Starr" give you a sense of
19 anything?

20 A. What if C.V. Starr was the site of a
21 fundraiser.

22 Q. But we don't know; correct --

23 A. That's correct.

24 Q. -- unless there is an inquiry beyond the

1 document itself. The document itself really tells
2 you nothing concerning whether state business was
3 taking place. Can we agree on that?

4 A. We can agree on that. I actually make that
5 point in trying to get you to consider the fact
6 that if this were some kind of plot to smear, the
7 product of the plot would not be so helpful to
8 Bruno in demonstrating that he was doing state
9 government work. Why were we collecting this
10 information? We had information from the
11 reporter. He said, "I want to see itineraries
12 from you and Bruno and I want to see flight
13 manifests from you and Bruno." The only thing we
14 had that passed as itineraries was this very
15 sketchy document.

16 Q. When you provided these documents, the
17 itineraries to Odatto -- and it was at the end of
18 June; right?

19 A. Right.

20 Q. Did you communicate to Odatto that the
21 executive chamber had formed an opinion that an
22 ounce of state business justifies a pound of
23 non-state business?

24 A. We would have discussed what the law was.

1 Q. You did that?

2 A. Yes.

3 Q. You did that yourself?

4 A. Yes. More to the point, I said, "Dude,
5 you're going to have to figure out what this means
6 because you're not going to know too much unless
7 you get the schedule."

8 Q. But you communicated to him the ounce and
9 pound notion?

10 A. Yes. It was well established.

11 BY MS. TOOHER:

12 Q. After you received the information by
13 e-mail, 34 and 63, did you continue to receive
14 information from Mr. Howard?

15 A. I believe so, yeah. Basically, it's sort of
16 like, you know, every time he was using the
17 aircraft we were notified.

18 Q. Every time Senator Bruno was using the
19 aircraft you received notification from Mr.
20 Howard?

21 A. We received some note.

22 Q. That commenced in the middle of May?

23 A. The beginning of May.

24 Q. How long did that continue?

1 A. Right up until the time that the FOIL
2 request was honored.

3 Q. You received e-mails from Mr. Howard?

4 A. E-mails. And, he came down and mentioned
5 "another request today."

6 Q. And, did you get other information from Mr.
7 Howard beyond the itineraries?

8 A. I don't recall any other information than
9 just those.

10 Q. When you discussed earlier that there was a
11 point where Bill Howard relayed to you that the
12 documents went way back.

13 A. Um-hmm. Early on, in early may. And I
14 think there is an e-mail where I sort of conveyed
15 to Rich. We were trying to figure out, well, we
16 have this obligation to monitor but what can we
17 use to sort of ensure that it is being used
18 properly? And, that's when Bill told me that and
19 that's when I shortly relayed it to Rich, after
20 the fact.

21 Q. That fact being --

22 A. That there are records going back.

23 Q. What was your understanding as to what those
24 records were?

1 A. Something that was a reasonable facsimile of
2 an itinerary or schedule akin to what Eliot was
3 providing, what Eliot would provide, because that
4 was my request to Bill: As I am going to be
5 providing the manifests, the schedules, what do
6 you have that is similar for Joe, if anything.

7 Q. And did you relay to him that you wanted
8 schedules similar to what you provide for Governor
9 Spitzer?

10 A. No, because I knew that we didn't have a
11 schedule. But Billy's thought was that we had
12 something that spoke to wherever he was being
13 driven.

14 Q. This was after he provided you with
15 Commission's 5?

16 A. I think it was before -- I think it was
17 before. It was early in the month when we talked
18 about what would be available. Remember, that's
19 what sort of Odatto asked me: What's going to be
20 available, and I would have checked with Billy and
21 he would have said that.

22 Q. You believe that was early in May?

23 A. I think so; before the 17th.

24 Q. Was it before or after he had given you

1 Commission's 5?

2 A. Before. Remember, the sequence is:

3 Reporter asked me what's available. I say: I
4 don't know. I will find out. I turn to Bill and
5 Bill says, well, obviously, the manifests and I
6 will see what else is available. And I would have
7 said: Well, the reporter would be looking for
8 anything akin to a schedule or itinerary. And he
9 said, you know, "I'll check." And, maybe a day
10 later he came back and said, "I think the records
11 go way back." That's when I sort of relayed to
12 people -- or subsequent to that I relayed to
13 people there were records going back that speak to
14 a kind of on-the-ground, you know, itinerary, log,
15 some type of record of what he was doing when he
16 was there.

17 Q. Did he ever provide you with the records
18 going way back?

19 A. You now, when I said later on, "Will that be
20 FOILable and do you have that," he said, "I'll go
21 back and check." And the only thing he came back
22 with were the Commission's 5. Whereupon, I said
23 to him, "But I thought you said the records go way
24 back." And he said, "I will find out what the

1 deal is." And, then, he came back with the travel
2 records, and then I said to him, "Why does one
3 look different from the other?" And, then, he
4 said, "Because sometimes they are called in and
5 sometimes they are faxed over."

6 Q. So, at this point your testimony is that he
7 indicated to you he had the records he provided
8 you with?

9 A. He didn't say he had them.

10 Q. He said they existed?

11 A. Yes.

12 Q. He provided you with Commission 5?

13 A. Right.

14 Q. And, then, you asked him for additional
15 records?

16 A. I said, "What about the rest?" And he said,
17 "What do you mean 'the rest'?" And I said, "I
18 thought you said the records go way back." And he
19 says, "oh, I'll find out."

20 Q. I am going to show you what has been marked
21 as Commission's 45. Do you recognize this e-mail?

22 A. Yes.

23 Q. And, this is an e-mail from you to Richard
24 Baum?

1 A. That's right.

2 Q. And this is, apparently, May 23, 2007?

3 A. Yes.

4 Q. Can you identify this document?

5 A. Remember, on the 17th we concluded that we
6 would stand down. But there were open questions.
7 Which Herb has sort of pointed out, what can you
8 really tell from this from this. It was
9 thereafter that, you know, Bill came forward with
10 this information. And it was right about this
11 time that I consulted Pope.

12 Q. When you say "this information" what are you
13 referring to?

14 A. The fact that there would be additional
15 itineraries, ground travel things. And it was
16 then that I kind of showed it to Pope and that's
17 when Pope sat at my desk and said, "Here's what I
18 think you should do."

19 Q. What is it you showed to Pope on the 23rd?

20 A. The itinerary or itineraries. I don't
21 recall whether I had one or two. I think it was
22 just the one.

23 Q. Commission's 5?

24 A. Yes. And the "new and different" way to

1 proceed was rather than conducting an internal
2 review which we had already said we would stand
3 down from, maybe we should refer to the I. G.

4 Q. Why do you say, then, "new and different way
5 to proceed" regarding the media?

6 A. Because referral to the I.G. would relieve
7 me of the obligation to interact with the media.
8 All's I would have to say is that the matter is
9 under review by the Inspector General. We have
10 referred it to them for their review.

11 Q. So, this is not taking the back to the
12 media, but passing it --

13 A. No, no. We made the decision not to go to
14 the media. But when Pope says: You really ought
15 to go to the I.G., that in effect is really a
16 media strategy because it relieves me of the
17 obligation. If the reporter said: Give me the
18 information. And, what would I be able to do at
19 that point is say: I'm sorry. I can't comment.
20 I have no information for you. It's being
21 reviewed by the Inspector General.

22 Q. Did you discuss the media aspect of the
23 decision to refer to the Inspector General with
24 Mr. Pope?

1 A. No. I was kind of shocked that he was
2 telling me the things he was, and I quickly ran to
3 Baum and Nocente.

4 Q. When you say you were shocked what were the
5 things he was telling you?

6 A. That I have a criminal liability if I didn't
7 refer it. And he shows me the statute of the
8 damned law that said -- forgive me for not knowing
9 it; I don't recall it. But the upshot of it is if
10 you had information about possible misuse of state
11 aircraft you must refer. And I said, "Peter, we
12 really don't know." "Darren, 'possible' means any
13 possible." I kind of -- He spooked me a little
14 bit, to tell you the truth.

15 Q. So, Mr. Pope was saying to you that you had
16 an obligation?

17 A. Me, personally, right.

18 Q. To refer?

19 A. And to do so in a timely manner.

20 Q. And what was it that he felt you were
21 referring to the Inspector General?

22 A. The records and other information regarding
23 Senator Bruno's use of the aircraft.

24 Q. And that was based on Commission's 5?

1 A. Based on Commission's 5 and the disclaimer.
2 Remember, the lawyers on staff kept matching up
3 the two and kept trying to determine whether
4 attesting in writing to the fact that you are only
5 conducting legislative meetings, you know, how
6 that compared with the standard policy and
7 practice of ounce versus pound. Now, did our
8 disclaimer influence ounce versus pound; right?
9 How would you weigh those two things? That was
10 the lawyerly discussion that happened.

11 Q. That discussion occurred with who?

12 A. You know, pretty much everybody. It's like
13 Rifkin, Pope, Nocente, and Baum. I didn't really
14 participate in it except to listen to what they
15 were saying.

16 Q. You were present for the discussion, though?

17 A. I was sort of like the catalyst for it,
18 because once Peter said what he said to me, I
19 immediately went to Nocente and then I told Baum
20 about it. And it's like when I tell you that we
21 discussed in ad nauseam internally, we were like
22 agonizing over what the ethical thing to do was
23 with Pope and me at various point saying we really
24 ought to refer, but with others saying, just as

1 Herb has noted, but we really don't know anything
2 from this. There's no smoking gun. There's
3 nothing that says you can't but, more to the
4 point, it shows places where he might.

5 Q. But did you show that to Pope? Did you
6 indicate to Pope the ounce versus pound analysis?

7 A. No, just to the others. I might have, but
8 it was kind of quick. Peter comes in and makes
9 pronouncements and then departs. He came in. I
10 showed him the materials. He sat down -- he says,
11 "Get out of there." And he typed up the I.G.'s
12 web site and shows me the things. I didn't wait
13 too much longer to go to Nocente to say what I
14 heard.

15 Q. He told you that you might be criminally
16 liable and walked out?

17 A. Yeah. That's his style. It's like, you
18 know, yeah. I mean we laughed, but I was kind of
19 spooked about it.

20 BY MR. TEITELBAUM:

21 Q. This wasn't a joke; was it? Did you think
22 he was kidding you?

23 A. No. But I mean he just like punched me in
24 the shoulder and then departed. That's Peter.

1 He's a prosecutor's prosecutor. Whenever there
2 was -- I would push back and say, "Oh, come on,
3 Peter. We really don't know." And he said,
4 "Whenever there's a question you should refer."
5 That's why I went to Nocente and Baum. And they
6 were dismissive, but he made quite an impression
7 on me. And they said don't worry about it, never
8 mind. And I said he said I have to do it in a
9 timely fashion. And the comment was: It all
10 depends on what "timely" is because we just don't
11 have anything now. More to the point, you know
12 what Bruno's going to say; he's just conducting
13 official business. I said okay. A little weird,
14 but okay.

15 BY MS. TOOHER:

16 Q. When you say you were discussing "in a
17 timely fashion" with Baum and Nocente, is there
18 any discussion about continuing to gather the
19 information?

20 A. One didn't naturally follow from the other
21 except in my mind which was that knowing what
22 Peter was saying, it was imperative for me to at
23 least continue to have Bill review and monitor the
24 situation.

1 Q. Because, now, you are concerning about your
2 own personal liability?

3 A. Yeah. It's like Peter's a dramatist at
4 times, but he's the former head of our criminal
5 division for eight years, a good friend, and
6 former Inspector General. And, I said, "Are you
7 sure?"

8 Q. And did you say to him: Are you sure?

9 A. Yes, I did, "Are you sure?" And, more to
10 the point, it's like, "What do you want to do
11 create World War 3 here?" But, then, I'm like --
12 the reporters are going to be asking about it.
13 This is going to come out sooner or later. Don't
14 we want to have done the right thing by either
15 internal review -- and I raised internal review
16 again -- or referring it some place? And it's
17 like: No!

18 Q. They specifically told you, no, don't pursue
19 it?

20 A. Yes, it's absurd.

21 Q. And, did they tell you not to pursue the
22 issue of Senator Bruno's use of the aircraft?

23 A. That didn't follow. It was just the kind of
24 understanding that you would continue to monitor

1 in the event that -- you're right, these things
2 didn't tell you a hell of a lot, but maybe
3 something in the future would that you'd have to
4 act definitively on. I think that's what they
5 were thinking. I can't really put myself in their
6 shoes at that point, but most assuredly I
7 presented Pope's notions to them and they said no.
8 But it truly would have been unethical to say:
9 No, never mind. Let's not ever look at this
10 again. That would be turning your back on
11 possible misuse use of taxpayer money. That's not
12 what they were doing. They were just saying no,
13 not now. We just don't have enough to go on. But
14 what was unsaid or maybe even said is, "Let's
15 continue to monitor.

16 BY MR. TEITELBAUM:

17 Q. Was anybody else use of the aircraft being
18 monitored?

19 A. Everybody's use of the aircraft was being
20 monitored. It's just that Joe was the most
21 prolific user. Patterson was the next most
22 prolific user. And I asked that very question.
23 It's like, ultimately, records for everybody using
24 the aircraft during that time were laid out. I

1 knew for a fact, and I asked, "What about Shelly"?
2 Shelly had every so often a religious obligation
3 and had to be certain places by sundown. And
4 every so often in the past during the Cuomo years
5 he made a request of Eliot, "I need to get there."

6 Q. You mean Mario Cuomo?

7 A. I'm sorry; I mean Mario. "I need to get
8 there. I will stay with you at the leaders
9 meeting, but can I have the chopper to get me down
10 by sundown?" So, this is the way it was. So,
11 Shelly used it. I asked for everybody else's use,
12 so I may as well.

13 Q. So, am I to infer from what you just said
14 that Howard was collecting information from the
15 State Police on anybody who used state aircraft?

16 A. He would have had anybody else who had been
17 using it, right. But the only other person was
18 Patterson, and I already had access to that
19 information from Marlene Turner.

20 Q. You are saying -- the only person you are
21 saying who had information with the State Police
22 who wasn't with the executive chamber was the
23 Majority Leader?

24 A. It wasn't worded exactly like that. Marlene

1 Turner signs off on all the requested uses of the
2 plane. When Marlene Turner told me it's Joe, I
3 then turned around and said to Bill, "I understand
4 Joe is using it. What records do you have?"
5 When it was Patterson I said to Billy and Marlene,
6 "What records do you have?" It was Marlene that
7 produced Patterson's records. Actually, I take it
8 back. Marlene gave me a description of what
9 Patterson was doing. I had to go to Patterson's
10 people to obtain those specific records.

11 Q. Was that in connection with the press
12 request or was that in connection with an ongoing
13 internal monitoring?

14 A. It was all prompted by my initiative early
15 in May based on the reporter's inquiry: Who else
16 is using the plane? So, I would have turned
17 around to Billy and Marlene and said, "Who is
18 using this asset?" "Eliot, David Patterson, and
19 Joe Bruno were the only ones using the plane
20 during that period of time.

21 Q. Was the monitoring going on in connection
22 with the press request or something else?

23 A. The start of it was as a result of the press
24 request. And, you remember, it's the press

1 request that gets us looking into it, knowing that
2 we have an obligation to ensure proper use. So,
3 once the monitoring had begun, once the review had
4 begun, to all of a sudden discontinue it, even
5 though, as you say, you are not finding anything,
6 you have an obligation to continue to review
7 because you know the request is coming for
8 comprehensive information on who is using it.

9 Q. Before May was Senator Bruno using state
10 aircraft?

11 A. Yes. There were twice monthly trims from
12 time immemorial.

13 Q. Were you monitoring those?

14 A. No, only after the 1st. The State Police
15 were keeping records on those, but that
16 information is only being forwarded to us after
17 the reporter's request came in.

18 Q. So, the internal monitor procedure commenced
19 as a result of the press request? Is that your
20 testimony?

21 A. And the subsequent conversation internally
22 will concluded that we should be monitoring. The
23 press request raises it.

24 Q. Do you mean on the 17th?

1 A. No, a little bit before that. Remember, I
2 go to my people being the Governor and Secretary
3 saying: Some pretty comprehensive requests refer
4 for explanations of who is using the aircraft.
5 And the result of that thing is: Well, we'd
6 better find out. You'll take care of that,
7 Darren? Yes, I will. I will talk to Bill. So,
8 yes. Early May is when we start to say: Wait a
9 minute. This could be a problem for us. We
10 better know is using aircraft and for what
11 purposes.

12 Q. On the 17th or at any time before then did
13 you represent to Baum that you had a FOIL request?

14 A. I don't think I used those words. I just
15 said I had a lot of reporters' inquiries. And I
16 hope wouldn't have been shy about saying they were
17 pretty intensive, pointed ones.

18 Q. Is your answer no?

19 A. Yes. I never used the word FOIL to Rich,
20 not until later.

21 Q. In words or substance, did you communicate
22 to them you had a FOIL request?

23 A. No. I am positive that at some point I said
24 it's going to be FOILED.

1 Q. That's not what I'm asking you. I'm asking
2 you: On the 17th or before did you represent to
3 Mr. Baum that you had a FOIL request?

4 A. No, because I didn't.

5 Q. The same question with respect to Howard.

6 A. Same thing. I didn't have a FOIL request.

7 Q. Did you ever make that representation to Mr.
8 Nocente that you had a FOIL request on or before
9 the 17th?

10 A. I never told anybody that I had a FOIL
11 request because I didn't have one. I would have
12 instead said I have a lot of reporters' inquiries.
13 What do you have that would be responsive to a
14 FOIL request?

15 Q. To "the" FOIL request?

16 A. Or to a FOIL request. What do you have that
17 would be responsive to a FOIL request? That's
18 what I said to Bill, and that's the only way I
19 could have proceeded. But I did not have it, no.
20 Again, I like maintain to you, given the intensity
21 of the reporters' inquiries I was not a genius in
22 concluding that there would be a FOIL request. It
23 was like obvious from their intense questioning
24 and I knew what was coming. And any

1 communications director worth his salt commences
2 that and knows the answer to the question before
3 it finally comes.

4 BY MS. TOOHER:

5 Q. In your understanding as to what was coming,
6 was a request concerning travel?

7 A. We discussed it fairly thoroughly, Odatto and
8 I. It's like, "What have you got? And I told him,
9 "I am going to give you schedules and manifests
10 for Eliot. For Joe I just have manifests." "Well,
11 what about schedules?" "Well, I don't know about
12 that." "How could you not have schedules? How
13 can you not have some kind of itineraries?" "I
14 don't know. I'll check." That's what encouraged
15 me to go to Billy and say, "What do we have that
16 corresponds to a schedule or itinerary?"

17 Q. Would it be your understanding that
18 Commission's 5 was a document of the executive
19 chamber under a FOIL request?

20 A. I don't follow you on that. Commission's 5
21 to me would have been produced to me in response
22 to my request to Bill about what do you have that
23 would be akin to an itinerary or schedule. And he
24 would have said: This is all we have.

1 Q. And if he said to you this is not something
2 that would be produceable under FOIL --

3 A. I'm the press guy. I am responding to media
4 inquiries. I say to him, "What do you have that
5 would be responsive to a FOIL request?" Here's my
6 filter. Felton and Valle and all of those other
7 guys there, they wouldn't have given it to him
8 unless they concluded it was a public document.
9 Billy wouldn't have given it to me unless it was a
10 public document. I looked at it and said, "Ah,
11 this has got to be a public document and
12 responsive to a FOIL." I wouldn't have stopped
13 there. I then would have showed it ton everybody
14 else. Nobody at any time said: This is not going
15 to be FOILable, or: This isn't a public document.
16 To the contrary, we looked at it and knew it paled
17 in comparison in specificity to everything that we
18 were voluntarily providing to everybody from the
19 Governor.

20 Q. If Mr. Howard have given it to you in
21 response to your internal inquiry, and if he had
22 said to you: This is merely for use on your
23 internal inquiry; this is not something that would
24 be produced under FOIL --

1 A. That would be burned on my forehead for all
2 eternity, but that never happened.

3 Q. If you had said to Mr. Howard that: I am
4 looking for documents pursuant to an internal
5 inquiry and he had given you documents --

6 A. Internal inquiry is --

7 Q. Would those be something that you would
8 consider to be records you would turn over under
9 FOIL?

10 A. There's a red flag. That means someone in
11 an internal review, like David, like Mariah, or
12 somebody else, has to go over that with a fine
13 tooth comb to be sure it's appropriate because,
14 Bingo. You have reached a trigger for me, because
15 if there is an official internal review and
16 investigation, A, you don't give anything to
17 anybody during that because it's an ongoing
18 investigation. And, B, you have to ensure it's
19 appropriate for release. But, remember, my
20 request to Bill and remember my media inquiries:
21 What have you got that's responsive to a FOIL.

22 Q. I thought you testified earlier that you
23 were gathering these documents in furtherance of
24 your own intentional inquiry.

1 A. No, no. I suggested that we conduct one.
2 But my purposes were only: What do you have
3 that's responsive to a media request? I wouldn't
4 have conducted the internal inquiry. I suggested
5 that it might be a course of pursuit based on my
6 experience in the Cuomo administration, but I
7 wouldn't have been part of that process. That's
8 why I liked the process of an internal review
9 because it put the brakes on me giving anything to
10 any reporter. I never would give anything to a
11 reporter when there's an ongoing investigation.
12 Boom! It gets me out of my media problem and, to
13 me, it was the ethical and right thing to do
14 because, like Mr. Pope said -- and he gave it to
15 me good -- any time you have something, you should
16 really do something with it.

17 BY MR. TEITELBAUM:

18 Q. I thought you testified that after the 17th
19 the purpose of your receiving information from
20 Howard and his purpose of receiving information
21 from the State Police was a monitoring purpose; is
22 that correct?

23 A. Correct.

24 Q. It was not for the purpose of handing

1 documents over to the press; correct?

2 A. Once they told me to stand down that was the
3 case. But remember what I advised them. They are
4 going to come back, meaning the reporters are
5 going to come back, and ask for the information,
6 at which time that happened -- and guess what I
7 did. I consulted everybody saying, hey, I've got
8 a request. What do you want me to do with it?

9 Q. Did you tell Howard that you were monitoring
10 the senator's travel for internal information or
11 words to that effect?

12 A. No. I would have told him --

13 Q. Not what you would have told him about. You
14 did tell him?

15 A. I believe I told him we decided to stand
16 down for now in terms of conducting an internal
17 review and we had not decided what to do, whether
18 to follow through on the media or whether to do
19 something else.

20 Q. How could you then rely on the notion that
21 what you were given was FOILable at that point?

22 A. I just like assumed.

23 Q. Why?

24 A. Because that was my original very clear

1 request of him: You know that I am preparing in
2 response to media inquiries.

3 Q. But it changed; didn't it?

4 A. Yes.

5 Q. In other words, the notion that this was
6 press inquiries or activities in response to a
7 press inquiry -- that, understandably, had changed
8 on May 17th. It was no longer monitoring for the
9 purposes of press inquiry; it was monitoring for
10 the purposes of internal use?

11 A. Not inexorably. We still could have
12 revisited internal abuse. We still could have
13 revisited referral. We could have released to the
14 media based on whatever we found.

15 Q. Were you concerned, Mr. Dopp, that after you
16 told Howard that the indication was to stand down
17 and you didn't know --

18 A. Stand down from handing the media.

19 Q. To the press, right. You were going to
20 stand down from that. You didn't know -- what I
21 say "you", you and the executive chamber didn't
22 know what direction you were going to take after
23 that, all right, weren't you concerned about
24 whether having delivered that piece of information

1 to Mr. Howard that he was giving you documents
2 that from his perspective or from Felton's
3 perspective were FOILable?

4 A. No. It didn't raise a concern for me. I
5 apologize if you see something wrong with it.
6 FOILable documents are public information that
7 should eventually be released. And, remember, my
8 position with all of my colleagues, you know, was
9 that sooner or later they are going to ask for
10 this information and I believe we are obliged to
11 provide it.

12 Q. I thought you said having told Howard that
13 this was in anticipation of a FOIL request prior
14 to the 17th that you had assumed, well, Howard
15 wouldn't give you documents that shouldn't be
16 released to the press because Felton wouldn't give
17 Howard documents that shouldn't be released to the
18 press. But, come the 17th the releasing to the
19 press is no longer the necessary strategy;
20 correct?

21 A. It wasn't like a final decision. It was like
22 for now. 'Stand down' doesn't mean never. It
23 just means we don't have anything to go on. Why
24 would we conduct an internal review?

1 Q. I understand. I'm just trying to get at the
2 reliability of your assumption that the documents
3 that you are getting from Howard and he is getting
4 from Felton, once Howard receives these pieces of
5 new information as to the ambiguity of the purpose
6 for which he is delivering documents to you, your
7 continued reliance that people are looking at
8 these documents on the assumption that they are
9 going to be released to the press. That's all I
10 am trying to get at.

11 A. It may have been a failing on my part that I
12 didn't like think of it in the terms that you are
13 describing. But I just wasn't -- that didn't
14 occur to me. I see your point at this point, but
15 in the course of doing it, moving fast on a whole
16 host of issues, I was just like -- this
17 administration has a serious obligation to ensure
18 appropriate use. If we are not going to conduct a
19 further internal review, if we're not going to
20 refer to somebody else to do so, we better sure as
21 hell at least continue to monitor. I would do
22 nothing with the information that was provided to
23 me without then going back to double-check that
24 they are public documents before any of the

1 options. I was in possession of them and, if at
2 some later point we decided to do a review I would
3 have turned them over. If at some point we
4 decided to make a referral I would turn them over.
5 If I was going to release to the media I would
6 most assuredly say: Here's what I have. The FOIL
7 request is coming. Should I release?

8 Q. And you did that, you said?

9 A. Yes, sir.

10 Q. You checked with Nocente?

11 A. Nocente was out on the given day the FOIL
12 request came in. I checked it with Baum and
13 Spitzer. And, subsequent to that I told Nocente
14 about it.

15 Q. You showed the Governor the documents?

16 A. Yes. It wouldn't have been at that
17 particular moment. It would have been a couple of
18 days before it went out.

19 Q. Before they went out to the press --

20 A. Yes.

21 Q. -- you showed him the documents?

22 A. He looked at them.

23 Q. Did you show him before the request?

24 A. I believe it was before the FOIL request

1 came in, but it was at a time I was confident that
2 a reporter is coming down. And what I said to him
3 was, "Odato's coming down. I know what he's going
4 to ask about. Are you okay with releasing the
5 documents?" I showed them to him. And one of the
6 minor errors is the Soares' report was that it
7 wasn't Nocente who said Orenstein to me; it was
8 Spitzer who said Orenstein to me. Spitzer looked
9 at the documents and said, "Dan Orenstein." He
10 then proceeded to tell me the story of how there
11 was a new prosecutor on the case and it concluded
12 -- I'm not a lawyer and I might mangle this -- but
13 the upshot to me was that legislative business and
14 fundraising, that one does not preclude the other
15 legislative business. He then thought it's like
16 we are obligated to release it since the reporters
17 are asking for it. His mindset and Baum's mindset
18 at the time was to trust my judgment on these
19 things. And, "How? What's going to happen?" And
20 what I said to him was, "I think we take a little
21 bit of a whack. I think Patterson takes a little
22 bit of a whack. We've got two trips; Patterson's
23 got one trip. And, basically, all we have on Joe
24 is three trips for which he has total cover. So I

1 don't know how this story ultimately turns out. I
2 think it's like any one of the dozen stories on
3 this that have had occurred since I've been in
4 public life where we all take a little bit of a
5 whack for expensive use of taxpayers' aircraft
6 where we mix politics and government." And the
7 boss was, you know, a little nervous about it.
8 And that's why in subsequent e-mails he was
9 constantly asking, well, "How's it going to come
10 out? How's it going to come out?" That was our
11 expectation at that particular moment; that we
12 would give the story to Odatto who was notorious
13 for doing this that whacked us all pretty good.
14 That is responsive. I think I can follow through
15 a little bit. But I learned from Odatto a couple
16 of days -- after the FOIL was in, he said to me,
17 "You'll never believe what Bruno is doing. He
18 blew me off, wouldn't give me schedules." He was
19 really angry with him. That's neither here nor
20 there. This was communications policy. But I
21 submit to you that the scandal was produced by
22 Joe's communications staff staying: Screw you to
23 Odatto. They wouldn't tell him what the use of the
24 airplane was all about. They wouldn't confirm

1 that government business had been done. So, at
2 that moment, you would have had the story that I
3 predicted with Spitzer taking a whack for the
4 Monroe County trip and the California trip,
5 Patterson taking a whack for meeting with the
6 National Party Chair, and Bruno taking a whack for
7 attending his party's fundraisers while also
8 mixing together with business.

9 The story would have went on to say that
10 everything under the law was fine. But that story
11 -- you'll see in my package -- has been written at
12 least six times since I have been around in
13 government.

14 Q. When you say you showed the documents to the
15 Governor, you showed him all of the documents that
16 ultimately went into the hands of Odatto?

17 A. It was a big package. I showed him
18 representative samples of each. I showed him a
19 itinerary, your Exhibit 5. I showed him the
20 flight request. I showed him manifests, and
21 showed him our schedules. And, again, his
22 interest was -- Joe was like an afterthought to
23 him, you know. He was just concerned about how
24 bad of a whack we were going to take.

1 Q. Because of his use of the aircraft?

2 A. Yes. He didn't want to look like a
3 hypocrite. And I'm like, "Boss, I think we're
4 really covered, especially when you look at the
5 range of people using it. They all have some
6 government apparently. We just don't know about
7 Joe. We think so. We think he's got the venues
8 to point to. But without the schedules we just
9 wouldn't know. What did he do? He then repeated
10 what I just said to him. Yeah, without knowing
11 the schedules how would we ultimately know? And I
12 like, "Are you okay with releasing? It's like
13 they're asking for it." And he said "It's all
14 public information." And my response was, "Yeah,
15 public information." "When's it going to happen?
16 When is he going to run the story?" "I don't
17 know."

18 Q. And, you told the Governor that it was
19 public information based on what?

20 A. Just the review of everybody that I would
21 have brought it to.

22 Q. Who was that?

23 A. Pope, Nocente, Baum.

24 Q. I thought you testified that Nocente wasn't

1 there.

2 A. Not at that time, but earlier.

3 Q. So, Nocente looked at those documents and
4 They are releasable?

5 A. In an early form. He didn't say: These are
6 releasable. Go ahead. But I said everybody
7 concludes these are public docs. He looked at
8 them and he asked me one question on point about
9 the manifest. And he said, "This is what they
10 have?" And I said, "Yes. It's the way they keep
11 their records." He looked at the other materials,
12 the sheets. Respectfully, anybody who looks at
13 these cannot conclude that it's not a public
14 document. "Did they study it and go back and
15 consult the law?" "No, because it was like a
16 no-brainer that it was."

17 Q. When did Nocente look at the documents?

18 A. I don't think he saw the final package
19 before it went out. I think he would have seen
20 them in one of our sessions between the 17th and
21 the time the FOIL was received. And at the time I
22 finally put it out he would have seen the
23 scheduling information, the manifests, and some of
24 these.

1 Q. "These" being the itineraries?

2 A. Yes. And he also would have seen the
3 disclaimer which he was proud of for having
4 instituted.

5 Q. Did you tell Mr. Nocente at the point in
6 time when he was looking at the documents that you
7 didn't have a FOIL request in hand?

8 A. No, I didn't say that.

9 Q. In substance, not those exact words, and
10 inform him that there was no FOIL request?

11 A. No, I didn't say it like that. I just said
12 there's avid media interest. I might have said a
13 FOIL is coming.

14 Q. And Pope looked at the documents, too --

15 A. Yes.

16 Q. -- around the same time?

17 A. I can't nail it for each one because they
18 are staggered. Rifkin did too and, of course,
19 Rich. And Eliot did as well.

20 Q. And all of them saw Exhibit 5?

21 A. Yes. That was the one that was like
22 directly from Joe. I mean I don't want to like
23 misrepresent it. It's like I brought it to them.
24 Did we sit down and pore over it in massive

1 detail, no. They all did this. (Indicating) And,
2 what else? What else have you got?

3 Q. How long did it take to look at the
4 documents? More than five minutes or less than
5 five minutes?

6 A. I think less than five minutes. It's a
7 quick trip from the manifests. The Governor at
8 one point looked closely at the flight request,
9 the disclaimer, because that was kind of the
10 lynchpin of it for him. I apprised him of the
11 legal discussion between -- does the disclaimer
12 change the ounce versus pound dynamic.

13 Q. I take it from your testimony that Marlene
14 is not part of your group? While she may -- I
15 just want to confirm that.

16 A. I confirm that.

17 BY MS. TOOHER:

18 Q. After you received the e-mails from Mr.
19 Howard concerning the senator's schedules that you
20 received on two occasions, e-mails from Mr.
21 Howard, did you discuss it further with the
22 Governor at all, the e-mails that you were
23 receiving?

24 A. No, not really.

1 Q. Did you discuss them with Mr. Baum?

2 A. I just would have told him that Billy
3 continues to inform us. But most of the time he
4 already knew that because the request is actually
5 coming to Marlene. So, she would at this point
6 after having the concern raised and raised in a
7 significant way, Marlene and Rich were discussing
8 in detail whether to approve.

9 Q. So, Marlene Turner is letting Mr. Baum know
10 as the requests are coming in now?

11 A. From the Majority Leader.

12 Q. As each request comes in?

13 A. Most assuredly, because Rich is the one who
14 has the ultimate sign-off. Now, we have got two
15 principals in the process, Eliot and Rich. I need
16 to protect Rich and make sure he is doing the
17 right thing because he is the one who is
18 ultimately accountable for sign-off. And I would
19 have informed him to do your -- in the Cuomo
20 years, Andrew Zambelli didn't have a problem with
21 saying: No, we're not going to give you the
22 aircraft at a given time. And he was kind of
23 surprised by that. And I said, "Dude, you don't
24 understand the power you wield here. Your word is

1 final on the matter. And, furthermore, you have
2 got an obligation because at some point down the
3 road they will be looking at it. And if we are
4 lax and look the other way, there's a problem for
5 you and for Eliot and the whole administration."

6 Q. So, your understanding following the 17th is
7 that Marlene Turner is checking with Baum as each
8 of the flight requests are coming in?

9 A. Yes. He actually sort of confessed to me
10 that he wasn't paying too much attention to it
11 beforehand and just allowing Marlene to sign off.
12 Thereafter, he had he was.

13 Q. After the 17th?

14 A. Right. After we all sat down and recognized
15 that we think we're okay with the Governor. We
16 were a little concerned about those two trips but
17 open question with regard to Joe; what should we
18 do. So, in the wake of that I do believe -- and
19 you'd have to get this from them -- they were
20 talking and conferring closely as to what to do
21 about Joe's continued requests.

22 Q. Were they getting any additional information
23 beyond the flight request form?

24 A. I can't speak to what they might have been

1 getting. I just think Marlene might have asked
2 another question of the people requesting it,
3 which was usually secretary to secretary.

4 Q. Were you providing any of the information
5 you were getting from Mr. Howard to Mr. Baum or
6 Ms. Turner?

7 A. I was apprising Rich but not Marlene.

8 Q. So, you were letting Mr. Baum know you had
9 gotten additional information regarding the
10 scheduling?

11 A. Yes. I would say something like, you know:
12 Billy says there's another question of use of the
13 helicopter. And, he said, "Yeah, I know. Marlene
14 just talked to me about it."

15 Q. Did you provide him any other information
16 concerning the ground itinerary, if you will?

17 A. No. He didn't ask for it, and it was sort
18 of like we knew we needed to convene again and
19 discuss it, but he would like ask me, "Well, is
20 there any like smoking gun in there or anything
21 like that?" And I was like, "No, as before, we
22 don't know absent review of the schedules."

23 Q. And did you discuss the ground
24 itinerary/smoking gun issue with the Governor at

1 all at this juncture after you have now received
2 additional information concerning Mr. Bruno?

3 A. I would have said to him at some point it
4 was beginning to appear that there was some
5 question as to whether Joe was living up to the
6 spirit of the disclaimer. And he would have said,
7 "What does the gang think?" And I would have
8 said, "Absent review of the schedules we just
9 don't know for sure, but it does raise some
10 questions."

11 Q. I apologize, Mr. Dopp. I think it's just
12 the way you speak and the characterizations of
13 "you would have said." Did these conversations
14 occur?

15 A. Yes -- yes.

16 Q. I am going to show you what has been marked
17 as Commission's Exhibit 46. This is an e-mail,
18 and the initial caption is: Lawrence to Richard
19 Baum dated May 27, 2007 at 11:55 a.m. This is a
20 two-page document. About two-thirds of the way
21 down in the e-mail thread -- apparently it's from
22 Lawrence. I understand that's the Governor?

23 A. Um-hmm.

24 Q. So, the Governor to you and to Richard Baum

1 and to Christine Anderson. And he talks Tuesday
2 about the Rupert meeting. The last sentence in
3 that thread: "I also want to discuss a
4 post-session strategy regarding Bruno and travel
5 generally."

6 A. I am absolutely positive this has nothing to
7 do with aircraft but, instead, speaks to
8 responding in the regions, conducting regional
9 travel. My communications thing is you have got
10 the LCA which you minister to. But the LCA has
11 preconceived notions, sharp attitudes about
12 things. I was constantly urging them to get out,
13 to do regional travel, go to the communities to
14 make our case for our legislative agenda. It
15 wouldn't have been anything to do with Bruno's
16 travel. Instead, it would have been: What are we
17 confronted with at this moment? We've got to get
18 our legislative agenda passed. We are at
19 loggerheads with them. The only thing that gets
20 them to do it is by going into their districts
21 standing up and saying you are against campaign
22 finance. This is my advice and counsel to the
23 Governor, and I was pretty sure he was responding
24 to it. I said, "Boss, you've just got to get out."

1 You've got to get out of th LCA. You've got to
2 stop talking about fights with Joe Bruno and we've
3 got to talk to the people. Remember, this is our
4 standard practice. We walked into office
5 committed to taking our case to the people on a
6 whole host of the issues.

7 Q. But at this same time you are discussing the
8 Bruno travel issue?

9 A. Yes, I am. But I am really confident that
10 this message from Eliot had nothing to do with
11 that.

12 Q. Why are you so confident of that?

13 A. That post-session strategy is winning the
14 media for you. This is going to be way too much
15 information for you. But one of the things after
16 the budget was settled, we got just about
17 everything that we were looking for. We lost the
18 communications battle when the Long Island
19 Republicans claimed they were the winners. We
20 necessarily had to stand down for making that
21 aggressive public case because if you do that,
22 they'll balk at voting it. We get an agreement
23 but it doesn't pass in terms of legislation for
24 several days. During the intervening time, they

1 went back to their districts and made the case
2 that they want and we had to stand down until they
3 actually passed it. Then, we needed to get out on
4 the road. Eliot knew that dynamic from the budget
5 dialogue and wanted, once the legislative session
6 was over, not to wait but to run to the regions
7 and claim success in the areas for the things we
8 got done.

9 Q. How was that with Bruno?

10 A. Bruno is he guy saying: I won; he didn't.
11 It's uber politics, but it's the business of what
12 we are really talking about. This other stuff
13 about travel and Joe is like, I mean, given
14 everything that's ready -- and you will raise an
15 eyebrow at this -- we thought the story that would
16 come out would take a whack at all of this. We
17 didn't think what was some massive smear against
18 Bruno. We weren't plotting to damage him about
19 this because I keep coming back to the point that
20 the information was not conclusive.

21 (INTERVIEWEE: Request for recess)

22 May I offer a quick additional point?

23 When Mr. Spitzer and I were arranging the
24 materials in front of him, he would have had no

1 knowledge of any notion of reconstruction of
2 documents or any controversy that might have
3 existed between the State Police over that. He
4 wouldn't because I didn't. You know, we really
5 never relayed that there was any kind of
6 consternation or anything like that. In my
7 characteristic lingo I said, "Everything's cool,"
8 and these are public documents, obviously." I
9 believe that would have been the extent of it.
10 When Eliot gave me sign-off and when Rich gave me
11 sign-off it was with the belief that -- similar to
12 mine -- that, you know, A, it had been vetted and,
13 B, it was appropriate.

14 Q. You mentioned that there was a story in the
15 paper concerning Senator Bruno and Mr. Griesen.

16 A. Right.

17 Q. That was in the beginning the June?

18 A. I think so.

19 Q. Was there any reaction from the chamber at
20 that time about the story?

21 A. I think you'll see from the e-mail of mine
22 that I said, "Man, I guess this is what Joe's
23 people were so jumpy about." I said that because
24 in the week that followed all of my entreaties ort

1 of come together, and: Come on, guys. What's the
2 matter? They were like -- I want to spare you the
3 language of it all, but it was like screw you! It
4 was antagonistic in some weird way. I found out
5 later they are adamantly convinced that we were
6 responsible for Joe Bruno's FBI investigation.

7 Q. "They" being --

8 A. The Majority Leader's office. And when they
9 tell me these kinds of things it's like it's just
10 not true. Why do you think such things? And they
11 maintain that. So, when the Abbruzzese story
12 appears the response that I kind of got was Pope
13 saying at that moment that if the feds are looking
14 at his airline travel, maybe they would like to
15 look at this, and I could provide that information
16 to them if y'all think its appropriate.

17 Q. Mr. Pope relayed this to you at the time the
18 story was released?

19 A. Right.

20 Q. Who was present for this conversation?

21 A. Just me and Peter; he stopped by my office.

22 Q. And suggested to you that perhaps you might
23 want to provide --

24 A. And another option on the flight stuff is I

1 could provide it to the feds.

2 Q. And did you discuss that conversation with
3 anyone?

4 A. Yeah. It was similar to the previous one
5 when I told David and Rich about it and they said,
6 "Is he nuts? It's not a federal case."

7 Q. And did you discuss the travel issue with
8 Rich Baum or David Nocente at that time in any
9 further detail?

10 A. No. I just related to them what Peter had
11 said. That was probably the conclusion of the
12 discussion or the discussion of options for
13 referral. Remember, before that was Billy's note
14 that maybe the IRS should be informed. And we had
15 previous conversations about the others that I
16 went through. But the last one on the list was:
17 What about the feds?

18 Q. And what about the feds?

19 A. The last one was, "I could give it to the
20 feds who are investigating Joe," Peter said. And
21 it was rejected.

22 Q. Who did you send that e-mail to?

23 A. It wasn't an e-mail. It was just Peter
24 stood before me, said it, and then I took it to

1 Rich and David. And even I agreed with that.
2 It's like come on. It's like not a federal case.
3 If anything, you know, you find a problem with Joe
4 and the aircraft he ought to reimburse because
5 reimbursement issues were live for us in the
6 beginning of the year with the Pataki charter
7 flight. That's what we were seeking from him.
8 You see some e-mail traffic in there where Dicker
9 is asking about the flights: Doesn't he owe the
10 state money? And Howard is negotiating with
11 Catalfano, Pataki's person on the outside after
12 the administration has concluded, about having
13 them reimburse, having their campaign reimburse.
14 BY MR. TEITELBAUM:
15 Q. When you say "feds" you mean the United
16 States Attorney's Office?
17 A. Forgive me -- Mr. Pope.
18 Q. The Federal Prosecutor?
19 A. The Federal prosecutors. I thought the
20 Southern District was doing the Abbruzzese step.
21 But I don't recall exactly what he said.
22 Q. I am talking about your conversation with
23 Mr. Pope when he suggested that one option was to
24 present the documents to the federal authorities.

1 A. They were already investigating.

2 Q. This is the U.S. Attorney?

3 A. Southern District.

4 Q. Wherever, but the United States Attorney?

5 A. Yes, sir.

6 MR. KINDLON: I think it's both in the
7 Northern and Southern District, but that's just
8 what I heard on the street.

9 INTERVIEWEE: My people come out of the
10 Southern District. Michelle Hershman, Peter, and
11 the others that all served there.

12 MR. TEITELBAUM: I think Peter is in the
13 Eastern District.

14 INTERVIEWEE: Sorry about that.

15 BY MS. TOOHER:

16 Q. I am going to show you what has been marked
17 Commission's 47. This is a June 3, 2007 date. Is
18 the Bruno/Abbruzzese article?

19 A. This is really just what I described in
20 shorthand. And, "I think the travel story would
21 fit nicely in the next" -- that's when I went to
22 him saying that Peter says in the mix of reviewing
23 air flights they might want to do this. And what
24 ensued was what I just described.

1 Q. What ensued was a meeting with you and --

2 A. Here's what happens. Just prior to me
3 sending this, Pope came in and said, "Perhaps we
4 should send it to the feds. Another alternative
5 would be to send it to the feds. I went and said,
6 you know, the following: I think a travel story
7 would fit nicely in the mix. And, then, I went to
8 Rich down the hall to say what that meant. And,
9 what that meant is Peter thinks we could give it
10 to the feds who are already investigating flight
11 issues.

12 Q. And, you only had this discussion with Rich
13 Baum?

14 A. No. I later on mentioned it to Nocente as
15 well.

16 Q. What did you say to Nocente?

17 A. The same thing; that "Peter suggested we
18 give it to the feds."

19 Q. And, the response from Nocente?

20 A. We're all brothers, but siblings sometimes
21 form rivalries and awkwardness. Pope and Nocente
22 are like this. (Indicating)

23 BY MR. TEITELBAUM:

24 Q. When you say "like this" you mean in

1 conflict?

2 A. Just like they're two sweet but totally
3 different guys who sometimes are at odds and
4 sometimes have arguments.

5 Q. When you say "like this" just for the
6 record, you are whacking your fists together and
7 that indicates conflict.

8 A. Yes, sir. It was conflict. They would
9 sometimes become angry at one another but have
10 total respect for each other's intelligence and
11 experience, but rub each other the wrong way in
12 strange ways.

13 BY MS. TOOHER:

14 Q. Do you know if either Mr. Nocente or Mr.
15 Baum had a discussion with Mr. Pope about the
16 possibility of the travel story?

17 A. I don't think they even wanted to do that.
18 They were so dismissive with me over the notion
19 that even if Peter raised it to them I think they
20 would have feigned that they were too busy to talk
21 about it. They just thought it was absurd.

22 Q. So, they were not interested in pursuing the
23 travel story on Joe Bruno at this time?

24 A. They weren't interested in sending it to the

1 feds. But the notion persisted that we should
2 continue to monitor, and I would have used this as
3 another opportunity to say -- They would have said
4 to me, "Any media interest?" And I would have
5 said, "Nah. Everybody has been too busy with
6 legislative affairs, but -- what's the date?"

7 Q. June 3rd.

8 A. I would have said nothing of now -- nothing
9 of late.

10 Q. You would have said or you did say?

11 A. I'm sorry. I did say. I told them I
12 haven't had anything recently. Jim hasn't come
13 back to me nor has anybody else. Everybody is
14 pretty much preoccupied at that particular moment
15 with end of the legislative session stuff, the
16 continuing impasse over congestion pricing and
17 campaign finance. We were holding leaders
18 meetings throughout the process. It dominated the
19 interest of the reporters, making airline traffic
20 stuff kind of a second tier issue at best at the
21 moment. Instead, it's the furor of Albany and the
22 big three, the big five trying to come to some
23 agreement to close out the session.

24 Q. During the same time frame Mr. Baum and Mr.

1 Nocente are coming back to you and specifically
2 inquiring: Have we heard anything on Bruno?

3 A. No, not precisely. They were just too
4 otherwise busy. I would have said: Hey, do you
5 remember the old aircraft issue? Peter thinks we
6 should give it to the feds, and that would have
7 elicited chuckles with a little bit of derision
8 mixed in.

9 Q. And, did they at any time say to you,
10 "Forget about that. It's a dead issue"?

11 A. Their derisive comments and their chuckles
12 were -- and "That's absurd. Never mind that."

13 Q. So, at that point was it your understanding
14 that this was a dead issue?

15 A. Never completely. It would never be dropped
16 because of our ongoing obligation to ensure
17 appropriate use. But those weren't options that
18 anybody wanted to pursue.

19 Q. So, you are continuing to monitor this on
20 what basis?

21 A. Coming back to the other notion; we are
22 responsible for appropriate use.

23 Q. Well, you testified earlier, I think, that
24 Richard Baum is responsible for monitoring this

1 and Marlene Turner is responsible for monitoring
2 this. Where is your responsibility in this?

3 A. I protect them. This is something that
4 could come back to bite them in the media. That's
5 my job to protect my principals. I protect them
6 at any and all costs. That's what I do. I think
7 about their exposure and the administration's
8 exposure to issues.

9 Q. But at this juncture, they have told you
10 there is nothing in these records that show
11 anything illegal. Richard Rifkin has told you if
12 it's an ounce we're in for a pound. And, twice
13 now, at least, the concept of referring this to
14 the I.G. has been rejected as unsound. It doesn't
15 appear that there is anything to monitor.

16 A. I guess I'm not like conveying -- you never
17 in this business on a matter like this reach a
18 final conclusion. To do so means like you're
19 opening yourself up to like a tremendous problem.
20 Issues had been raised. You have to continue to
21 monitor.

22 Q. But the issues, from what I have heard, have
23 been resolved.

24 A. In no way could these simply resolve. We

1 could hold them in abeyance as we continue to
2 monitor. That's the only logical course with
3 this. You couldn't just say based upon those two
4 little itineraries that we have now found we can
5 conclude we don't have to worry anything about Joe
6 Bruno. What about the future? What about
7 additional trips he might have taken?

8 Q. What about the past? Did you seek the
9 itineraries for January, February, March, and
10 April?

11 A. Yes.

12 Q. What happened in that regard?

13 A. They said they weren't in. They hadn't been
14 retaining them, and the only things they had were
15 from May on.

16 Q. Did you give a directive to Bill Howard to
17 make sure this information was preserved or
18 institute a recordkeeping practice or anything
19 like that?

20 A. Nothing so formal. I just said, "Billy,
21 that's kind of weird; isn't it?" And he goes,
22 "Yes. They were supposed to keep these records to
23 protect themselves."

24 Q. When did this conversation take place?

1 A. As a result or the 17th when it was clear
2 that the only records that he can produce would be
3 from the beginning of May on. I would have said,
4 "But he took eleven trips and I thought you said
5 'the records go way back'". And, yes, they
6 existed but they weren't in the habit of keeping
7 them is what he told me. I'm sorry. They are
8 weren't in the habit of retaining them. They did
9 maintain but didn't retain until the issue came up
10 in early May that we might want to do that because
11 there may be a question of improprieties.

12 Q. After you had the conversation with him that
13 the records didn't exist did you follow up with
14 Mr. Baum?

15 A. I don't really recall doing so. I just know
16 in one of our meetings they said, "What about the
17 other trips?" And I would have said they weren't
18 retaining them. They had them for awhile and
19 threw them out.

20 Q. Was there discussion at that time about
21 instituting a policy with the State police to
22 retain these records or maintain these records?

23 A. I think it was apparent given the fact that
24 we were not interested in to do so moving forward

1 and not throw them out. But it wasn't like
2 something Rich or I or anybody else said: You
3 hold onto those records from now on moving
4 forward. Instead, I think it must have been a
5 conversation between Howard and Felton in which
6 Howard said, you know, that: You were supposed to
7 have been retaining these given our problems from
8 the past. And, again, I'm just speculating that
9 that is what occurred.

10 Q. You don't know, though, that this
11 conversation took place?

12 A. I don't know that that occurred. I don't
13 know that. I just know that moving forward they
14 were going to retain them as they supposedly were
15 in the part but inexplicably stopped doing so for
16 some reason.

17 Q. When you say "supposedly" were in the past,
18 that was based on the representation that Howard
19 made to you?

20 A. Yes, that the records go way back. And I
21 guess I feel somewhat vindicated in my
22 recollection of it, because that's what Odatto
23 wrote about and Brendan Lyons wrote about on the
24 weekend that, indeed, the Pataki was keeping those

1 records and retaining them, maintaining them and
2 retaining them. In the bottom of a Soares report
3 he notes that -- I think that's the catalyst for
4 the newspaper requesting them. They could have
5 provided them, fine, for the Sunday story.

6 Q. Those records were provided from the State
7 Police, not from the executive chamber?

8 A. I don't know the answer because I never
9 looked at that. I can't tell you how it worked
10 out.

11 Q. Were you aware of the records being kept at
12 the time that you were speaking with Mr. Howard?

13 A. He told me the records exist from all the
14 way back.

15 Q. But had you ever seen these records?

16 A. No.

17 Q. So, you had no personal knowledge?

18 A. No. Like I say, I'm only as good as what
19 these experts convey to me.

20 BY MR. TEITELBAUM:

21 Q. Did you delete e-mails on your personal
22 BlackBerry concerning this matter?

23 A. Sir, I didn't have a personal BlackBerry.

24 Q. Personal computer?

1 A. My personal computer wasn't used for this
2 type of stuff. My wife and two kids. And the
3 only exception that I have to that is, as I told
4 you before, I had some personal rapport with Fred
5 Dicker. He's like a history buff and interested
6 in antique firearms. He would occasionally send
7 me a blog or e-mail or a link to a gun he thought
8 was extraordinary. That was usually corresponding
9 to a weapon used in family's military history.

10 Q. I'll tell you what's puzzling me, which is
11 why you were involved in monitoring activities as
12 opposed to somebody else in the executive chamber
13 or some other agency given your job. Why were you
14 monitoring?

15 A. All I can tell you about that, sir, is we
16 were a new administration. I was the guy with
17 more experience in the matters than just about
18 anybody else. We lost Michelle Hershman who is a
19 person I would have turned to to handle such a
20 matter. But, again, I maintain to you that my
21 activities in this regard wouldn't have been like
22 something that I wouldn't have been consulting
23 with others and apprising others of.

24 I also maintain to you that given the

1 fact that it was an inquiry from the media, that I
2 had an obligation to sort of follow through and
3 get the answers.

4 Q. I want to draw a distinction, Mr. Dopp,
5 between your activities to respond to the media
6 and your telling Mr. Howard to monitor. I'm not
7 talking about the monitoring function. I
8 understand why you would be involved in responding
9 to the media. I'm focusing in on monitoring and
10 I'm having a hard time understanding why you as
11 communications person, why you and Howard are
12 monitoring through the State Police the senator's
13 travel.

14 A. It kind of fell to me by default. I brought
15 the matter to the attention of the senior circle
16 and I said I'm going to do this; is there any
17 objection? And there was none. It's a new
18 administration. There's a thousand things going
19 on. We're doing a lot of different stuff. Was I
20 the appropriate person to do so? I thought so
21 because I had done similar things in the Cuomo
22 administration. But others might take a different
23 view. Others might say Michelle Hershman or
24 someone akin to Hershman's critical First Deputy

1 role did not yet exist. Rich was otherwise
2 occupied. Mr. Nocente was otherwise occupied.
3 The three of us made the true inner circle with
4 the Governor, so it was a communications issue in
5 my mind. I believe, again, I didn't do anything
6 inappropriate. I turned to the appropriate
7 person, Mr. Howard, for information and then
8 brought the information I received back to the
9 group. Somebody else could have filled that role
10 after me serving as a catalyst for it, but it fell
11 to me and I was doing it. And I believe I was
12 doing it in an appropriate and ethical way. But
13 you are right; if this occurred two years down the
14 road, it might have been Olivia Golden, the First
15 Deputy, but she was brand new at the time. It
16 might have been Michael Balboni, the Second Deputy
17 who was brought in as like the uber security guy.
18 But it was me and Bill Howard, Bill being the
19 individual who worked with these guys for twelve
20 years and knew the most. He was our expert. I
21 trusted the information that was received from him
22 was accurate, appropriately obtained, and suitable
23 for release to the media. That's my mindset at
24 the time. But, you know, like I say, in the

1 Spitzer Attorney General's Office it would have
2 been handled in a slightly different way. And I
3 presumed that in the future it probably would be
4 handled in a slightly different way. But
5 recognizing who I am, I have sort of diminished
6 myself in some respects but also hold out to you
7 that there's three guys have been with him. And
8 it's an issue that speaks to his integrity and I
9 was apprising everyone along the way. You might
10 conclude it was inappropriate. Neither I nor my
11 colleagues thought it was inappropriate, or at
12 least nobody told me that it was.

13 BY MR. TEITELBAUM:

14 Q. Let me put it to you squarely. There is
15 evidence in the record here that you were not
16 authorized to do your monitoring; is that false?

17 A. I guess I would have to ask what possible
18 evidence that could be.

19 Q. I'm just asking you whether it is false.

20 A. Yes, dead wrong. Absolutely dead wrong. I
21 have a responsibility to my principal and to Baum.
22 They are my two principals. I have got a
23 responsibility to ensure we were using that
24 aircraft properly. I did it for Cuomo. I did it

1 in different respects for Spitzer. I've kicked
2 this around an awful lot. What should I have done
3 or could have done differently. Looking the other
4 way would have been -- forgive me for saying so in
5 a provocative way -- unethical. In washing my
6 hands and saying: Never mind. I'm not going to
7 look into this matter wouldn't have been right.
8 By the same point, not relaying the information to
9 the media after receiving approval to do so, in my
10 mind would have been wrong because the public has
11 a right to know this information. And, so, I am
12 the central person who had the wherewithal,
13 ability and the experience in those matters so I
14 handled it. Nobody during the process ever told
15 me: You're out of bounds; you shouldn't be doing
16 this. They said after the fact say, well, maybe
17 it would have been better handled by somebody
18 else. Why didn't you raise that during the six
19 weeks we were discussing it ad nauseam? And,
20 believe me, as a communications guy, as a team
21 player, should anyone have ever said that to me I
22 would have said I would be only too happy because
23 I am buried with other real work.

24 Q. Let me be more specific. There is evidence

1 in the record that you were told that: "This is a
2 dead issue" on the 17th, okay. Is that false?

3 A. Yes, completely. How could that possibly be
4 a dead issue when we have an ongoing obligation to
5 review? More to the point, I still had divergent
6 opinions on the second floor telling me to do
7 otherwise. Again, it's like dead issue in terms
8 of conducting an internal review based on the
9 information we had at that particular moment.
10 Anyone who says: Over and done with and we aren't
11 going to discuss it further is not being straight.
12 That would have been illogical and wrong in every
13 respect and doesn't comport to the facts. We
14 talked about it again and again, several times.

15 Q. When is the last time you had conversations
16 with any of the people you have been talking about
17 today: Mr. Nocente, when is the last time you had
18 conversations with Nocente?

19 A. They cut me off right after I was suspended.
20 I'm sorry. I have not spoke to Spitzer, Baum, or
21 anybody else except for Mr. Nocente since that
22 day.

23 Q. When did you speak to Nocente?

24 A. I called him periodically or he called me

1 periodically checking in as to how we're doing.
2 We were extremely close. We go back twenty years
3 and we were extremely close. I, during the
4 process said, "What did I do wrong?" He wouldn't
5 engage in that topic. I couldn't talk about it.
6 I said, "Well, what's going to happen? I have
7 been cleared by Mr. Soares. People who commit
8 crimes are allowed to serve until in their final
9 adjudication. Why are you doing this to me and my
10 family?" I was devastated by it. I was getting
11 hammered in the papers. I would say to him,
12 "David, why aren't we pushing back? Why aren't we
13 saying things, correcting things that are
14 obviously false?" He was always, "I'm sorry,
15 Darren. I can't talk about it." Eventually, I
16 told him, "I am going to depart because I can't
17 stand not working and I can't stand being in limbo
18 forever." And it was at that point he said, "No,
19 wait. You didn't do anything wrong. We want you
20 to return but we can't talk to you about the
21 venues for doing so until we're done here, because
22 we don't want anybody from this body to ask the
23 question: Has there been collusion.

24 Q. By "this body" you mean the Commission?

1 A. Yes, you all. I said, "David, it's me
2 you're talking to. What am I supposed to do
3 here?" And, he said, "We'll put you back on the
4 payroll." And it's like: How about our future?
5 What are we going to do? "I can't talk to you
6 because the first question out of those guys at
7 Ethics will be did you talk about the substance of
8 this matter with us? And I don't want that to
9 happen." So, he wouldn't talk to me.

10 Q. Were you ever told why you were suspended?

11 A. No.

12 Q. They just suspended you?

13 A. You were apprised of it but I read about it.

14 Q. "You" meaning your lawyer?

15 A. I'm not trying to trash them or I would
16 never be disloyal to them no matter what like
17 personal conflicting opinions say. But that
18 wasn't right, you know.

19 BY MS. TOOHER:

20 Q. At a certain point in time you received
21 Commission's 1, 2, and 3. These are the
22 transportation assignments for Senator Bruno.

23 A. Yes.

24 Q. Do you recall the circumstances under which

1 you received these documents?

2 A. Somebody dropped them off. I would have
3 already Commission 5, and he added to it the other
4 ones. It was at that point I related -- I
5 questioned him as to why they look different. It
6 was at that point he told me "Sometimes Bruno
7 called them in and it was a longhand transcription
8 from the secretary. Other times, it was their
9 faxing an itinerary over directly."

10 Q. Had you seen this information prior to the
11 information contained in 1, 2, and 3 prior to
12 receiving these documents?

13 A. No. Just when Bill gave them to me was the
14 first time I saw them. Nobody else had them that
15 I was aware.

16 Q. I want to show you what has been marked as
17 Commission's 23 and ask you if you have ever seen
18 this document before.

19 A. It comports to the information that would be
20 on the travel assignment stuff, but I don't recall
21 seeing it. I mean I might have, but I just -- I
22 recall this because this is what Billy gave me for
23 my purposes which is to release to the media.

24 Q. That's actually the package, 1 through 4.

1 And you are saying Commission's 1, 2, and 3 were
2 provided to you by Mr. Howard?

3 A. That's correct.

4 Q. Commission's 23 wasn't provided to you by
5 Mr. Howard? And 23 is right in front of you.

6 A. I don't recall seeing this, no. It looks
7 like a compilation of all three. It would have
8 been broken out into all of these, but I am just
9 guessing.

10 Q. In fact, it is the same information
11 contained in Commission's 1, 2 and 3 that is in
12 Commission's 23.

13 A. Got it.

14 Q. But, you were not provided with 23 by Mr.
15 Howard?

16 A. I don't remember seeing it.

17 Q. And you did not direct Mr. Howard to break
18 out the information in Commission's 23 into three
19 separate documents?

20 A. No.

21 BY MR. TEITELBAUM:

22 Q. I think when Ms. Tooher asks you about 23,
23 if you took out the handwritten portions of it
24 would you have seen the document absent the

1 handwritten portions?

2 A. No. I just don't recognize this.

3 Q. Any part of it?

4 A. I recognize the substance of it because it
5 comports with the substance of the transportation
6 assignments. But I don't know why it had been
7 mashed together into one.

8 Q. Commission's 1, 2, and 3 were provided to
9 you by Mr. Howard?

10 A. Yes.

11 Q. And, did you have any conversation with him
12 about the information contained in 1, 2 and 3
13 before he provided it to you?

14 A. Not before. But once I received it, it was
15 just as I described: I said why does it look
16 different from what you previously provided to me?
17 And, he gave me that explanation.

18 Q. When you say "previously provided to me," do
19 you mean Commission's 5?

20 A. 5, yes.

21 Q. And, what was the explanation he provided?

22 A. Sometimes Mr. Bruno's office was in the
23 habit of faxing over an itinerary. Other times
24 he's in the habit of having his secretary call it

1 over. And that would have resulted in somebody
2 taking it down longhand and then writing it down
3 or typing it in this fashion.

4 Q. What was your understanding as to what
5 Commission's 1, 2, and 3 were from Mr. Howard?

6 A. The equivalent of Commission's 5 and the
7 only available information that we would have had
8 about his itinerary.

9 MR. TEITELBAUM: Just note that Mr.
10 Kindlon is leaving the room. And you're saying
11 it's okay to continue?

12 MR. KINDLON: Yes, it's okay to keep
13 going. I'll be back in about 30 seconds.

14 (The previous testimony was read.)

15 INTERVIEWEE: Yes. It would have
16 comported with what the reporter was asking for.
17 The reporter was asking for anything that spoke to
18 the schedule or itinerary for Joe. In response to
19 that, I asked Bill what do you have that would be
20 like that? And he said, "This is the only thing
21 we have."

22 Q. So, when he gave these to you it was your
23 understanding that these were documents at the
24 State Police?

1 A. That was the only conclusion I could draw.
2 He was working with the State Police to provide
3 information that would be responsive to my
4 anticipated FOIL request.

5 (Mr. Kindlon entered the room.)

6 Q. Had he ever relayed to you that he was
7 having difficulties in getting information from
8 the State Police on Senator Bruno's schedules?

9 A. No. There was no sense of anything
10 problematic or strange about it. I kind of
11 trusted -- he had this longstanding relationship
12 with people at the State Police. I didn't even
13 know it was Preston Felton that he was dealing
14 with. And, I don't think it was always Preston
15 Felton. I just know he was tight with them from
16 way back, and I sort of trusted that -- as I said
17 before, the information was cleared for release,
18 accurately and appropriately maintained, and
19 technically accurate.

20 Q. And what was that based upon?

21 A. My belief from Felton and Howard's
22 professionalism.

23 Q. So, it was your understanding that Mr.
24 Howard was dealing with Preston Felton?

1 A. I didn't know it until a little bit later
2 on. I just knew he was interacting with
3 appropriate people at the State Police. He didn't
4 explain who or how or what.

5 Q. Do you recall when you first received those
6 documents?

7 A. I couldn't pinpoint for you, but obviously
8 it would have had to have been after the last --
9 the 27th I'm pointing to. That wouldn't have been
10 responsive to -- the 27th wouldn't have been
11 timely for our purposes because it wasn't ready
12 yet. So, that came later. But these three came
13 shortly after the 24th which is our last date
14 here.

15 Q. If I told you that they were delivered to
16 Mr. Howard on or about June 6th would that be in
17 accord with your recollection?

18 A. That would have been after the 24th at some
19 point. But June 6th seems a little late for me,
20 because I know I would have received information
21 about the 3rd and the 17th prior to that, shortly
22 thereafter -- maybe the 24th came in later, but I
23 had information about the 3rd and 4th prior to
24 that.

1 Q. You had information in Commission's 34 and
2 63 concerning those schedules, the e-mails you had
3 received previously?

4 A. Right.

5 Q. Did you have additional information? Had
6 you received Commission's 1 or 2?

7 A. I can't tell you exactly when I would have
8 received this. Obviously, it would have been in
9 time for inclusion in the packet that was going to
10 be presented to the reporter. But it was vetted
11 by all of my people.

12 Q. I will show you what has been marked as
13 Exhibit 35, the print screen on an e-mail. It's
14 from Michael Kopy to Preston Felton with three
15 attachments, and the attachments are Commission's
16 1, 2 and 3. There has been evidence prior in this
17 matter that this was the time in which Preston
18 Felton was provided with Commission's 1 through 3
19 and this is when he forwarded the same to William
20 Howard.

21 A. I really can't speak to it. I had no
22 contact, communication, or involvement with
23 anybody at the State Police at any time. I met
24 Felton in a cabinet meeting and shook his hand,

1 but there was no other communication with him.

2 Q. I am going to direct your attention to
3 Commission's 2, which is the itinerary, the listed
4 itinerary for May 17th. Were you provided this
5 document from Mr. Howard as well?

6 A. Yes.

7 Q. Did you have any discussion concerning
8 Commission's 2?

9 A. No. Just that we've got the original sent
10 over from Bruno's office.

11 Q. The original, being Commission's Exhibit 5?

12 A. 5, yes.

13 Q. If you could take a moment -- I would like
14 you to just take a moment and compare those two
15 documents.

16 (The witness complied.)

17 A. I just realized they are different. They
18 don't speak to the other -- to the Sheraton event
19 or anything else.

20 Q. But the information contained on the May
21 17th, Commission's 2, is different from that
22 contained in Exhibit 5?

23 A. Right.

24 Q. You seem to have noticed that for the first

1 time?

2 A. Yes, indeed. I really can't explain why
3 since this was sent over -- since I was told it
4 was sent over by Bruno's office and since I had it
5 in my possession earlier. I just like --
6 actually, i never did what you just directed me to
7 do, compare the two. I don't know why they look
8 dramatically different. I can't explain why.
9 Does this mean he didn't meet with C.V. Starr and
10 didn't go to the Sheraton at that point? I can't
11 figure that out.

12 MR. TEITELBAUM: You are pointing to
13 Exhibit 5?

14 INTERVIEWEE: That's right.

15 Q. And, when you provided the documents to your
16 people: Baum, Nocente, the Governor to review,
17 did you provide Commission's 1, 2, 3 and 5?

18 A. No, I did not provide this. I provided
19 this.

20 Q. So you didn't provide Commission's 2?

21 A. No.

22 Q. Did you have Commission's 2?

23 A. I don't really recall seeing it. Maybe I
24 looked at it and said I have already gotten that.

1 And I probably pulled it out and put the two
2 together. Basically, what I had was 1, the 17th.
3 And I was asking what about the others. And he
4 gave me this, and I said, "I have already got
5 this, and I have got -- I have already got that.
6 And I stuck the two together.

7 Q. Why would Mr. Howard provide you the
8 information concerning the 24th and the 3rd and
9 4th when he had already sent you e-mails with that
10 information? Had you requested some sort of
11 formal documentation on those dates?

12 A. I don't recall saying that. It's just that
13 those internal e-mails wouldn't have been things
14 that I would release to the media. Instead, I
15 would be releasing something that was this, the
16 transportation assignment. I wouldn't have been
17 releasing an e-mail about a transportation
18 assignment. I would have been releasing what I
19 believed to be an official document on
20 transportation assignment.

21 Q. So, the format that you had received the
22 information in earlier, the e-mail from Mr.
23 Howard, is not something you would release to the
24 media?

1 A. Not internal on anything like that. I would
2 have said, "What do you have that I can release to
3 the reporter?"

4 Q. Did you ever say that to Bill Howard?

5 A. Sure.

6 Q. An e-mail is not acceptable; what do you
7 have that I can release to a reporter?

8 A. His act of apprising me along the way, and
9 others, that the travels wasn't the same as okay,
10 when we assemble the package in response to the
11 FOIL request. What should we put in there? You
12 wouldn't put in an internal e-mail with a lot of
13 extraneous information on the top and bottom.
14 Instead, you would deliver this.

15 Q. Is it your understanding that an internal
16 e-mail is not produceable under FOIL?

17 A. It may be. But in this particular press you
18 are talking about, you want some type of
19 consistency in the records you are providing and
20 something that is clearly public information. I
21 really wouldn't divulge e-mails from Preston
22 Felton or some of the other people on there that I
23 didn't recognize. That's not a FOILable thing
24 except under certain circumstances. It's work

1 product. That's something else. But it wouldn't
2 occur to me to include that. A, it's not official
3 and, B, it's probably problematic.

4 BY MR. TEITELBAUM:

5 Q. What do you mean that the e-mail sent to you
6 on Senator Bruno's travel was not FOILable?

7 A. I mean I just don't know who the other
8 individuals were -- I mean Anthony whoever. I
9 glanced at that and I wouldn't have concluded that
10 I would take something so informal as an internal
11 e-mail to be a FOILable document.

12 Q. Are you telling us in your mind that the
13 only FOILable documents are "official" documents?

14 A. Something given to me with the clear
15 understanding that I was going to provide them to
16 a reporter. And when I asked for manifests and
17 anything speaking to an itinerary or schedule, I
18 would assume that. I sort of stressed the point
19 that when I am asking for information that would
20 be responsive to a FOIL, an e-mail where he writes
21 "T" and says: Hey, there's another trip -- I want
22 him to look for documents that I can release to
23 the media.

24 Q. You understand that 1, 2, and 3 were created

1 after the fact?

2 A. No one ever told me that.

3 Q. Did you ever learn that?

4 A. In the media.

5 Q. That's how you learned that?

6 A. Right.

7 BY MS. SULLIVAN:

8 Q. Didn't Mr. Howard tell you the records did
9 exist but were no longer retained?

10 A. That's correct. But, remember, that's in
11 response to my question: What happened to the
12 other eleven? He is giving me three. And Im
13 saying: What happened to the other eleven? Well,
14 they existed but weren't retained. Here, when I
15 asked him the question: Why do they look
16 different from the first one you gave me, the
17 answer was: Sometimes they are called it in and
18 sometimes it's taken down longhand.

19 Q. Did Mr. Howard ever say to you the word
20 "synopsis"?

21 A. I don't remember that word. Travel
22 assignment is the word we used. I would have said
23 "logs" had he said, "No. They never have logs;
24 they are travel assessment." Forgive me for

1 pointing it out, but I think I remember testifying
2 that he didn't know about reconstruction; that
3 Felton didn't tell him about it. I just know that
4 had he told me about reconstruction, I would have
5 like flagged it for discussion internally as to
6 whether it was problematic or not. Instead, when
7 he gave me these, in my mind clearly in response
8 to my requests for information to give to the
9 media, that's one level of -- it's a security
10 blanket for me. The fact that Felton was
11 producing it for us is one level. The fact that
12 Bill is looking at it, my review of it is the next
13 level, and I am looking at it saying clearly a
14 public document. And, then, I take it to my
15 people and they look at it and nobody certainly
16 raises a concern.

17 BY MR. TEITELBAUM:

18 Q. You were told by Mr. Howard that the ground
19 itinerary information was sometimes in handwritten
20 form on pieces of paper; is that correct?

21 A. I was told that by him; that the State
22 Police needed to know where to pick up and deliver
23 the Senator and that they sort of -- in getting
24 this request underway from Joe Bruno, he was

1 calling in directly to the state police barracks.
2 That was a little bit of a breach in protocol
3 which was another thing Bill was miffed about. He
4 was calling in sometimes faxing an itinerary,
5 sometimes saying: I need you to pick me up here
6 and drive me here, here, and here.

7 Q. In what form was this information contained?

8 A. Secretary to secretary. The secretary would
9 be calling up the secretary of the State Police or
10 a dispatcher at the State Police saying: I need
11 you to pick up Bruno and take him here, here, and
12 here. That was the raw material for this
13 production.

14 Q. So, when you say "it was the raw material
15 for this production," was it your understanding
16 that 1, 2 and 3 were created from other documents
17 or other information, interviews? Do you
18 understand that?

19 A. I didn't put probably enough thought to it.
20 I just asked the question: Why does one look
21 different from the other? And it seemed
22 plausible. It was a little weird or loose in
23 terms in terms of recordkeeping practices in my
24 mind. But I just assumed, A, because Felton gave

1 it and Howard was giving it to me that it was
2 okay. And, again, I looked at it and it didn't
3 strike me as extraordinary because it was not
4 terribly descriptive.

5 Q. I want to hone in on the issue of it being a
6 document created after the fact and your notion of
7 what an official document is. You seem to be
8 saying these are official documents and FOILable
9 absent a FOIL from one of the accepted categories
10 in the statute. You will agree with me that you
11 understood that 1, 2, and 3 were created from
12 information contained on other documents?

13 A. I didn't think of it in that way. I just
14 thought they were recording what happened based
15 either on an itinerary or telephone call.

16 Q. But after the fact; correct?

17 A. Is not contemporaneous.

18 Q. In other words, when you say secretary to
19 secretary, are you telling us that you believe 1,
20 2, and 3 were created during the communications
21 between the secretary from, I guess, Senator
22 Bruno's office and the secretary from the State
23 Police?

24 A. Right.

1 Q. And 1, 2, and 3 were created then and there
2 with respect to those conversations?

3 A. That was the logical assumptions. I mean
4 it's like you needed to have -- Bill said we
5 needed to have this. They were supposed to be
6 keeping it to protect themselves. So the notion
7 that like they had it, they lost it, it was
8 longhand and they had to reconstruct it, basically
9 that never entered my mind. If I could take you
10 back the that moment, it's like --

11 Q. You were never told that?

12 A. No. It's like -- and the notion of it, it's
13 just like it wouldn't have occurred to me. It's
14 like you're talking about the State Police. We're
15 talking about the absolute necessity in sending an
16 investigator -- not a trooper but an investigator
17 -- out on a mission. They have to have something.
18 And when I said, "What have you got" this is what
19 they produced to me. Nobody, with the exception
20 of the quick discussion of why does it look
21 different, that's all I heard from them.

22 Q. What was answer to why it looks different?

23 A. Sometimes they faxed it over directly --
24 that's what Exhibit 5 was -- and sometimes they

1 called it in, Bruno's office.

2 Q. So, you surmised from that piece of
3 information, 1, 2, and 3 were created as the
4 result of a call-in situation?

5 A. Yes. I mean a secretary is on the phone
6 telling the State Police: This is what we need to
7 do, and somebody saying okay. Boom, boom, boom.
8 And my logical assumption is that a travel
9 assignment for Joe Bruno was being handed to the
10 trooper and that the trooper was putting this on
11 his clipboard in his suburban and using it to do
12 his job, and when the trooper was done with it he
13 was bringing it back to the office and it was
14 being retained, and this is what they are going to
15 be providing to me.

16 BY MS. TOOHER:

17 Q. And, do you have a direct memory of what
18 happened to 17, Commission's 2?

19 A. I think at the time Bill was in my office
20 and said: You have reproduced 17 and I've got
21 that here. And he says: Oh, yeah. I just didn't
22 look closely to see that they weren't the same.
23 And I just went boom, boom and boom and I put it
24 together and yanked this out (indicating) because

1 I already had it.

2 Q. What was your understanding as to 2, if this
3 was the faxed version and this -- Commission's 5
4 being the faxed version -- and then 2 is now a
5 different version?

6 A. Forgive me for not putting two and two
7 together, but it didn't occur to me. I wasn't
8 like -- I wasn't looking that closely. Again,
9 this so pales in comparison. And I was like:
10 "Billy this is kind of lame in terms of
11 recordkeeping." And, "That's all they were doing.
12 That was it."

13 Q. So, you specifically addressed this issue
14 with Mr. Howard?

15 A. Yes. I talked to him and asked why they
16 looked different. And, then, I said, "Well, I've
17 got this. Why don't we just use this?" So, I did
18 that. But, truthfully, I didn't compare and
19 contrast because this isn't a concern for me now,
20 because, you know, if we are talking the 17th, I
21 mean maybe these things were erroneous, but I
22 don't think so because I know the 17th is the big
23 event that the reporters are all jazzed up about.
24 The 17th at the Sheraton was Joe's big event.

1 This transportation assignment doesn't appear to
2 show him going to the Sheraton or to C.V. Starr.
3 And I mean at this moment --

4 Q. This doesn't appear to contain the same
5 information that the actual itinerary in
6 Commission's 5. Commission's 2 does not appear to
7 contain the same type of information as Exhibit 5
8 has.

9 A. There's an anomaly between 5 and 2 which I
10 can't explain. I just didn't look at this
11 closely. Remember, what I'm dealing with here is
12 reporters asking about the big Republican
13 fundraiser at the Sheraton on that day. There is
14 extensive media coverage on Joe attending that
15 event. And why that doesn't appear here, I can't
16 explain.

17 Q. What did you do with these documents when
18 Mr. Howard gave them to you? And we are saying he
19 gave you 1, 3 and 5 at this point?

20 A. I began to assemble the package that I was
21 going to provide to the reporters. It would have
22 appeared just like this: Travel assignments,
23 another one that would have been flight requests,
24 another one that would have been manifests for

1 Joe, manifests and schedules for Eliot. I just
2 would have like -- the ultimate package to the
3 reporter was in this fashion.

4 Q. When you started to put these documents
5 together what did Mr. Howard give you when he gave
6 you Commission's 1, 3 and 5?

7 A. He would have given me manifests of
8 Patterson, Spitzer, and Bruno, and he would have
9 give me transportation assignments for Bruno.
10 Marlene Turner would have given me schedules for
11 Spitzer. And Charles O'Byrne, Chief of Staff for
12 Patterson would have given me his schedules.

13 Q. Did you get all of this information at the
14 same time?

15 A. No, it was kind of staggered. But all -- I
16 had had some of it brought together, but I needed
17 to complete the package after finally reviewing
18 and talking to Odatto as to what he really wanted.

19 Q. When is this happening?

20 A. Toward the end of June.

21 Q. So, you received this information from Mr.
22 Howard in early June?

23 A. Yes.

24 Q. What did you do with it?

1 A. Again, we are in stand-down mode, so I just
2 put it is in my file.

3 Q. When you received it from Mr. Howard did you
4 discuss it with anyone else?

5 A. No, not at that particular moment.
6 Remember, we are in a period with kind of like
7 media inquiries and the mode of nothing really
8 doing right now, so just hold onto it. So, I
9 waited per my instruction until there was a media
10 request. Then, that's when I went back to
11 everybody saying the media request is in. The
12 FOIL is actually coming. I'm assembling the
13 materials and I've got most of them. What do you
14 want to do?

15 Q. When did you get the media request?

16 A. You've got to be a little bit more specific.
17 It's like the original media request?

18 Q. The media request you just spoke of; there
19 we're in stand-down mode and then I tell -- who do
20 you tell?

21 A. Basically, Odatto came back. And you will
22 see an e-mail where I'm in there saying: You have
23 got to be nice to him. We need a favor. I'm
24 asking him to stand down from another FOIL

1 request. And it's at that point that he actually
2 raises: What about that other request that I made
3 of you? And I said, "I've got those materials."
4 And I said, "What you want me to do?" And he
5 said, "Well, you said you'll put it on a piece of
6 paper." That was at the end of June.

7 (Commission's Exhibit 78 was marked for
8 identification.)

9 Q. You have been given what has been marked as
10 Commission's 78. I believe you were just
11 referring to an e-mail that you needed to be nice
12 to him. I am going to ask a big favor of him
13 soon.

14 A. Andrew's investigator thought that this was
15 some kind of like efforts from me to gin up the
16 other story. Instead, I have been struggling with
17 Jim over the previous few days -- actually, a few
18 weeks -- with his request for a pork list
19 submitted by the Legislature. That list, you
20 know, as a long time communications person I
21 regard it as public information. But I was asked
22 by Nocente in response to this FOIL to see if I
23 can get him to stand down from it.

24 Q. Did you receive a specific FOIL request from

1 Mr. Odatto in that regard?

2 A. I think Ms. Treisman had. He had already
3 asked me for it repeatedly in the ten days or so
4 that followed.

5 Q. And, you had indicated you didn't want to
6 provide that information?

7 A. Internally, I sort of argued, you know,
8 saying: How can we refuse that request? And it
9 came down to like a funny situation in that Paul
10 Francis, the Budget Director, gave his word of
11 honor that that list wouldn't be released. And my
12 people, Mariah and Nocente, asked me to see if I
13 can convince the reporter not to go forward with
14 that. I did my best to say to him that that was
15 word of honor stuff and, you know, hey, I sort of
16 admitted to him that I thought he was probably
17 entitled to it. But I asked him to reconsider,
18 and he said okay. Subsequently, I found out --
19 and I didn't know that at the time when I was
20 first talking to the D.A. that he didn't really
21 stand down. He said that to me then, but the
22 newspaper really wanted the list and continued the
23 FOIL request and it was ultimately denied. But,
24 that was the favor I was asking of him. I wanted

1 to protect Paul Francis' honor and relationship
2 with his counterparts, and that was the request I
3 made of him.

4 Q. When asked about that stepdown, Rex Smith,
5 the editor for the Times Union, denied that that
6 was the favor and denied --

7 A. I don't think he denied that that was the
8 favor. I think he denied that they stood down. I
9 had represented to the D.A. that he made the
10 request and he agreed. But I'm almost positive --
11 Rex wasn't saying that that was the favor. I know
12 that Jim said okay, but I interpreted that to mean
13 that he did stand down. Ultimately, I found out
14 he didn't upon reading Rex's notion. If you read
15 Rex's comments: No, we didn't stand down; we were
16 refused. And, again, they were miffed about it.
17 And myself, I felt they should have got it, but it
18 was out of my hand at that point.

19 Q. That's the favor to which you are referring?

20 A. Yes. Look, it's a personal favor to sort of
21 protect the honor of Paul Francis who's a friend
22 and a colleague. I did so both at Francis's
23 request and Nocente's request.

24 Q. Immediately following the end of session,

1 Mr. Odatto is in touch with you --

2 A. It's at this meeting, this particular
3 session on the 26th that he says: What about the
4 other stuff, meaning the aircraft stuff.

5 Q. That's when you indicated to him --

6 A. I brought some stuff together, but give me a
7 piece of paper like we talked about. And, Odatto
8 is like a persistent, veteran persistent excellent
9 reporter who is constantly digging. And he
10 thought there was an interesting story in the pork
11 list and, of course, he was coming back to
12 aircraft matters.

13 Q. I am going show you what has been marked as
14 Commission's Exhibit 67 and ask if you are
15 familiar with this document.

16 A. Yes.

17 Q. Can you tell me what this is?

18 A. I wrote it. And it would have been a cover
19 note based in response to like Nocente's notion
20 from earlier that we might refer to somebody else.
21 And, so, basically, it was like okay. Build a
22 case that this should be reviewed, and that's how
23 I composed it.

24 Q. But I thought you said earlier that you

1 decided not to refer this matter to the Inspector
2 General.

3 A. Again, you all -- forgive me to being a
4 little bit -- not antagonistic, but you assume
5 kind of a once and all final decision was made on
6 these matters. That's not the way government
7 works. We drift back and forth as new information
8 comes forward. And, as of last round of e-mails
9 we still had a question as to what was going on,
10 especially on this one date on the 17th. And,
11 absent some type of inquiry I still was of the
12 mind that it should be referred to somebody. And
13 Nocente and others were like maybe, maybe not. It
14 wasn't, as you described, we definitively
15 concluded there is no matter here and you were
16 told to stand down. That wasn't it at all.

17 Q. Let me say, Mr. Dopp, that's not a
18 conclusion we were jumping to. There has been
19 evidence in the record that that was an
20 instruction to you, that there was a conclusion
21 that there was nothing here and that you were told
22 definitively to stand down.

23 A. Again, if --

24 MR. KINDLON: We really can't respond to

1

2

3 Q. Well, he was characterizing how we are
4 asking our questions. And all I am asking you is
5 your understanding that it was not that you were
6 to stand down and not to pursue this matter.

7 A. To me, that contradicts everything I would
8 have engaged with my people on. It's convenient
9 for somebody to say that, but it just doesn't
10 comport with the facts. The nineteen years in
11 government service, do I suddenly say I am going
12 to do something without regard to what everybody
13 else is telling me? If there was the description
14 that you describe, if there was that directive I
15 wouldn't have done that. More to the point, we're
16 all moving back and forth on what the appropriate
17 course of conduct is. Yes, at that moment on the
18 17th, we said let's not do that for now. But it
19 couldn't have been -- Logic dictates that it would
20 have be absurd to say we are never going to look
21 further beyond this. I mean we've got an
22 obligation. We've got a responsibility to ensure
23 that there's appropriate use. You don't put
24 blinders on thereafter. More to the point, Rich

1 and the others are sort of like -- I mean it's
2 like I bring them knew information as it comes up,
3 and they are given pause as well.

4 The final point for you, I went to them
5 to say I got the reporter's request. Do you want
6 me to release or not? I do not act unilaterally.

7 Q. Commission's 67, the computer notes on the
8 bottom of this document indicate eighteen
9 revisions on this document.

10 A. Yes.

11 Q. Did you discuss this document with anyone
12 else?

13 A. When you say 18 revisions on the document --
14 I'm glad that's there because I would have
15 compiled it early on when we were thinking about
16 the possibility of a referral.

17 Q. Well, page two of the document indicates the
18 document was created June 25th and it was last
19 saved on June 27th. So, this is a relatively
20 short period of time as reflected by the document.

21 A. I suggest that I had written it out longhand
22 from notes.

23 Q. Did you write it out longhand in advance of
24 this?

1 A. Yes -- yes. That would have been started at
2 the process where a referral was a real option
3 when we were discussing it.

4 BY MR. TEITELBAUM:

5 Q. Let me ask you, Mr. Dopp, it seems unusual
6 to me to engage the communications director in
7 writing up a document in connection with a
8 referral to a law enforcement authority. Can you
9 explain to us why it was that were engaged to do
10 that as opposed to one of the various lawyers and
11 prosecutors, so-called prosecutors on the second
12 floor.

13 A. I was the person who the matter was brought
14 to originally, and I was the person sort of
15 leading the dialogue internally on what to do.

16 Q. Let me ask you this. As regards to referral
17 to a law enforcement authority, correct, why are
18 you telling the law enforcement authority in the
19 last four paragraphs about the Governor and
20 Lieutenant Governor and contrasting them, it
21 appears to me as I read this, the Majority Leader?

22 A. I have to protect my principal.

23 Q. So, your concern with the law enforcement
24 authority is in protecting your people?

1 A. They obviously would have been looking at
2 them. And it would have been the appropriate
3 thing to do is to say that these three were trying
4 to fulfill the spirit of the disclaimer.

5 Q. And did you share this document with any of
6 the lawyers on the second floor to get their view
7 as to whether it was an appropriate thing to do to
8 include references to the Governor and Lieutenant
9 Governor in the referral cover to a law
10 enforcement authority?

11 A. I wouldn't have initiated any process any
12 action on my own.

13 Q. So, Mr. Nocente got this document?

14 A. Yes. And he would have ripped it apart if
15 he felt it was inappropriate.

16 Q. But he didn't' is that what you're saying?

17 A. I don't think he did anything with it. We
18 weren't going to pursue that path. But as a
19 contingency, much in the same way that I wrote the
20 earlier news release announcing an internal
21 review.

22 Q. So, you are saying Nocente got this
23 document?

24 A. Yes.

1 Q. And Nocente did not "rip it apart"? Is that
2 what you're saying?

3 A. I know that he didn't. I assume that he
4 ultimately used it, or used a version of it, as
5 the cover letter for referring to the D.A. and the
6 A.G. And I think that was the case because when I
7 was with the D.A. they said: Oh, yes. We
8 recognize this.

9 Q. Let me ask you flat out. It's your
10 testimony that 67 was not done as a document that
11 would go to the press?

12 A. No, but I would have use this --

13 Q. I just want to get the answer. If you can
14 answer yes or no for now.

15 A. Yes. It wouldn't have gone to the press.

16 Q. It wasn't prepared for that purpose; is that
17 correct?

18 A. No. But it was ultimately used in part for
19 that purpose.

20 Q. It was not prepared for that purpose; is
21 that your testimony?

22 A. That is my testimony.

23 Q. And, if we were to ask Mr. Nocente whether
24 he received this document and he said yes, and we

1 asked him: Did Dopp indicate to you that this was
2 a document to be used for referral to a law
3 enforcement authority and not for the press he
4 would say yes? Is that what you are telling us?

5 MR. KINDLON: I don't --

6 MR. TEITELBAUM: I'll ask the question
7 in a different way.

8 Q. Did you communicate to Mr. Nocente that 67
9 was for the purpose for use in referring these
10 various files to law a enforcement agency? Did
11 you indicate that to Nocente?

12 A. I handed Nocente this (indicating 67) on top
13 of the FOIL package for the purpose of his
14 determination what the appropriate action would
15 be.

16 Q. So, what you are telling us now is that 67,
17 the use to which 67 was to be put was to be
18 determined by Nocente?

19 A. I wouldn't unilaterally engage any law
20 enforcement agency, not like this.

21 Q. So, is the answer to my question: Correct?

22 A. Please restate it one more time.

23 (The pending question was read.)

24 A. Yes.

1 Q. And, in your mind -- in your mind when you
2 prepared 67, the use to which it was to be put was
3 as a cover for a referral to a law enforcement
4 authority; is that correct?

5 A. That's right.

6 Q. Nobody else helped you prepare this document
7 who was a lawyer before you handed it to Nocente;
8 is that correct?

9 A. Yes.

10 Q. Had you ever prepared a document previously
11 which was a cover to a law enforcement authority?

12 A. I wasn't proposing this as a cover to a law
13 enforcement agency. I was proposing it as
14 something that would help Nocente prepare such a
15 document.

16 Q. I see.

17 A. And the answer to your question: Had I ever
18 done anything like this before -- countless is too
19 strong a word, but numerous times.

20 Q. Then, is it correct to say that 67 was in
21 the nature of a memorandum to Nocente to help him?

22 A. That's why it says "background," indicating
23 "background only" -- for background.

24 Q. Sometimes the word "background" is used in

1 the press; correct?

2 A. That's true. But it's for David's
3 background in articulating -- in figuring out what
4 he wanted to do.

5 Q. And how did you give 67 to Nocente? Was
6 there a top of it, a memo form saying from you to
7 him?

8 A. It was the full package of materials along
9 with this (indicating Ex. 67) on the top.

10 Q. Was there a discussion with Nocente prior to
11 the preparation of 67 in which he was requesting
12 that you prepare 67?

13 A. No. He didn't specifically say: Do me a
14 cover note. But he said, "Can you explain -- can
15 you give me the package and explain what's in it."

16 Q. And did Nocente -- what I am inferring from
17 what you are saying is that -- your explanation is
18 that he wanted it in writing; correct?

19 A. That's the way David operates.

20 Q. So, your testimony is that 67 was in
21 response to a request from Nocente?

22 A. Yes. He didn't specifically say: Do me a
23 background memo, but I just prepared it for him
24 based upon his request: What's -- you know, tell

1 me what this is all about so I can bring myself up
2 to speed completely right away. I need the
3 package and whatever else you can give me to
4 explain things."

5 Q. And, at least in typewritten form or
6 computer, the first day you started this was -- it
7 was last saved on June 27th at 8:13 p.m. It was
8 created for the first time on June 25, 2007 at
9 1:42 in the afternoon. So, between those two
10 times you put this one-page document through 18
11 drafts in order to tell Mr. Nocente the background
12 of the documents you were delivering up to him;
13 correct? Is that your testimony?

14 A. No, sir. 18 times I have might have opened
15 it up, you know. But 18 times for revisions, I
16 don't think that makes a heck of a lot of sense.
17 Or -- I don't recall exactly how it went down. I
18 had notes on this and I was using those notes to
19 interact with the media. And I would have been
20 transcribing the notes moving in and out of
21 numerous things. But I mean it was just something
22 that I probably had on a side screen, and when I
23 got distracted I would come back to finish
24 transcribing the notes that I had. I think it was

1 basically connected -- concocted or developed a
2 long time earlier.

3 Q. Where are your notes?

4 A. I just don't have them. I wish I could
5 provide them to you. But, remember, the sequence
6 of events we are talking about something over a
7 six-week period. And I write stuff and once it's
8 in the computer I throw away the longhand notes.

9 Q. So, when you say "the bottom" -- and you
10 have an asterisk, "the Lieutenant Governor's
11 information, manifests and schedules will be
12 provided separately," that is to Nocente? You are
13 saying you are going to provide it to him
14 separately?

15 A. I didn't have them at that particular time.

16 Q. But, you were indicating to Nocente that you
17 were going to provide them to him separately?

18 A. I had a full package of everybody minus
19 Patterson. Patterson wasn't in the list.

20 Q. Right. So, you were saying to David Nocente
21 that you were going to provide this to him
22 separately?

23 A. "It's coming up, David."

24 Q. Okay. And, you told Mr. Nocente that, "The

1 Governor attended fundraising events during the
2 five-month period but always, underscored, used
3 private aircraft for such purposes." You say that
4 is from you to Nocente, you're saying that Nocente
5 didn't know that before.

6 A. Remember, Mr. Nocente works and operates --
7 he's got a thousand things going, and I wanted him
8 to know the salient points.

9 BY MS. TOOHER:

10 Q. Mr. Dopp, you indicated that this memo,
11 Commission 67, was on top of the FOIL package when
12 you gave it to Mr. Nocente.

13 A. Yes.

14 Q. Is that all you gave to him at that time?

15 A. I think that's what he was requesting.

16 Q. The memo itself refers to a number of
17 different files.

18 A. Sure.

19 Q. File C is the invites. File D: Greenberg
20 related contribution. File F: Bruno comments on
21 Hevesi.

22 A. Additional materials that have been brought
23 together that I believe I provided to him. And I
24 think we have sort of concluded they did have

1 those, so I didn't like provide it to him as well.

2 Q. Who had those?

3 A. This was conveyed to David as well.

4 Q. So, you provided him with the invites from
5 the Sheraton Hotel?

6 A. The one that was a blog item.

7 Q. And the Greenberg related contribution?

8 A. This is a single sheet that C.V. Starr was a
9 possibly problematic issue.

10 Q. And the "Bruno comments on Hevesi"?

11 A. Yes, the news article.

12 Q. So, you had done a fair amount of background
13 research on this?

14 A. Definitely.

15 Q. Did you say a moment ago that you did
16 provided this document to Mr. Odatto as well?

17 A. No, that was not provided to Mr. Odatto. But
18 I would have worked from it in explaining what was
19 available in the package that I was providing him.

20 Q. And in the package you were providing to Mr.
21 Odatto, did you also provides him with the invites
22 and the Greenberg-related contributions
23 information?

24 A. He had them already. They were blogged

1 items and other materials that he was aware of.

2 Q. Had he told you this information existed?

3 A. Yes.

4 Q. You were working with this in advance of
5 this memo and he had told you this information
6 existed?

7 A. He, throughout, had his suspicions of what
8 was going on and was apprising me of some of it.
9 This is new information that comes to me that I
10 then relay to my people as a cause of: Perhaps we
11 should do something different. As new information
12 comes in we are constantly reevaluating what we
13 would do, which comes back to that point of -- it
14 wasn't just stand down and don't ever do anything
15 again. That wouldn't have been logical based on
16 the fact that we were constantly getting new
17 information from Bill, from reporters, from
18 others.

19 Q. So, you had gone back to Mr. Nocente, Mr.
20 Baum, and the Governor with the invites, for
21 instance, and shown them the invites are for these
22 particular dates and those particular events?

23 A. I would have done that much earlier. The
24 invite was a blog; it was a published story. And

1 I could provided that, too, in my package. It's
2 from April.

3 Q. And with the Greenberg-related contributions
4 you indicate that is concerning C.V. Starr.

5 A. Yes.

6 Q. When did you bring that to the attention of
7 the executive chamber?

8 A. After the 17th when we found out he was
9 meeting at C.V. Starr. It was Eliot or somebody
10 else who said, "Oh, don't you know who C.V. Starr
11 is? That's Hank Greenberg."

12 Q. And, so, you had researched the
13 contributions?

14 A. A little bit. You just dial in "Greenberg"
15 on the Board of Elections and see that yeah.
16 Basically, we knew all about Hank Greenberg
17 because we had a case against him in the A.G.'s
18 Office.

19 Q. And the, "Bruno comments on Hevesi," what
20 was the point of including those in this memo?

21 A. I would have to take a look at the article,
22 but I think it was just Joe saying it was
23 inappropriate to use state resources for private
24 purposes, private and fundraising purposes.

1 Q. You indicate, "This situation may be similar
2 to the Hevesi scandal," Commission 67, the fourth
3 paragraph. And then, "(Majority Leader was quick
4 to denounce the former comptroller call on others
5 to do so as well.)" You are including that in the
6 information for Mr. Nocente as well?

7 A. That's was the news article that I pointed
8 out to you. It would have been based on some
9 offhand discussion with reporters, you know, who
10 -- Remember, in the beginning of our interview I
11 was telling you somebody on the outside was kind
12 of like jazzing up the inquiry with regard to Joe
13 Bruno saying he's using it, and don't forget he's
14 criticizing others for using it. So, again, it's
15 like the overlay of a lot of different things,
16 some of which come from us and some of which don't
17 come from us. And, again, it's a news article
18 that was relevant and it's attached.

19 Q. I'm a little confused. At this point you
20 are giving Mr. Nocente the FOIL package?

21 A. Right, and some supporting materials that I
22 have been alerted to through interaction with the
23 media.

24 Q. What is the purpose in providing all of this

1 to Nocente?

2 A. To give him as full a picture as possible
3 to, once again, finally conclude what it is that
4 we would want to do.

5 Q. You were responding to a FOIL at this point
6 and you are going to provide this information to
7 the media?

8 A. Right.

9 Q. Did you indicate to Nocente you were
10 discussing these facts in Mr. Odatto as well?

11 A. Yes. Remember, what I'm doing at the last
12 possible -- I'm just trying to make another pass
13 saying: Are you sure you don't want to do an
14 internal review? Are your sure you don't want to
15 do a referral to an investigatory agency, or do we
16 want to release to the media? What's your
17 pleasure?

18 Q. Did you discuss this package, now, the FOIL
19 materials, the memo to Mr. Nocente, the
20 attachments to that memo, with anyone else in the
21 chamber?

22 A. I would have apprised Rich Baum as well.

23 Q. So, you discussed this with Mr. Baum as
24 well?

1 A. Yes.

2 Q. Did you discuss it with the Governor as
3 well?

4 A. He had one final pass, you know, where I
5 said the FOIL request is in. Do you want to
6 proceed? And I would relay that conversation, and
7 he said, you know, "What's our exposure?"

8 Q. And, I think you indicated he reviewed the
9 FOIL materials and the itineraries?

10 A. Right.

11 Q. Did he review Commission' 67?

12 A. No, I don't think so. I don't think that
13 was part of the package.

14 Q. That wasn't part of the package you had
15 given him?

16 A. No. But one thing that would have been part
17 of the package, I also had the invite that I was
18 alerted to by the reporter which is a blog item
19 showing Joe attending an event and some
20 speculation as to why he departed the leaders
21 meeting earlier.

22 BY MR. TEITELBAUM:

23 Q. I'm confused. Was 67 generated in
24 connection with a memo to Mr. Nocente for purposes

1 of referral to law enforcement authorities, which
2 I thought you and I were talking about, or was it
3 generated in connection with the FOIL?

4 A. It was meant for the purposes of educating
5 Nocente for possible referral. Of course, you
6 know, since the information is all relevant to my
7 dialogue with the reporter, you know, I would have
8 like in the conversation with the reporter said,
9 hey, here's what we've got. You've got to make
10 the decision.

11 MS. TOOHER: Hold on, please. Off the
12 record.

13 (Pause taken)

14 INTERVIEWEE: I would have said our
15 people one last time, knowing the FOIL was
16 imminent: Are you sure you don't want to go the
17 route of referring it someplace?

18 Q. What does compliance with a FOIL have to do
19 with a decision to refer it to an investigative
20 agency?

21 A. Again, I'm giving my people options on how
22 to proceed. If we had referred to another agency
23 you not have had to rely on the FOIL. And, again,
24 it's like what do you do when you are a

1 communications director? You try to give your
2 people as many options as possible. What would be
3 the advantage of doing a last-minute referral to
4 an agency? It would get us out of a possible
5 negative story about Eliot's use of the aircraft.

6 Q. I have what you testified in Exhibit 67.
7 That in no way reflects the presentation of
8 options. Where in the document are you presenting
9 options?

10 A. I wouldn't have been presenting options in
11 this document. This is specifically with regard
12 to the referral. I would have verbally said, hey,
13 you can still refer, conduct an internal
14 investigation and get us out of responding to the
15 FOIL.

16 Q. Did you have a conversation with Nocente
17 around 67 --

18 A. Yeah, and Baum.

19 Q. You told him: Listen, you can give this
20 material pursuant to FOIL to Odatto, and if you
21 don't want to do that -- this is in substance, not
22 exact words -- we can go with a referral. Is that
23 the substance of it?

24 A. I would have revisited the original options

1 being: Internal investigation, referral to an
2 outside agency, or complying with the anticipated
3 FOIL request which I know is imminent.

4 Q. I thought you testified that Nocente
5 requested 67.

6 A. He didn't specifically.

7 Q. I don't mean specifically 67. He wanted you
8 to explain to him what was in the package?

9 A. Exactly.

10 Q. And the package was a FOIL package?

11 A. Right.

12 Q. But you are testifying that 67 was created
13 in connection with submission to a law enforcement
14 authority; correct?

15 A. Yes.

16 BY MS. TOOHER:

17 Q. The response that you are providing to the
18 FOIL request, those are all what you believe to be
19 all public documents; is that correct?

20 A. Those are all that the State Police, that
21 Bill Howard, that Darren Dopp, and the crew that
22 reviewed them believed to be public documents.

23 Q. How would referring this to a law
24 enforcement agency eliminate your responsibility

1 to respond to the FOIL request?

2 A. When there is any ongoing investigation you
3 don't comment to the media and you don't provide
4 documentation to the media.

5 Q. You don't provide documentation on the
6 investigation.

7 A. What I would have had the ability to do with
8 reporters at that point asking to information and
9 FOILing information, I would say there's an
10 ongoing inquiry and we cannot respond at this
11 time. It is being reviewed.

12 BY MS. SULLIVAN:

13 Q. But they would still be entitled to the
14 manifests for the calendar year. That's not an
15 investigatory document.

16 A. I think you would have to consult with some
17 others other on that. My interpretation is as
18 long as there's an ongoing review that you can
19 stand down. The I.G.'s office and the A.G.'s
20 office, whenever we have an ongoing review I shut
21 up. I don't engage. And the reporters invariably
22 say okay. But I want to know when you can engage.

23 BY MR. TEITELBAUM:

24 Q. Did you run that position on FOIL past

1 anyone else in the executive chamber that once an
2 investigation is starting you don't have to
3 provide any documents to a reporter pursuant to
4 FOIL?

5 A. Yes. What I would have said to them is: We
6 can get out of responding to the media if we have
7 got an ongoing investigation. And they nodded.

8 Q. They nodded up and down?

9 A. Yes, they did. And that made sense.

10 BY MS. SULLIVAN:

11 Q. Even though in your mind they were clearly
12 public documents?

13 A. Oh, yeah. An ongoing investigation in my
14 world buys time not to comply with FOILS or
15 anything else. It's a matter of ongoing
16 investigation, and we can't release it.

17 BY MS. TOOHER:

18 Q. But, you had indicated earlier in your
19 testimony that you were freely providing these
20 documents.

21 A. Yes, in the past.

22 Q. And that, in fact, the flight manifests you
23 had provided in the past; that correct?

24 A. Sure. Oh, yes.

1 Q. So, what are you holding back on at this
2 point in the investigatory phase of this?

3 A. It's just when you have an ongoing
4 investigation you don't release information that
5 could be relevant to the investigation. It's just
6 classic law enforcement posture that I would have
7 been familiar with from the Attorney General's
8 Office over the last eight years.

9 Q. But, you have already said that Odatto had
10 the invites.

11 A. Right.

12 Q. He had the information concerning
13 contributions.

14 A. He had written those things and done his own
15 research in that regard.

16 Q. And you provided the manifests in the past
17 freely --

18 A. Right.

19 Q. -- and they were easily obtainable, and it's
20 your belief that the schedules at this juncture --

21 A. Would have been, but they hadn't been
22 provided. They clearly were public documents and
23 could and should be provided as long as there was
24 not an ongoing investigation.

1 Q. If these are not your documents, if these
2 are State Police documents, then they would have
3 been provided anyway.

4 A. No, not if there was an ongoing
5 investigation. They would have been informed of
6 it and all parties concerned would have stood down
7 while the investigation proceeded. That's SOP in
8 the office, SOP in the Attorney General's Office.

9 Q. That if you don't want to respond to a FOIL
10 request you initiate an investigation?

11 A. You know, an unscrupulous person might do
12 that. But I would maintain there would be grounds
13 for conducting such an investigation, and
14 reporters would understand that and abide by it
15 until such time as we were ready to release the
16 information.

17 BY MR. TEITELBAUM:

18 Q. Who was to do this investigation in your
19 mind?

20 A. Internally, we could have conducted it.

21 Q. So, in other words, the executive chamber
22 would be the investigating agency at that point?

23 A. I could say to a reporter at that point to
24 get out of complying with a FOIL request or

1 providing the information by saying: Look. We're
2 conducting an internal review. You need to come
3 back to us a little bit later. Or, if we turned
4 it over to the I.G. all matters regarding this
5 investigation are under review by the I.G. and,
6 because of that reason, we are not going to be
7 complying at this time.

8 BY MS. TOOHER:

9 Q. You indicated that you didn't provide
10 Commission's 67 to Mr. Odatto.

11 A. I think I had it in my possession. And,
12 sort of in my explanation of what it was that I
13 provided I glanced at it a few times because I
14 needed to keep straight. Jim, here's what I've
15 got, just in loose fashion. You've got Eliot
16 doing it 19 times, Patterson on six trips. You
17 don't have anything for DiNapoli, Smith, or
18 Tedisco. And it's at that point he said, "What
19 about Cuomo?" Sorry, oversight. I'll get that
20 for you. And, then, "What are you going to have?
21 Are you going to have the manifests?" You've got
22 what you pointed out to me, which is the blog
23 items. You've got schedules for Eliot. With
24 regard to the other stuff, just take a look

1 through the package." I don't think I would have
2 alerted him in any way to C.V. Starr or anything
3 like that. I don't think I would have provided to
4 him Bruno's comments on Hevesi which is a little
5 bit extraneous. But I would have said: If you
6 are going to get the file, let's dig out the
7 manifests and schedules.

8 Q. Did you provide Odato with a memorandum?

9 A. No. It was just a package that you have
10 received. It's this big. (Indicating)

11 Q. Is the answer no?

12 A. Yes, it is.

13 BY MS. TOOHER:

14 Q. Was there any kind of cover letter that you
15 provided with that?

16 A. It gives an information dump. I explained
17 what he was being provided, but there was no cover
18 letter or anything else.

19 BY MR. TEITELBAUM:

20 Q. When you say "an information dump" what are
21 you talking about? I don't understand the term.

22 A. There were six or eight files. You know, in
23 this fashion: Here's your travel assignments.
24 Here's the flight requests. Here's Bruno's

1 travel. Here's Spitzer's travel. Here's
2 manifests. Here's Patterson's manifests. Here's
3 Spitzer's schedule. Here's Patterson's schedules,
4 and here's the only thing that speaks to a
5 schedule for Bruno, which is these travel
6 assignments.

7 Q. Were those various things written or are you
8 telling him this?

9 A. They are on files exactly like this.

10 Q. You are saying there was no document
11 prepared by you in memo or letter form in
12 connection with what you were giving to him?

13 A. We talked through exactly what it was that I
14 was giving him. And at the end of receiving
15 materials he was going, I think, through them.
16 And he says, "What do you make of it?" And we had
17 a conversation thereafter. I said to him -- I
18 said to Odato, "Dude, it's up to you. You figure
19 out what it is here. Maybe there's something
20 here, maybe not." I kind of presume that Bruno is
21 going to say to you that he was engaged in the
22 travel, and if you look closely at the travel
23 assignments you will see information for him being
24 able to do that.

1 BY MS. SULLIVAN:

2 Q. When you say "they're on here," are you
3 saying Odatto was angry with Bruno because he
4 wouldn't provide the schedules?

5 A. That came just a little bit after delivery
6 of this material. He was constantly coming back
7 to me and I was constantly going to my people,
8 including Nocente and Marlene, based on Jim's
9 review of the material, rigorous questioning
10 which spooked us about what was Eliot doing on
11 this date? What's this private meeting that's
12 crossed out? He went and spoke to the democratic
13 party: What was he saying there? Was that a
14 fundraiser for him? A host of questions in this
15 regard. And he turned to regarding these
16 transportation assignments and he said, "Who said
17 the guy should get ground travel? Why was he
18 being provided that?" Antagonistic -- not
19 belligerently antagonistic, but tough questioning
20 on everything that Eliot was doing. And he came
21 back to me a couple of days later and said,
22 "You'll never believe what the Bruno people are
23 doing. They just blew me off and wouldn't give me
24 any information.

1 BY MS. SULLIVAN:

2 Q. Information on --

3 A. His schedules. They wouldn't substantiate
4 for him that he was doing official business.
5 Instead they said "Death threats." And you'll see
6 in my correspondence, Jim was expecting us to say
7 something about the use of the aircraft. But I
8 had this e-mail saying, "We're learning things
9 that cause us to be much more cautious." Once
10 death threats were mentioned I quickly went back
11 to Bill and the others saying, "He's saying
12 there's death threats; that he requires ground
13 transportation and helicopter usage. Do you know
14 anything about that?" Remember, you give the
15 material to the reporters and their editors. They
16 scrutinize it and keep coming back to me with
17 questions that I don't know the answers to but for
18 which I turn to Bill, Nocente, and turn to some
19 others: Well, how much is this costing the State
20 of New York? You'll see traffic from Bill that
21 says anywhere from \$15,000 to \$17,000 a shot.

22 Q. Let me just make sure I have this right.
23 Odatto gets the ground itineraries from you and
24 then he calls the Senator's office to verify the

1 information contained on the ground itineraries?

2 A. I presume that's what happened, but I have
3 no independent knowledge of it. I just know what
4 Jim told me thereafter which was -- Remember, I
5 had sort of in the course of walking through the
6 information I had provide to him said: You will
7 see some information regarding transportation
8 assignments that sort of matches up to what you
9 told me before about the blog and events being
10 held on a couple of dates. But absent his
11 schedules, we don't know anything is going on.
12 "Well, why didn't you guys" -- Believe me, we are
13 monitoring the situation, but there's no smoking
14 gun. We don't know. Only you will be able to
15 determine that based on your exchange with him. I
16 presume they're going to say it's legislative
17 state business." And that was the exchange with
18 Jim in November.

19 BY MS. TOOHER:

20 Q. You provided the FOIL documents to Mr. Odato
21 prior to these subsequent discussions?

22 A. Yes. What I'm describing to you right now
23 are his follow-up questions, and there were
24 dozens. That's why you see: Give me a call --

1 give me a call in the days following his receipt
2 of the material.

3 Q. But, in Commission's 67 you raise the
4 security threat issue with Mr. Hevesi as a
5 potential issue in this referral.

6 A. But I was not educated at that point about
7 death threats. It was Bruno's comments on Hevesi.
8 And I will show you this article. You have to see
9 it. He was asked if he ever used State Police
10 drivers in the article and he denies ever doing
11 so.

12 Q. Now, this document, Commission's 67, was a
13 referral or potential referral to whom?

14 A. It was whoever Nocente thought appropriate
15 to give, if he thought it was appropriate to give.
16 Again, I am just making one more pass before
17 giving it to the reporter as to whether he wanted
18 to do something internal or whether we wanted to
19 do something internally or whether we wanted to
20 make a referral.

21 Q. But you note in this document, "His
22 political activity would appear to conflict with
23 restriction with statewide policy with the state
24 aircraft being used only for official business."

1 That's not a statement of what the policy is, but
2 the ounce for pound policy, I think is how you
3 explained it earlier.

4 A. But, once again -- and I keep coming back to
5 this point. We go back and forth. It was never
6 completely resolved by the lawyers as to whether
7 the disclaimer policy trumped the original policy,
8 the standing policy.

9 BY MR. TEITELBAUM:

10 Q. If that's the case, if it wasn't resolved --

11 A. It was finally resolved, but we had an
12 issue.

13 Q. 67, you review tension between the concepts;
14 correct?

15 A. Again, perhaps upon reflection or perhaps
16 upon -- you're right. I probably could have, you
17 know, maintained that and put that flow in there,
18 but I just didn't. I don't know what to read in
19 it, other than I'm not perfect in drafting a quick
20 memo in response to what I perceived as a need by
21 Mr. Nocente.

22 Q. You say what you are saying you are saying
23 to Nocente -- The first sentence, it's not
24 accurate, is it, that "This activity would

1 conflict with restriction under state law." What
2 state law are you referring to?

3 A. We had -- Again, one of the e-mails that you
4 will see in the exchange was me asking David if it
5 conflicted. You will see me saying: Could this
6 possibly conflict with any state law? I can't
7 remember his response. He sent me back a passage
8 of law which might, in fact, conflict. And, if I
9 recall it correctly, it's in the e-mail package.
10 It would be: If you make a false statement you
11 might have a jackpot, it might be inappropriate.
12 Because, again, going back and forth right until
13 the very end as to whether the use is appropriate
14 or not -- and again, if you're attesting that you
15 are doing official business, Rifkin and Pope both
16 maintain to the very end that if there is no
17 official business you really have a problem and
18 you might still have an issue. Somebody might
19 raise it as an issue that "official" means
20 official only. But, again -- forgive me.

21 Q. It looks like an advocacy piece to me.

22 A. Forgive me for saying that I would have made
23 one final pass for referral.

24 Q. Did you view it as an advocacy piece, 67?

1 A. I would have been trying to make the
2 clearest case possible, laying out both sides and
3 trying to defend my principal. The only advocacy
4 that I'm really after is trying to make sure that
5 Eliot is not harmed.

6 Q. When you say "both sides" --

7 A. I want to represent clearly that Eliot tried
8 to do the right thing and at least hold open the
9 prospect that Joe really should have -- somebody
10 really should look at it. If I am sending it and
11 encouraging David to send it to a law enforcement
12 agency -- you wouldn't write a note that was
13 entirely dismissive. You would write a note
14 emphasizing the points where you might lean one
15 way or the other.

16 Q. Might you write a note saying it's unclear
17 whether this violates any states law and that the
18 executive chamber has been in conflict over this?

19 A. In retrospect that sounds like a great
20 addition to it.

21 Q. That would have been within bounds; is that
22 correct?

23 A. That's correct. You're a good editor. And,
24 remember, what I do write I write things quickly

1 for Nocente, so consider -- I assumed if he was
2 going to do anything with it, he would have added
3 that.

4 BY MS. TOOHER:

5 Q. Showing you what has previously been marked
6 as Commission's 28, and this is 28B. And this is
7 the flight request information form for the May
8 17th trip. And it is the standard certification
9 form as presented in the manifest packages. And,
10 there is a certification that the statements are
11 true and accurate?

12 A. Yes.

13 Q. And there is a requirement to indicate the
14 official state business. But I cannot find in the
15 form anywhere where it says only official state
16 business.

17 A. I think internally we meant this to mean
18 that it would be only for state business and that
19 legislative business meetings and political
20 fundraisers and private business would be
21 inappropriate.

22 Q. But, it does not provide that there must
23 only be State business on the form; does it?

24 A. I think that question is best directed to

1 Mr. Nocente. But the spirit internally of this
2 disclaimer was that -- I mean why would we
3 institute it except to ensure that official
4 business is done and only official business is
5 done.

6 BY MR. TEITELBAUM:

7 Q. When you say "we" who are you referring to?

8 A. The administration.

9 Q. What individuals meant for this form to
10 preclude the use of state aircraft except for
11 state business only?

12 A. That was what we were trying to do. We
13 wanted to avoid abuses.

14 Q. Who is "we"?

15 A. Nocente, Baum, Spitzer, Dopp.

16 Q. So, all of you would have viewed that the
17 only legitimate use for state aircraft was for
18 state business and nothing else? Is that what you
19 are saying?

20 A. And that is the policy that we lived up to,
21 with one exception that we were scrupulous about
22 and kept hammering home. I bring to your
23 attention that we refused on numerous occasions
24 Lieutenant Governor Patterson's trips and we made

1 him modify them because he was mixing.

2 Q. Was Rifkin consulted about this policy when
3 this form was drafted; do you know?

4 A. I believe so. He had been like the premier
5 expert in that.

6 Q. Are you saying Rifkin was of the view that
7 only state business could legitimatize the use of
8 state aircraft?

9 A. No, I --

10 MR. KINDLON: I think this is getting
11 absurd. How is he supposed to tell you what's
12 going on in Rifkin's mind?

13 MR. TEITELBAUM: In his head.

14 MR. KINDLON: Then why don't you ask him
15 that question?

16 MR. TEITELBAUM: I'm not asking Mr. Dopp
17 to presume what Rifkin was thinking. I am asking
18 what he said or wrote.

19 Q. Did he say that his view was that the only
20 use to which state aircraft could be put was state
21 business only?

22 A. Both Rifkin and Spitzer cited Orenstein.
23 Rifkin cited Orenstein and his previous policy,
24 but he also acknowledged that the whole point of

1 our trying to set a higher standard would be that
2 it would be official business only and not related
3 to fundraising.

4 Q. That was at or around the time that this
5 form was developed?

6 A. I believe then, and in my dialogue
7 subsequently. I mean we are trying to set the
8 highest ethical standard possible. And that is
9 our goal and mission here, setting new standards,
10 doing things different. Everything changes on day
11 one. And, this had been a scandal on previous
12 administrations and it had been abused. And what
13 are you trying to do? You are trying your best to
14 do the right thing.

15 BY MS. TOOHER:

16 Q. To your knowledge, was it ever relayed to
17 Senator Bruno that there was a change in the
18 standard?

19 A. Yes. He was asked to sign these and it was
20 explained to him, or so I was told.

21 BY MR. TEITELBAUM:

22 Q. You mean the flight request form?

23 A. Yes, the new policy.

24 Q. You mean the new form.

1 A. The fact that we have to fulfill the new
2 form, and the purpose behind it was to ensure
3 proper use.

4 BY MS. TOOHER:

5 Q. You eventually received an actual written
6 FOIL request from Mr. Odatto; is that correct?

7 A. Yes.

8 Q. And I believe in the D.A.'s report it
9 indicates that Mr. Odatto presented this FOIL
10 request to you in response to a request from you
11 that the FOIL be in writing?

12 A. I said to him much earlier that because you
13 are asking for a lot of stuff you better put it
14 on paper. But was I soliciting it or did I
15 request it outright, I don't believe that was the
16 case. I just said when he came down asking for
17 the info: Put it in writing as to what you really
18 want. I have got most of the materials based on
19 our previous conversations. I'm pretty much ready
20 to provide it to you, but why don't you give me
21 that piece of paper.

22 Q. I think you testified earlier that that was
23 code for: Give me a FOIL request?

24 A. Again, why -- if he was asking for a single

1 trip or single week or even a single month, I
2 probably would have not suggested that he FOIL.
3 But because it was so comprehensive and because it
4 was for everybody that required it, it obviously,
5 you know, required some work to bring together
6 and, you know, just seemed the right thing to do
7 based on the comprehensive nature of the request.

8 Q. I am going to show you what has been
9 previously marked as Commission's 66. I will ask
10 if you can identify this document.

11 A. That's what he e-mailed to me on that
12 particular day.

13 Q. Did you provide this e-mail, this FOIL in
14 Commission's 66 to anyone else in the executive
15 chamber?

16 A. I told him it was here, and I believe I
17 forwarded it to him.

18 Q. You told who that it was here?

19 A. All my people.

20 Q. Being --

21 A. Mr. Nocente, Spitzer, Baum, and others. It
22 finally came in. Like I predicted, it's now here.

23 BY MR. TEITELBAUM:

24 Q. Can you identify the people?

1 A. Some of the people were just like ancillary
2 people. I would have told them the FOIL request
3 was in at a morning staff meeting or afternoon
4 staff meeting. And a lot of people were there
5 when I said, hey, it's finally FOILED. Odatto has
6 finally FOILED. The reporter has finally FOILED.

7 Q. And, did you say, "I suggested to him that
8 he should FOIL"?

9 A. No, it wasn't relevant.

10 Q. Well, you're saying: "It came as I
11 predicted." It actually came, as I suggested.

12 A. No. I mean I didn't want the story because I
13 knew it would whack Eliot. And I knew it was
14 coming and I apprised everybody that it was. And
15 I believe you have testimony from people
16 underscoring my concern about the whole process
17 given the exposure that I have described. Eliot's
18 use and our stewardship, we have to do it the
19 right way on both counts. So, it was no surprise
20 when they told me to stand down -- I keep saying
21 when they told me to. I reached the same
22 conclusion at that moment that it was fine to
23 stand down. I had reservations, but I said at
24 that point he's going to come back. They always

1 do to periodic requests for this stuff. It's
2 almost like clockwork, every year someone writes
3 an aircraft story. So, again, it's like some
4 people say, oh, you jazzed up -- Odat, when you
5 see the e-mail and when see the article package
6 that I gave to you, he routinely writes on
7 aircraft issues.

8 Q. But he had never been provided the
9 itineraries for the other articles.

10 A. That's right. Nor had anybody else because
11 nobody specifically asked that. To be perfectly
12 honest, how did he get to that? I inadvertently
13 turned him onto that. And the reason why in that
14 conversation that I was talking about: What's
15 going to be available? And, I said to him, "Well,
16 you have got manifests."

17 Q. Which conversation? What time frame are we
18 talking about?

19 A. Early May. When he said, "What's going to
20 be available?" I said, "You have got manifests
21 and you've got schedules for Eliot. And at least
22 you've got manifests for Bruno and everybody who
23 is using it." "What about itineraries? What
24 about schedules?" I said, "I'll check." That was

1 the catalyst for me going to Bill saying: What
2 have you got that would be responsive to a FOIL
3 request? I new it was coming. Going.

4 Q. And, when you get the FOIL request,
5 Commission's 66, he asks for trips, itineraries,
6 manifests and schedules for Governor Spitzer, and
7 the Lieutenant Governor Patterson. He does not
8 ask for that information for Senator Bruno; is
9 that correct?

10 A. We have had that conversation together
11 numerous times. I glanced at it, and it was clear
12 to me he was looking for that and everybody else
13 using the aircraft. Some people pointed out it's
14 like -- Sometimes you all expect a kind of
15 precision that's like not exactly matched at all
16 times in the real world.

17 Herb, you said: You probably should
18 have mentioned in your cover letter something, and
19 I agree with you. You're a good editor. I
20 probably should have done that in my original
21 letter -- I probably should have done a number of
22 things. In this Odatto -- I probably should have
23 explained it, but the second he gave it to me, oh,
24 I looked at this and I forgot Cuomo. And it's

1 like the whole upshot of my interaction with him
2 was he wanted Bruno and he wanted Spitzer and
3 anybody else. Why did he want Bruno? When you
4 see the clippings that I gave to you, you see that
5 he had written five or six articles on Bruno's
6 aircraft use. I don't know why he had a bugaboo
7 about aircraft. And you will see that
8 subsequently with his writing about Nexium and all
9 the other entities that have given Joe in-kind
10 contributions for airline flights. I can't
11 explain that. Was I jazzing it up and saying do
12 this, do that? No, because I was a little bit
13 leery about the whole piece.

14 And, to speak to your point, is it an
15 advocacy piece, I've got an obligation to do it.
16 And, this is like a little tawdry -- the secret of
17 my business, if I know Mr. Spitzer is going to be
18 taking a whack, I naturally am going to say:
19 Look, I want you to consider everybody, you know.
20 And here's everybody's use of the aircraft.
21 Believe that I am doing my job for Mr. Spitzer and
22 believe in public disclosure on that point.

23 BY MS. TOOHER:

24 Q. Did you continue to collect Bruno's flight

1 information?

2 A. After the FOIL?

3 Q. After the FOIL.

4 A. No. Bill forwarded me another one that
5 wasn't ready in a timely way to be included in the
6 package. And you see that from like the 27th or
7 something like that.

8 Q. Did you request Bruno's flight information
9 from anyone else?

10 A. The only person I could have would have been
11 Bill. Do you mean like a reporter or somebody
12 else like that?

13 Q. No. Anybody else in the chamber, anyone
14 else who would have had the information.

15 A. You will see a traffic with Marlene Turner
16 where I say: Anything else? Is there a latest
17 request? And, basically, that would have been the
18 case. It's like again, we were not going to like
19 stand down from the inquiry but, basically, once I
20 provided the material for the first five months of
21 the year for Odatto, he felt as though he had
22 enough at that moment. He subsequently wrote back
23 another FOIL saying, oh, but I want June, too.
24 And remember June is halfway over or largely over.

1 What I was told is that it gets collated and
2 provided at the end of the month.

3 Q. I'm not sure I understand that explanation.

4 A. What I provided to Odatto was the first five
5 months of the year. I'm providing the first five
6 months of the year in the sixth month of the year
7 at a time when the sixth month of the year had not
8 been fully recorded yet.

9 Q. What is your understanding as to the
10 obligations under a FOIL request as far as
11 document production?

12 A. It would be as responsive as you can as long
13 as the materials you are providing are in the
14 public interest. And, in this particular case I
15 had pretty extensive familiarity based on years of
16 fulfilling those requests and the ad nauseam
17 discussion internally about what to do.

18 Q. So, it is your understanding under a FOIL
19 request it's a continuing obligation once you get
20 a FOIL request to keep responding to it?

21 A. No, not at all. I thought what we provided
22 was sufficient. He thought otherwise and wanted
23 another month.

24 Q. When did he relay that to you?

1 A. A couple of days later when he sent me the
2 FOIL. This was one occasion when he didn't call
3 me up and ask me about it. He just sent it to me.

4 (Commission's Exhibit 79 was marked for
5 identification.)

6 Q. You have in front of you what has been
7 marked as Commission's Exhibit 79 forwarded by
8 Marlene Turner. It's a two-page document, a
9 thread of e-mails between Marlene Turner --
10 (Pause)

11 You have Exhibit 79, a two-page document
12 starting with an e-mail from Susan Braga
13 (phonetic) to Marlene Turner and ends with an
14 e-mail from Darren Dopp to Marlene Turner. Can
15 you identify this document?

16 A. This would have been on the day that I had
17 given Jim the first five months of the year, I
18 believe. I believe this is when the FOIL request
19 came in. And it came in earlier and I gave him
20 the latest. I'm not sure of the timing exactly,
21 but he was also inquiring about what happened
22 during the -- I had the first five months, but I
23 didn't have the sixth month. And what I'm trying
24 to do is make sure I have the ability to bring all

1 of that together for Jim. But I don't believe I
2 did. Hence, his later request of for that sixth
3 month.

4 Q. So, on the day that you get the FOIL request
5 you are still looking to collect information on
6 Senator Bruno's flights?

7 A. Pursuant to his request. And maybe I should
8 just turn to the request because I thought he was
9 asking for the first six months of the year, but I
10 don't have that in front of me unfortunately.

11 Q. The FOIL request should be in front of you,
12 Commission's 66.

13 A. Yes. "Please provide me for the calendar
14 year 2007."

15 Q. It is dated June 27th.

16 A. Right. And I had the first five months but
17 I didn't have the sixth month.

18 Q. So, after you got the request you are asking
19 for additional records.

20 A. Just because Jim says: We're at the end of
21 the sixth month. What about this month? And I
22 said, "I'll work on it for you."

23 Q. I thought you said a moment ago this request
24 came a few days later.

1 A. In writing. Remember, he sent his follow-up
2 FOIL.

3 Q. And Marlene Turner is gathering the
4 information for you?

5 A. That's right. And I think what he is asking
6 for is the full package; itineraries, flight
7 requests, everything that would correspond to what
8 I have given him for the first five months.

9 Q. There's nothing about Bruno's itineraries in
10 Commission's Exhibit 66.

11 A. No. I would have asked Bill for that later
12 on. I would have said, "He also wants the six
13 month. What have you got?" And you see that in
14 the e-mail package he eventually gave me that as
15 well. I don't think my memory is correct on this.
16 I don't think we ever got around to providing it
17 to him because of when the scandal broke. Maybe
18 the people that were left behind did it, but I
19 don't think I did.

20 (Commission Exhibit 80 was marked for
21 identification.)

22 Q. You have been given Commission's 80, which
23 appears to be another e-mail thread between you
24 and Marlene Turner and Susan Braga.

1 A. All following up on questions from Jim Odatō
2 regarding like other activities.

3 Q. Now, you seem to be requesting the
4 information on other individuals including
5 Lieutenant Governor Patterson.

6 A. We provided -- we actually had in great
7 detail these others. Like I said, the materials
8 were largely complete, but we provided like in
9 kind of a staggered phase over the 27th and 28th
10 to Jim as they became available.

11 Q. So, now, you are making formal requests for
12 the other information?

13 A. Requests had been made before but they just
14 weren't finalized.

15 Q. Requests in what form?

16 A. I apprised the Patterson people previously,
17 but when the FOIL actually came in, you'll see the
18 e-mail stuff: Jim's really interested in your
19 travel, too.

20 Q. You apprised them when?

21 A. Early on, in terms of like close to the 27th
22 -- prior to the 27. And you will see e-mail
23 traffic with me interacting with his chief of
24 staff saying we really need this because he is

1 asking for it. I told you before we had internal
2 discussions and pulled some information on
3 Patterson but not the full amount Jim was looking
4 for.

5 Q. So, the only people you had pulled the full
6 information for, all of the information for, was
7 Senator Bruno?

8 A. Spitzer and Bruno. And, basically, the
9 reason for that, there wasn't anything on anybody
10 else. And while we had sort of engaged
11 Patterson's people -- you see it's in the e-mail
12 traffic. "I know you are busy and haven't had a
13 chance to get to it," that kind of stuff. And I
14 would have reminded them: We have now received
15 the official FOIL and we have to respond. Can we
16 please set aside whatever else you are doing and
17 do it for me.

18 We had had internal discussions about
19 Patterson quite a bit. Basically, it was not
20 involving Howard but Marlene Turner and Rich Baum
21 who relayed some concerns about this, about these
22 travels.

23 Q. What do you think Mr. Odatto was looking at
24 in terms of the air activities?

1 A. At that moment I was pretty convinced that
2 it was the traditional story that I had seen many
3 times. Who's using the aircraft and for what
4 purposes? As I've sort of relayed again and again
5 my primary concern is ensuring that Eliot doesn't
6 get a whack and, secondarily, that Rich doesn't
7 get a whack for failing to be a good and diligent
8 steward of proper use of aircraft.

9 Q. Did you discuss this at all with Bill
10 Howard?

11 A. At that point I conveyed to him that the
12 actual FOIL is finally here and we are poised to
13 release. I have just got to go to Rich to make
14 sure that's exactly what they want to have happen.

15 Q. Did you discuss say ramifications of the
16 release in terms of Senator Bruno with Bill
17 Howard?

18 A. I don't think in any great detail, other
19 than Bill had a constant view of what those
20 ramifications were; that he had a lot of
21 explaining to do. But the rest of us, with the
22 exception of Pope and sometimes Rifkin, thought he
23 would just, of course, say: I have got official
24 business going on those days and that would take

1 care of it. But, you know, we didn't know that
2 for sure. And there's at least the possibility or
3 potential that he might not have been fulfilling
4 his obligation under the bargain and might have a
5 problem.

6 Q. Did you discuss the Public Officers Law with
7 Mr. Howard?

8 A. Yeah. I would have asked at one point,
9 assuming he doesn't have an explanation, do you
10 think there is a legal jackpot there? I would
11 have had the same conversation with Nocente.

12 Q. You would have had or you did have?

13 A. I did -- I did. I talked to Bill and I
14 said, "Bill, what legal issues might be raised by
15 this?" And, I said the same thing to Rifkin and
16 Pope who were the experts.

17 Q. Showing you what has been marked as
18 Commission's Exhibit 68, an e-mail from Bill
19 Howard to you --

20 A. This was in response to me telling Bill that
21 Nocente and Rifkin said Section 3 might be at
22 issue if there's no business being conducted.

23 Q. Section 73 might be at issue?

24 A. Right. Forgive me for not having the full

1 grasp of what 73 is all about. The upshot is if
2 you are attesting to one thing and doing something
3 else, that might not be appropriate.

4 Q. And, did you relay to Bill Howard that you
5 had spoken with Richard Rifkin and -- who else,
6 Peter Pope?

7 A. Nocente. I don't recall specifically doing
8 so. I might have done so. I just at this stage
9 of the game, I'm saying, "Billy, I'm going to need
10 you to stand by because I'm getting peppered with
11 questions from Jim.

12 Q. And he specifically says, "I have read
13 through 73 several times; am having a hard time
14 finding applicability to the issue." Did you
15 specifically ask him about Section 73?

16 A. I would have said some of the others think
17 73 is in play. What do you think?

18 Q. Is Mr. Howard an attorney?

19 A. I don't believe so, no.

20 Q. Why would you be asking him a legal
21 question?

22 A. He was the standing expert on this the
23 matter who had fielded these types of inquiries
24 for twelve years.

1 Q. He was the standing expert on the plane.

2 A. He was the expert on use of the aircraft and
3 relevant administration policy governing it. And,
4 earlier, you would have seen me asking him: How
5 did the guys in the Pataki administration handle
6 it? Remember, he was the acting director of the
7 government for the Pataki administration in the
8 waning days. And we retained him for his
9 expertise in security and public security matters.

10 Q. Had you ever discussed the Public Officers
11 Law with Mr. Howard?

12 A. I don't recall in any particular detail. I
13 just would have said in my characteristic fashion:
14 What if Gerald really doesn't come back and says
15 there's no legal business? Remember, Rifkin said
16 to me if he was doing nothing then I think there's
17 a problem. And that's what I would have conveyed
18 to Bill. But when Bill when he looked at 73 I
19 think he had a different opinion. But again, what
20 you see me doing in my characteristic fashion is
21 constantly checking with folks to get their take
22 on where we stand, what we should be doing.

23 (Commission's Exhibit 81 was marked for
24 identification.)

1 Q. You have been handed Commission's 81. It's
2 an e-mail from Bill Howard to you dated 6/27/07,
3 the subject is policy. "I put that policy document
4 on your chair."

5 A. Jim had said --

6 Q. Jim Odatto?

7 A. Yes. Jim Odatto said: What is state
8 aviation policy? And what Bill provided to me was
9 I believe the policy that Rifkin helped the
10 administration formulate. You should have that
11 because it's like the ounce versus pound matter,
12 the underpinning of the ounce versus pound matter.

13 Q. When you say "the policy of the
14 administration" which administration are we
15 talking about?

16 A. I think it was actually formed in the Cuomo
17 era but carried through, perhaps with some
18 modification, by Pataki.

19 Q. Was it carried through to Spitzer?

20 A. I advance to you that we modified it with
21 our disclaimer policy.

22 Q. Your disclaimer policy being --

23 A. Flight requests, the fact that you require
24 somebody to attest to official business, whether

1 it be legislative meetings or whatever.

2 Q. This is a written policy, a policy document?

3 A. Yes. You need to like have it because at

4 one point I said: Does this have the force of

5 law? No, it's our internal policy.

6 Q. Did you commit the certification policy, as

7 you just referred to it, to a written document?

8 Did the administration commit the certification

9 policy to a written document?

10 A. That is best directed to Mr. Nocente who

11 would have been responsible for it. I would

12 assume so.

13 Q. Did you ever see any written document?

14 A. I saw the flight request information and it

15 was fully described to me. And I was pleased when

16 I heard it because I thought it was due diligence

17 on our part. No one ever showed me: Here's the

18 existing policy and here's what we are doing. I

19 recognized it as an advance, and I was pleased to

20 hear that we were trying to set higher standards.

21 Q. Did you ever see a written memorandum or

22 anything within the chamber that indicated what

23 the policy was?

24 A. I had seen the state aviation policy in

1 years past with Governor Cuomo.

2 Q. Did you seen any modification to that policy
3 in the Spitzer administration?

4 A. If I saw it, I wouldn't have appreciated it.
5 Nothing stood out to me that appeared to be the
6 same standing policy.

7 (Commission's Exhibit 82 was marked for
8 identification.)

9 Q. I am giving you what has been marked as
10 Commission's 82. This appears to be an e-mail
11 thread between Charles O'Byrne and yourself. Who
12 is Charles O'Byrne?

13 A. Chief of staff to the Lieutenant Governor.

14 Q. Can you identify this document?

15 A. I can explain it. Charles -- I made a
16 verbal request to him and some e-mail requests to
17 him for appropriate documentation that would match
18 up to what we were providing for Eliot. Charles
19 protested a little bit saying, "Well, should I
20 redact some of this stuff?" And I said, "Don't
21 try to hide anything. We should be an open book
22 in this regard." And he was worried about his
23 Dean meeting, Dean being the head of the National
24 Democratic Party and the appearance of that

1 particular trip. And I said whether it was good
2 or bad, we have to disclose it.

3 Q. Did you give Senator Bruno any heads-up on
4 providing his schedules or itineraries to Mr.
5 Odato?

6 A. Honestly, in years past it had been my
7 practice with my friend and longtime colleague
8 John McArdle to give him a heads-up on such
9 matters. But they had been such -- there had been
10 such animosity between the camps and they had even
11 sort of like ripped off me on occasions
12 unceremoniously. I didn't take offense to it
13 because I knew they were jazzed up themselves
14 being in like a death fight with Eliot. In years
15 past I may have apprised him. But in this
16 instance --

17 Q. Up did not in this case?

18 A. I didn't give him a heads-up.

19 BY MR. TEITELBAUM:

20 Q. Let me ask you a questions about 82. There
21 is an e-mail at 10:35 from you to O'Byrne. The
22 second sentence, "Think of Dean in the context of
23 a full day of government activities. "How does
24 that square with what you were telling us is the

1 policy of the chamber?

2 A. At least there would have been cover. But,
3 you know, what I am endeavoring to do with him is:
4 Please don't do anything weird or squirrely in
5 trying to redact things and screen things. I am
6 personally trying to assure him that, yeah, it's
7 like a little bit of an issue and we'll have to
8 explain it. But the way it was explained to me is
9 they were talking about policies that impact New
10 York State. I knew it was an appearance problem,
11 but when I say to him: Please don't do it because
12 I don't think it's an overall problem, it's me
13 encouraging him not to be cute or try to conceal
14 anything from the media.

15 Q. Did you say it was a "Dean" meeting? Who is
16 Dean?

17 A. D-e-a-n, Chairman of the Democratic National
18 Party, former Governor Dean from Vermont.

19 Q. And, this meeting with Dean you distinguish
20 from other activities. What other activities are
21 you talking about?

22 A. I am told he is in a government seminar
23 where he is talking about recruiting minorities
24 into public service. It's a forum in Washington

1 at which time he meets with Dean briefly. So, my
2 particular belief is, well, some people in the
3 media would raise a concern about it. When we
4 explained that instead it was a greeting and that
5 it was not about fundraising or anything else, we
6 would probably be okay. But, again, it was a
7 clearly political meeting. But the cover or
8 rationale there was that he is attending a meeting
9 on government procurement. I think there's a
10 description later on. He is going to a
11 governmental session that involves democratic
12 officials and how democratic officials confront
13 MWBE issues and other matters.

14 Q. What is MWBE?

15 A. Getting more minorities involved in the
16 state contracting process.

17 Q. What does that stand for?

18 A. Minorities and Women in Business Development
19 Enterprises.

20 Q. So, that portion of the trip related to
21 state business?

22 A. The whole --

23 Q. I'm not disputing with you; I just want to
24 clarify it.

1 A. The government, he was there for government
2 purpose but he met with a political figure while
3 on that government purpose.

4 Q. You used the word "cover." What do you mean
5 by that? I don't say you used it here. You used
6 it in your testimony, Mr. Dopp.

7 A. Again, it's like what am I doing? I'm
8 working with reporters and saying to them, yes, he
9 met with Dean but he was covered by the fact that
10 he was conducting a full day of speeches and other
11 meetings that spoke directly to governmental
12 business in New York, especially and including the
13 role of women in business and minority contracting
14 in New York which has an economic development
15 component.

16 In my parlance with Mr. O'Byrne it's
17 like we are covered in that regard. Nobody is
18 going to give a sharp criticism for having that
19 brief meet-and-greet with Dean when you are giving
20 speeches and engaged in activities that are purely
21 in the state's interest and the people's interest.

22 Q. The meeting with Dean is a political
23 meeting, obviously?

24 A. Yes.

1 Q. And can we both agree that given your
2 description of what you perceived to be the policy
3 of the chamber on use of the state aircraft that
4 was improper?

5 A. He is on the board. If wasn't political
6 fundraising which is clearly improper, but it was
7 political. And, unless thoroughly addressed by
8 other governmental functions, it would be more of
9 a problem. But it was described to me as a
10 meet-and-greet between a Governor and a Lieutenant
11 Governor.

12 Q. Now, just so we understand one another on
13 the record, are you saying the policy on the use
14 of state aircraft prohibited a state official from
15 engaging in political fund-raising but other
16 non-state related business would be okay?

17 A. I am saying that the goal that we strive for
18 was no politics. I'm saying that there is a
19 marked difference between political fundraising
20 for your own purposes and having a meeting that
21 had a political component, right. And I would
22 endeavor to say it was a grade. I would like to
23 have avoided it entirely, but it existed and I
24 could not at this point do anything other than put

1 it in its best light.

2 Q. And what you articulated is the chamber
3 policy?

4 A. Yes.

5 Q. Was this policy written down anywhere?

6 A. It would have been an obligation of Marlene
7 and Rich to make sure we lived up to the spirit of
8 the policy we articulated both in the flight
9 request disclaimer and our public pronouncements.
10 We weren't going to go down the path that others
11 had.

12 Q. It was not written down anywhere?

13 A. No, sir.

14 Q. I take it the Lieutenant Governor did not
15 put down on his flight requisition that he was
16 engaged in a political meeting. Is that fair to
17 say?

18 A. I'm sure that the Lieutenant Governor would
19 have informed Marlene Turner who is responsible
20 for approving the trip of the exact nature of the
21 trip. I know, as well, Marlene Turner had
22 difficulties with him and Baum had difficulties
23 with him because he was cutting the line too
24 closely in certain cases. And I know that they

1 had -- reprimand is too strong a word, but
2 arguments to insist that he do a better job in
3 adhering to the spirit of the policy.

4 Q. In this instance you are telling somebody
5 what they put down on the form. To your
6 knowledge, did he put down on the form that he was
7 engaging in a political meeting in Washington?

8 A. I don't remember myself about that
9 particular matter. I just know Marlene Turner
10 conveyed to me that she had some difficulties in
11 ensuring that he was following the proper
12 procedure.

13 Q. And use of state aircraft, for one reason or
14 another, fell within your purview to some extent
15 during the first six months.

16 A. Four months, really.

17 Q. Four months. And you would have been
18 familiar with the policy of the executive chamber
19 on the proper use of state aircraft; right?

20 A. I know the standard we wanted to uphold.

21 Q. I am not asking you about what you wanted.
22 I'm asking about what the policy was. Were you
23 familiar with the policy?

24 A. Yes.

1 Q. I want you to articulate to the reporter,
2 given what you said about the gradations of
3 political fundraising versus political meetings
4 versus state-related business, the policy as you
5 understood it.

6 A. That we do everything possible, Jim, to
7 avoid political activity when using the state
8 aircraft. In no uncertain terms, that is what I
9 would have said. And, the, I would have further
10 said I believe that, with a couple of exceptions,
11 we have adhered to that in a good faith way, both
12 David and Eliot.

13 Q. Are were you able to say that, given the
14 policy as you just articulated, that the meeting
15 with Dean presented no problem in Exhibit 82?

16 A. No problem for me to explain and, I believe,
17 convince the reporter that it was not an egregious
18 violation.

19 Q. I'm talking about the ethical issues. There
20 was an ethics issue -- you put it in your
21 testimony today. There was an ethics issue with
22 regard to the use of state aircraft. Did you say
23 to anybody that the Lieutenant Governor, when he
24 took this trip and met with Dean, that he did

1 something improper?

2 A. No. I would have said --

3 Q. I'm not interested in what you would have
4 said. Forgive me for interrupting. It's a simple
5 question. Repeat the question, please.

6 MR. KINDLON: Do I get to do Redirect
7 here because these question are -- I object to the
8 form of the question.

9 MR. TEITELBAUM: This is not a
10 deposition.

11 (The pending question was read.)

12 A. When we met and discussed the matter I would
13 have said that that could be problematic. It's
14 not as problematic as conducting fundraising for
15 yourself or for others, but raises questions that
16 I will have to contend with.

17 Q. That is what you said?

18 A. Yes.

19 Q. To whom did you say this?

20 A. The group: Nocente, Eliot, and Baum. I
21 would have said: I believe I can handle it
22 because it's not the same order of magnitude as
23 raising funds. But I have got a problem there and
24 I have got a problem with Spitzer's Monroe County

1 trip.

2 Q. What did Mr. Nocente say concerning your
3 remark and the Dean meeting?

4 A. Wish it didn't happen. And, you know, we
5 should probably be able to take care of it; don't
6 you think? And I said I think so because it's a
7 matter of gradation. It's not the most egregious
8 kind of thing. Are we perfect? Absolutely not.
9 And, this, again, was being said --

10 Q. Who said, "Are we perfect?"

11 A. Me. I said, "Are we perfect in this matter,
12 no. But I think on balance we adhere to the
13 spirit of the agreement. We've got two
14 problematic trips, maybe a third."

15 Q. What did Mr. Baum say?

16 A. He agreed with me. He was most concerned
17 about the third trip I mentioned and insisted upon
18 having reimbursement to protect ourselves.

19 Q. And the Governor was a party to this
20 dialogue?

21 A. I would have apprised him, and I believe
22 Rich did as well.

23 Q. At that particular meeting?

24 A. No, not at that meeting. But I walked in

1 there afterwards to talk to him about it.

2 Q. What did he say?

3 A. He then would have said, "Are we okay?"

4 Q. Not "would have"; just what was said.

5 A. He said, "Are we okay?" And I said, "Look,
6 you took 19 trips, had 105 events over those 19
7 trips. We see two problematic ones for you, one
8 problematic one for Patterson." And, then, he
9 said, "What's problematic? What's problematic?"
10 And I said, "Your Monroe County visit." "Well, I
11 didn't take any money there. I wasn't doing
12 fundraising." "Sir, the county party was doing
13 the fundraiser. You attended the county party
14 fundraiser." And, then, with regard to Patterson,
15 I said "Patterson was meeting with Dean." And he
16 paused for a second and said, "What else were we
17 doing on those days? Weren't we involved in a
18 whole host of activities?" And, then he
19 interrupted me and he said, "Wait a minute. I
20 went to Monroe County to talk about our Democratic
21 Party reform agenda. Does that mean I'm talking
22 about public policy? There was no more important
23 public policy at that particular moment." And I
24 said, "I will make that case. I may not prevail

1 with a reporter and others who my see it as a
2 purely political venture."

3 Q. Was that a fundraising event?

4 A. Yes, for the Monroe County Democratic Party.

5 Q. Was there reimbursement for the trip?

6 A. No, sir.

7 Q. What was the rationale?

8 A. The rest of the day was covered with 13
9 other public events that were economic development
10 between community leaders at that meeting and
11 others.

12 Q. Was there any endeavor to do an
13 apportionment to pay a portion of the costs that
14 related to the fundraiser?

15 A. We had that dialogue. And I said, "Rather
16 than reimbursing for the California trip, I think
17 the more problematic one is the Monroe County trip
18 because it's clearly a fundraiser." And I said,
19 "I remember in the old days under Cuomo our policy
20 was two-thirds/one-third. If two-thirds of the
21 day was governmental, one-third could be
22 political. But in any dicey situation we
23 reimburse for the leg of the trip." That
24 conversation led to a segue where Rich said, "I'm

1 not concerned about Rochester; I'm concerned with
2 California. And I think we ought to reimburse for
3 that part of the trip."

4 Q. How about with respect to the Lieutenant
5 Governor? Did he share your concern about that?
6 Was there a discussion about reimbursement?

7 A. He didn't share my concern because they
8 thought it could be two governors talking about
9 public policy. And I said, "Forgive me, boss. But
10 I just don't think that's going to wash." And
11 Richard's judgment was, oh, forget about it.
12 We'll be all right.

13 Q. When you say that, you are talking about the
14 Lieutenant Governor, the two governors' meeting
15 between the Lieutenant Governor and former
16 Governor Dean of Vermont?

17 A. That's correct. He thought of that as a
18 meeting between two governors, and that's what
19 they sort of like suggested to me as my talking
20 point with reporters if the question came up.

21 Q. Is that what you would characterize as a
22 "cover"?

23 A. It's something to say. And whether it would
24 be believed or not I had doubts about.

1 Q. Is that what you did say?

2 A. Yes. And he ended up noting it and being
3 critical of the administration for it as a kind of
4 predicament.

5 Q. Who did?

6 A. Odatto in his article.

7 Q. But there was no request of the Lieutenant
8 Governor to make reimbursement?

9 A. No, sir. That is, that I'm aware of.
10 Something might have happened after I was gone.

11 BY MS. TOOHER:

12 Q. When you had this conversation with Mr. Baum
13 and the Governor concerning the Governor's
14 potential activities and the Lieutenant Governor's
15 activities did you discuss Senator Bruno's
16 activities at all?

17 A. We naturally would have segued to that.

18 Q. Did it segue to that?

19 A. Yes. Again, it was a kind of -- in this
20 particular discussion we didn't spend much time on
21 this. If the media was going to focus on it --
22 and we really didn't know how it was going to turn
23 out. They asked for my best judgment as to how it
24 would turn out. And, at the time, I said: One

1 for us, maybe two for us, one for Patterson, and
2 three for Bruno. It could be a wash depending on
3 what Joe says. Joe's the leader. Joe's the lead
4 or we're all the lead for mixing politics and
5 government despite our claim to try to clean up
6 the process.

7 Q. That's all prior to the July 1st Times Union
8 article; correct?

9 A. Yes. This is during the phase when I have
10 -- it's actually combined. I go to them and
11 request the ability to release the materials to
12 the reporter, seeking clearance for doing that.
13 In their thought process, in order to give me that
14 sign-off they are asking me, once again, questions
15 as to how I think it will come down.

16 Q. Are you in regular contact in Mr. Odatto at
17 this point?

18 A. Yes, a host of questions on everything from
19 the cost of the aircraft to the rationale for
20 providing ground service, to specific things on
21 Eliot's schedule that were stated to be private
22 meetings that I had to explain, go back to Marlene
23 Turner and say: Look, we're like committed to
24 being an open book here, but what was this meeting

1 all about?

2 Q. And, you are in regular contact with him up
3 until the article is published?

4 A. Yes. You have to understand, like this is
5 what I do the reporters. I joust, I cajole, I try
6 to convince them that what we're doing is proper,
7 but I'm also an open book. There were a couple of
8 meetings in which individuals requested that it
9 not be disclosed and I said: "Off the record,
10 this is who we met with." I have seemed to be
11 able to satisfy him on all of those counts, but I
12 still at the end was uncertain because he seemed
13 to have a problem with the Monroe County visit and
14 then seemed to also have a problem with us not
15 being more rigorous in our oversight of Mr. Bruno.

16 (Commission's Exhibit 83 was marked for
17 identification.)

18 Q. I am going to show you what has been marked
19 as Commission Exhibit 83. And the caption is,
20 "Return Receipt, the Odatto document was received."
21 Can you identify this document?

22 A. It might have been the state aviation
23 policy, or it might have been something else he
24 asked for. But I don't recall what specifically

1 it was.

2 Q. This is a receipt for an actual document
3 that you were e-mailing back and forth?

4 A. No. It would have been hand-delivered
5 because it didn't have the aviation policy on
6 e-mail. Do you have the aviation policy? I can
7 submit it to you because I have access to it.

8 MS. TOOHER: You can certainly submit it
9 to us. That would be great.

10 Q. This type of a receipt is a receipt for some
11 type of a document being provided?

12 A. I think so. I'm not like -- I guess that is
13 what he is saying. "I've got it, Darren." I
14 might have had one of my people drop it off
15 upstairs. It might also have been the completed
16 Patterson file. I wish I had a calendar in front
17 of me because I think this is the day when he says
18 something extraordinary to me that causes us to
19 sort of be taken aback and reevaluate what we
20 tended to say about the matter when asked for a
21 comment on the story.

22 Q. What did he say to you?

23 A. They blew him off. They wouldn't tell him
24 what his schedule was, wouldn't release schedules

1 and wouldn't confirm official business. Moreover,
2 they said his use of the aircraft and ground
3 transportation was necessitated by death threats.

4 Q. "They," now, are Senator Bruno's office?

5 A. This is Mr. Odatto conveying to me what
6 Senator Bruno's people were telling to him.
7 Whereupon, I quickly informed the rest of my
8 people what he was saying. And, then, we sort of
9 quickly turned to Bill Howard saying, "Death
10 threats? Is this something that we were aware of
11 and does this necessitate special services that we
12 are somehow unaware?" Rich didn't know a thing
13 about it. Howard didn't know a thing about it.
14 Howard came back after quickly consulting with the
15 State Police and said we are not aware of anything
16 except something that happened like six or eight
17 years ago where some disgruntled person appeared
18 in his Saratoga office, whereupon some smart aleck
19 commented, "What does he need security in New York
20 for if the death threat or the incident occurred
21 in Saratoga?"

22 Q. I'm just going to back you up a little bit.
23 I know it's getting very late. I just want to be
24 clear here. You were provided informational by

1 Mr. Odatto who indicated that Senator Bruno's
2 office was not being forthcoming with information
3 on schedules and had made the statement concerning
4 potential death threats to the senator. You then
5 relayed that information to whom?

6 A. To our people internally.

7 Q. "Our people" being --

8 A. Mr. Baum for sure. I think Eliot and, for
9 sure, Bill Howard because I quickly needed to turn
10 to him to figure out whether that was true or not.
11 Because if it was true, everything that we were
12 poised to say would be altered. And I think you
13 see an e-mail responding. Jim had wanted a
14 comment on the use by both ourselves and Joe
15 Bruno's use. We were prepared to issue something
16 bland like our aviation policy, spirit of our
17 aviation policy. I was poised to say based on an
18 interaction with Rich the spirit of our aviation
19 policy is that it is to be used for official
20 business. If there are issues that arise by that,
21 we'll obviously review it and figure out what to
22 do accordingly. After we heard "death threats" we
23 shut up completely because they were spooked by
24 that and believed we should quickly consult the

1 State Police to see whether that was real and
2 whether there was some kind of security or other
3 matter that would require us to take new and
4 different action.

5 MS. TOOHER: Just very quickly for the
6 record, we will mark that as 84.

7 (Commission's Exhibit 84 was marked for
8 identification.)

9 BY MR. TEITELBAUM:

10 Q. What does death threats have to do with the
11 proper use of aircraft?

12 A. You know from being in the law enforcement
13 field and having some familiarity with security
14 matters, if you have a period of high alert with
15 regard to a threat to an individual, then any and
16 all precautions the State police take to protect
17 him, whether it be ferrying him on a helicopter or
18 providing investigators, State Police guard and
19 travel duty would be warranted completely and
20 would trump any concern that we had regarding
21 activities being not consistent with our
22 disclaimer. So, we shut up completely. If that
23 was the case it would be serious for us and we
24 would have to reevaluate.

1 BY MS. TOOHER:

2 Q. Commission's 84 is the e-mail you were
3 referring to a moment ago?

4 A. Yes.

5 Q. "We are learning things that encourage us to
6 be much more cautious in our response." The
7 "things" you are learning are from Jim Odat; is
8 that correct?

9 A. It was directly from Jim. And I was given a
10 little bit of pause during that period where I
11 said, "could it be possible that he has death
12 threats and real security concerns? You hadn't
13 conveyed anything like that to me before, Bill."
14 And I was having second thoughts about providing
15 travel itineraries at that point, even though it
16 was months in the past or weeks in the past. And
17 I said -- he said to me, "I only know about an
18 incident that occurred several years ago in his
19 district office, but I'll get right on it." He
20 quickly came back to me saying it was a
21 disgruntled employee who came in and yelled. And
22 I proceeded to say, "I know from the Hevesi matter
23 who also alerted us to death threats that the
24 prerequisite for providing such coverage would be

1 a death threat assessment or security assessment.

2 And then I asked him was any such assessment made.

3 Q. You asked Bill Howard for this, and this is
4 all prior to the article being issued?

5 A. Exactly.

6 BY MS. SULLIVAN:

7 Q. Did you or your people with this information
8 look at the itineraries in terms of any security
9 concerns?

10 A. Not in this matter. It was me, and I looked
11 back and said: Could there been anything
12 problematic here? But, remember my, my policy and
13 practice as a communications director for the
14 Governor, I announce his schedule in advance
15 telling where he's going, who he's meeting with,
16 what he's doing. I do that on Friday for the week
17 following. To me, there can be no security
18 concern with something that had happened a full
19 month prior.

20 Q. There could be if there were death threats.

21 A. That was a little bit of a wild card. In a
22 business where we say you could establish pattern
23 and practice, it could be problematic. But,
24 again, remember how this stuff came to me. I

1 asked for what would be responsive to a FOIL.
2 Felton testifies that his understanding is that
3 there is a FOIL and he is providing information to
4 us through Bill Howard. And, then, I review it
5 and say: This really can't be a security matter,
6 can't be anything other than a public document
7 because it's so old.

8 Q. My question is: Did you alone review it for
9 that purpose or seek counsel?

10 A. Always would cycle back saying: Do death
11 threats mean that anything we might have been done
12 would be problematic? But that was before -- I
13 said that contemporaneous with Bill coming back
14 saying we know of no such death threats. So, it
15 kind of torqued us all down a little bit. We were
16 armed at the moment thinking that if there's
17 something serious going on we ought to know about
18 it. But the answer back was he never communicated
19 any death threats, and the only thing we ever knew
20 about is eight years ago in the district office.
21 So, it was kind of like an alarm at the moment.
22 And I just underscore to you that they quickly
23 dropped that two seconds later when it smacked of
24 what Hevesi had said about the same topic.

1 BY MS. TOOHER:

2 Q. Who dropped it?

3 A. It was no longer something that the Senate
4 Majority Leader was maintaining after one day in
5 which the reporters were questioning him
6 intensely: Please tell us what death threats were
7 involved.

8 Q. I am going to show you what has been marked
9 as Commission's 36 and ask if you have ever seen
10 this document before.

11 A. I don't believe I would have seen it. But I
12 know that it was what I just described as what
13 Bill was conveying to me.

14 Q. Did he convey to you that Preston Felton
15 said, "There were some security issues in the last
16 couple of years that were of concern to us and one
17 in particular was a guy who got into his outer
18 office?"

19 A. That's why I asked for some elaboration, and
20 he told me that's what it was.

21 Q. Did you discuss the level of threat
22 assessment?

23 A. No. I just said: Was there a threat
24 assessment, and Bill volunteered: No, there was

1 never anything of the kind. And Bill's deal was
2 that it was not particularly relevant to our
3 purposes or problematic. And, subsequently, the
4 Majority Leader's office just stopped talking
5 about it because it didn't appear to have a
6 foundation.

7 Q. To your knowledge, did the Governor's office
8 request a threat assessment of Senator Bruno?

9 A. In discussing what we ought to do after the
10 article came out, we all broached that notion that
11 shouldn't we conduct at least a threat assessment
12 based upon his earlier claim. But nothing ever
13 really came of it.

14 BY MR. TEITELBAUM:

15 Q. What did people say in connection with that
16 subject?

17 A. It was kind of like -- you will see an
18 e-mail in a few minutes in which Rich Baum said
19 that stuff about death threats has been thought in
20 classes for years to come as a kind of panicked
21 and untrue reaction as to what was a problem in
22 the media. That's what Rich interpreted Joe
23 Bruno's death threats coming to be which is they
24 had nothing better to say -- I'm projecting here

1 but it appeared to us that they don't want to tell
2 us what they're really doing, tell the reporters
3 what they were really doing, so they are saying,
4 well, it was death threats.

5 Q. With respect to Commission's 36, do you have
6 any knowledge as to why Mr. Howard is telling
7 Felton that "The defense reminds me of Hevesi"?

8 A. I don't if you recall that, but that's what
9 Hevesi suggested as the rationale for providing
10 his coverage. Hevesi dispatched a driver from his
11 office to act as a personal companion to his wife
12 because the rationale is: My family has had death
13 threats.

14 Q. I understand. My question is: I am asking
15 you: Do you have any knowledge as to why Howard
16 is sharing his perspective on this in the way he
17 does, "the defense reminds me of Hevesi" with
18 Preston Felton?

19 A. I can't speak to it. I just know I always
20 assumed they had close rapport having worked
21 together for twelve years and talked regularly
22 about these matters. But I also had no particular
23 knowledge. It came to me again and again. I just
24 didn't interact with the State Police at any time

1 in any way. I relied on Bill's interaction with
2 him.

3 (Commission's Exhibit 85 was marked for
4 identification.)

5 Q. I will show you what has been marked as
6 Commission's Exhibit 85 and ask you if you can
7 identify this document.

8 A. This is where we breathe a big sigh of
9 relief because instead of hammering Eliot -- they
10 did take some shots at Eliot in the end, but we
11 now know his focus is on Joe. And, basically, we
12 are shocked that from one communications guy to
13 another -- why didn't he just say he had official
14 business going on. So, number one, relief that
15 Eliot wasn't getting whacked more than he was.
16 They both take a little bit of a pop later on.
17 But, secondly, a kind of profound curiosity as to
18 why they didn't mount a more aggressive defense to
19 say, No, we were indeed conducting official
20 business which would have changed the whole cast
21 of the article.

22 Q. So, this is the July 1 Times Union article
23 by Mr. Odatto?

24 A. I'm sorry. That's what you were asking.

1 Yes, it is.

2 Q. It's an eleven-page document. The first two
3 pages are typewritten and the others are assorted
4 items that, to my understanding, accompanied the
5 article in the Times Union blog. Have you seen
6 these documents before?

7 A. I saw them when they appeared. I opened up
8 to the things -- I obviously recognized the flight
9 request and I recognize the 33rd annual spring
10 reception, because that was a blog item. And I
11 recognized the itinerary coming from Bruno's
12 office. I was surprised by his, you know, ability
13 to go track down a Nassau County Republican
14 fundraiser. I obviously know when the next flight
15 request was and the transportation. And I was
16 surprised again that he had a straight-up invite
17 to the May 23rd event. And the reason I was
18 surprised by that. You actually have to be in
19 Republican circles to receive an invite. So he
20 has somebody as a source who provided it to him.

21 Q. In Exhibit 67, the background piece, your
22 File C says plural, invites.

23 A. Right. It would have been a blog item as
24 opposed to the invite. I never had the invite

1 proper. I just had a blog item that noted in a
2 similar fashion that Bruno was holding the big
3 event.

4 Q. So, you had provided to Mr. Odatto two
5 invites or three invites?

6 A. He already had them. But I actually had
7 them in any possession because he had alerted me
8 to them. One came off his web site and another
9 came off the Daily News web site. Remember, the
10 reporter who writes the Daily News web site and
11 Jim used to be office mates up until about a year
12 ago. It's Liz Benjamin.

13 BY MR. TEITELBAUM:

14 Q. Mr. Dopp, the materials that you gave to Mr.
15 Odatto, according to 67 you provided a file of:
16 "Bruno comments on Hevesi." Why were you
17 providing that to him?

18 A. I don't believe I actually provided him with
19 that. I believe provided that to Nocente. It was
20 a newspaper article. If you will allow me the
21 forbearance I will give you the newspaper article
22 that would underscore why. I think it spoke to
23 the use of ground transportation and necessity of
24 having State Police as drivers.

1 Q. Was the file given to Odatto?

2 A. I don't believe so, no.

3 Q. Was File D given to Odatto, the
4 Greenberg-related contributions?

5 A. I don't believe so either.

6 Q. The same question for File C. Was that
7 given to Odatto? It's an invite to the Sheraton
8 Hotel fundraiser thing.

9 A. I think I would have held up to Jim the blog
10 you sort of provided to me. I don't think I
11 provided it to him, but he was aware of it. Is
12 came off his own web site.

13 Q. So, did the files that you put on Nocente's
14 desk, were those the very files that went to
15 Odatto, all or some of them?

16 A. Most of them, absent some of the stuff that
17 either Odatto already had or knew about, or which I
18 thought he should discover on his own.

19 Q. So, did Nocente give these files back to you
20 to give to Odatto?

21 A. Basically, I showed the gang the package
22 that was going to go to him. And there was only
23 one package that I took out of the meeting. And,
24 subsequently, David says: Hey, would you give me

1 that package?

2 BY MS. TOOHER:

3 Q. So, you gave the package to David Nocente?

4 A. A copy of it.

5 Q. What did you do with the originals f the
6 files that contained all of this information?

7 A. I retained them.

8 Q. Do you still have those files?

9 A. Yes. And I presume you do as well. It's
10 everything that we provided to Odato and a score
11 of reporters that asked for them afterwards.

12 Q. I mean the files that you provided with
13 Commission's 67 to Mr. Nocente.

14 A. You know, Commission's 67 was on top of a
15 file that had manifests, schedules, and
16 itineraries.

17 MS. TOOHER: I understand that.

18 BY MR. TEITELBAUM:

19 Q. But also had other files as well; it had
20 File C, File D, and so forth?

21 A. Correct.

22 Q. Do you have those files?

23 A. I'm sure I can get access to them. They are
24 not in my possession, but you will see each one is

1 something that could be googled. Each one is a
2 blog item. It's, you know, the description of who
3 C.V. Starr is off their web site.

4 Q. I know those pieces of information are
5 obtainable elsewhere. I'm asking: Do you have
6 the files or copies of the files that you gave to
7 Mr. Nocente?

8 A. I can get them for you if you so desire. I
9 don't have them with me now.

10 Q. But you have them somewhere?

11 A. I believe so.

12 MR. KINDLON: I don't think you have
13 them.

14 MR. TEITELBAUM: Terry, you don't
15 believe he has them?

16 MR. KINDLON: No. I can get them. They
17 are available on line.

18 MS. TOOHER: It's not about collecting
19 the information. I'm just not clear here.

20 BY MS. TOOHER:

21 Q. I thought you said when you gave Mr. Nocente
22 Commission's 67, was that with the files
23 referenced in 67 and then with the FOIL documents
24 underneath; is that correct?

1 A. That's right.

2 Q. And he gave it is back to you?

3 A. No, he kept it.

4 Q. He kept the whole packet?

5 A. Along with the cover sheet. That was his.

6 He asked for it. He said, "Okay, you are giving

7 this to me. Can you give me the full package?"

8 And that's what I did. And, along with the full

9 package I put 67 on top of it to help walk him

10 through, just to remind him what was there.

11 Q. And, then, you provided the FOIL information

12 to Mr. Odatto, not Commission's 67 and the files

13 with that?

14 A. No. Some of 67's cited documents went to

15 him, but not all. And I couldn't specify which

16 ones.

17 BY MR. TEITELBAUM:

18 Q. I think you have specified.

19 A. The reason was not to be weird or anything

20 like that. It's just that he already had it. He

21 was like -- the blogs came off his blog. The C.V.

22 Starr thing, you just punch in C.V. Starr and you

23 get their web site and just print out "C.V. Starr

24 is in industrial conglomerate that does" -- blank.

1 The others were off the blogs, not his but others.
2 All public information. Nothing that involved
3 anything other than a quick google search.

4 BY MS. TOOHER:

5 Q. After the article, Commission's 85 was
6 published was there a reaction in the chamber?

7 A. It was, as I described, a kind of relief
8 that, you know, we weren't hammered harder and a
9 kind of incredulity as to what Joe was saying,
10 Joe's people were saying, you know. You will see
11 in your e-mail traffic: So now what do we do? If
12 it is indeed the case that they're not saying
13 there's any public business, then some people are
14 saying: Darren, you're right about this. You may
15 be right about this. If they had government
16 business why wouldn't they say so? And I'm like
17 how would we have known? I didn't want to be like
18 an I-told-you-so kind of guy, but basically at
19 that point you'll see Rich saying, "Damn. Let's
20 get this referred right away. Let's not wash our
21 hands of this. Somebody ought to be taking a look
22 at it." You will see e-mail traffic in that
23 regard.

24 Q. Showing you Commission's 49 and 50. They

1 are somewhat parallel threads in e-mails between
2 you and Richard Baum?

3 A. Yes.

4 Q. They start from you to Richard Baum and
5 Lawrence?

6 A. That's Eliot.

7 Q. "When asked about the EnRon revelations
8 Uncle Charles, a leading authority on accounting
9 ethics, said, 'Well, it's not good.'"

10 A. Forgive me for being like a wise ass, but I
11 sometimes brought levity to a bunch of lawyers who
12 were so serious as to need some levity on
13 occasion. What I was saying there is Rich Baum's
14 uncle is indeed an expert on accounting. He's an
15 accounting expert. And Rich told me the story the
16 day before -- It was neither here nor there. It
17 had nothing to do with this. He told me a story
18 about one time he was asking Uncle Charles what he
19 thought of the EnRon matter. And this was a just
20 a classic understatement of, "Well, it's not
21 good." And I was just -- they had called me and
22 left a message of, "So, what's in the paper?"
23 And, I was just being a little flip saying,
24 "Remember Uncle Charles? Well, it's not good."

1 The reference was: You've got to see this.
2 You've got to look at it because it's unlike
3 anything we anticipated.

4 Q. Now, we go up the threat on Commission's 49.
5 Rich Baum is saying to you, "Well, he's got a
6 problem. What do you think? Put out statement."
7 And we continue up and he again asks you, "And
8 tomorrow ground him and refer to the I.G.?"

9 A. Basically, we are revisiting the dialogue we
10 had a month previous as to whether we should do
11 those kinds of things now. Rich is saying we
12 should. He didn't say we should have done it
13 earlier but we most assuredly should do that now.

14 Q. Did you have any discussion about that
15 concept at this time on what would be the basis
16 for referring him to the I.G.?

17 A. Instead of saying: I was conducting
18 government businesses, he said the opposite. "None
19 of your business." And it really raised questions
20 in ways that we were surprised by sort of saying
21 that this might be improper. We are the
22 custodians. We are the stewards. We have got to
23 ensure proper use. At this point, it looks like
24 it's the only logical thing to do is have someone

1 look at it to figure out exactly what was going
2 down.

3 Q. But Rich Baum is now asking you to report to
4 him, and you are not an attorney, as to whether
5 this matter should be referred to the I.G. is that
6 correct?

7 A. Remember, before, I had this contradictory
8 message to you. I'm the press guy akin to Walter
9 Ayers. But I'm also somebody who has been with
10 him for a trillion years. It's a press matter; he
11 asks me for advice. Does he then say: Darren
12 says this, so we've got to do this? No. But he
13 is asking my opinion. That's the way the trio
14 operated from time immemorial, thus checking each
15 other's wisdom and judgment. And the group was
16 always better than -- we were better than the sum
17 of our parts.

18 Q. Commission's 50, a similar thread of e-mail
19 finishes with, "The only twist is the S.P. thing."
20 The "S.P. thing" being --

21 A. Death threats.

22 Q. And noting that there has never been a
23 threat assessment?

24 A. Right.

1 Q. But you were aware that there had been some
2 issues concerning security and Senator Bruno?

3 A. Only after hearing from Odatto two days prior
4 to its release that he was claiming that death
5 threats necessitated it.

6 Q. Did you have any discussion with the
7 Governor at this time concerning this article?

8 A. This breaks during the Fourth of July
9 weekend. And the only discussion we had was the
10 e-mail traffic which was it's just Eliot. We are
11 all on vacation at this point and we are all just
12 communicating: This is weird. What do we do?

13 Q. Did you make any decision among yourselves?

14 A. Basically, this was it, you know. Let's
15 discontinue use and engage with the I.G. But we
16 awaited final consultation with Nocente to
17 determine what he wanted to do.

18 Q. Were you in communication with Mr. Dicker at
19 this time?

20 A. Not -- you will see the e-mail exchange that
21 comes to both my government account and my
22 personal account. He would have quickly called
23 saying: What's the deal? And, you know, I was a
24 little bit taken aback with his immediate siding

1 with Joe given his intense desire to review
2 similar issues with Pataki.

3 Q. At this point, July 1st, you feel that
4 Dicker is siding with Senator Bruno?

5 A. No, subsequently. And I think you'll see
6 that in the e-mail exchange, him pressing and
7 saying: Is it always the case this? Is it always
8 the case that? I had lost Dicker as a reporter
9 who was -- "sympathetic" is too strong -- a
10 reporter with whom we had rapport and were working
11 with closely at that point. He soured on Eliot
12 early, probably around the budget time where he
13 thought Eliot wasn't tough enough in controlling
14 spending. And he was really in an antagonistic
15 mode. As you can see from common dialogue with
16 Fred, he had a hard on for us and was challenging
17 every move we made. And my job is like to field
18 those inquiries. I did my best with him but,
19 again, he saw it as like some outrageous thing.
20 He kind of like bought in early and aggressively
21 to the notion that we are spying, misuse of the
22 state police, and other activities that were
23 inappropriate.

24 Q. When you say he "bought into the notion,"

1 where did he come up with that theory; do you
2 know?

3 A. After they dropped death threats as a
4 rationale they quickly turned to: You were spying
5 on us and you were misusing state police, and you
6 were doing all kinds of other things.

7 Q. It was your understanding that that was
8 coming from Senator Bruno's office?

9 A. Oh, yeah. That's what he was standing up
10 and saying. He launched a broadside from the
11 communications standpoint. When confronted with a
12 problem one response is to stand up and explain
13 everything that you did. Another response is to
14 take the offensive. And they took the offensive.

15 (Commission's Exhibit 86 was marked for
16 identification.)

17 Q. I am going to show you what has been marked
18 as Commission's 86, an e-mail from you to FUD31.
19 Do you know why that is?

20 A. Dicker.

21 Q. Can you identify this document?

22 A. Fred -- the prior thing says: "What
23 evidence is there that he might have crossed the
24 line?" I'm saying, "Look, Fred, you're right."

1 Your recollection of the history of how the
2 aircraft is used is correct. But the question is
3 whether he crossed the line or not." And when I
4 say this, it's like Jim felt pretty strongly about
5 what he was doing and why. And I assumed that Jim
6 knew something more, because what Jim related to
7 me -- after the story broke he called me and said,
8 "So, what do you think?" And I said, Wow! This
9 is an amazing piece." And he said, "There's more
10 to come." And I knew "more to come" didn't relate
11 to me because I had given him the info dump and I
12 really had no more to provide. So, I relayed that
13 to Fred. I said -- and there's a little breach of
14 protocol but, Fred -- I was still trying to relate
15 to him in a way -- usually, you don't tell one
16 reporter what another reporter might have. I
17 broke that because I was trying to convey: You
18 guys duped him. And I said no, these guys do
19 their own work, and you know Odat. He's a nut
20 for aviation stuff.

21 Q. Aren't you Odat's inside source up until
22 this point?

23 A. No. Because what I'm saying to you here is
24 "more to come." What I have -- I mean what I have

1 from OdatO after the story is written, he says,
2 "And I've got a follow." And I knew what I talked
3 to him about, which is the information I provided
4 to him. No, it wouldn't have been referring to
5 me. See, that's not the way you talk to
6 reporters. You know, you don't like say -- there
7 is a clear indication that he has somebody that he
8 is talking to. I never knew who it was. I had a
9 few hunches but I just never knew.

10 Q. You are not providing any information to
11 OdatO at this point?

12 A. I was responding to his questions. But,
13 basically, he was coming back with additional
14 inquiries that went way beyond -- he did a hell of
15 a job investigating things. I think the Senate
16 Majority had the ability to respond from a
17 communications standpoint. But he does his own
18 work. If I can convey this to you. Really,
19 OdatO, the Times Union, Dicker, there's some
20 notion that -- I was good at what I did. I took
21 Eliot from some obscure guy to one of the nation's
22 foremost law enforcement officials. I know my job
23 pretty well. But y'all have to understand. It
24 just isn't the case that I would go to someone

1 like Odatto and say, hey, write this story for me.
2 Let me tell you what to do. You can't even broach
3 that kind of stuff. These guys value their own
4 integrity and are not to be used in that fashion.
5 It's not nonstart. It's outrageous to think that
6 kind of thing. And some people said, oh, Odatto is
7 a hack. He's a damn good reporter that I have
8 known for 25 years. He's got a code of conduct
9 and a dogged reporter. And the proof of that is,
10 I have been gone for two months in seclusion and
11 he has broken three additional stories on aircraft
12 use. More to the point, he has broken stories
13 about Eliot Spitzer's aircraft use.

14 Q. But, Commission's 85 and Commission's 67, I
15 believe, are very similar in content concerning
16 the information on Senator Bruno's flights.

17 A. All of that stuff was out. He did his own
18 work. Again, the notion that I write a story for
19 a reporter, it just doesn't work that way. I
20 would have engaged him. I would have said to him:
21 Here's what I think the deal is on something like
22 this. But, again, I would have been totally
23 forthright and said, "Dude, you've got to figure
24 out what you want to do, you and Rex, down the

1 pike." And I am a former LCAer. My stock and
2 trade is my reputation and relationship with these
3 guys. I can't tell them what to do.

4 Q. But you have a longstanding relationship
5 with Jim Odatto?

6 A. Oh, yeah. And they would trust in what I
7 would say would have relevance and that I would be
8 honest and forthright. But do I write their
9 stories? It's absurd to think so.

10 Q. You knew Jim Odatto before you came to Albany
11 as well?

12 A. Long before.

13 BY MS. SULLIVAN:

14 Q. Have you spoken to Mr. Odatto since July 1st?

15 A. I haven't spoken to any reporter. I haven't
16 spoken to anybody on the second floor.

17 BY MS. TOOHER:

18 Q. Since July 1st?

19 A. He had some follow-up questions thereafter,
20 but as soon as the issue turned to me and I was
21 set aside, I have not had any communications with
22 him thereafter.

23 Q. So, when the Attorney General commenced
24 their investigation -- you are saying July 1st.

1 A. Once the matter was referred to other
2 investigatory agencies you will see it says,
3 "Nocente says we should not comment." So, I
4 didn't comment after that.

5 (Commission's Exhibit 87 was marked for
6 identification.)

7 Q. Showing you what has been marked as
8 Commission's 87, this document is dated July 1,
9 2007 from Darren Dopp to Christine Anderson and
10 Paul Larabee. Can you identify this document?

11 A. I'm giving guidance to my people on a rash
12 of media calls that they are receiving.

13 Q. You are instructing them as to what they can
14 say both on and off the record?

15 A. Giving them guidance based on my
16 conversations with Eliot and Rich as to what we
17 should say. Remember, on matters like this and
18 virtually all other matters I would have engaged
19 to say, okay, where are we and what should we be
20 saying at this point.

21 Q. Did you discuss with Richard Baum and David
22 Nocente the contents of this e-mail?

23 A. I would have went down and said to them both
24 saying, hey, what do you think? What should we be

1 saying at this moment? I would have advised some
2 guidance in this. And they would have turned to
3 me and said: What do you think we should say?
4 And we would have tweaked it and that would have
5 been the result. I don't think I would have
6 handed it to them in person, but I would have
7 taken notes based on our conversations.

8 Q. Did you discuss the contents of this e-mail
9 with the Governor?

10 A. Not the contents of the e-mail, but the
11 response we were making. I would have sort of
12 informed them: Look, this is what we're going to
13 say right now, given guidance to my people as to
14 how they should respond based on my communication
15 with Rich, Eliot, and Nocente on what a proper
16 response would be.

17 Q. I want to ask you a couple of questions
18 about 87. And, obviously, there is off-the-record
19 and on-the-record. Off-the-record is some
20 comments that you are making to the media; is that
21 correct?

22 A. Yes. It's sort of like background
23 explanation.

24 Q. You indicate that there is a potential here

1 that you are referring this to the appropriate
2 authorities: I.G., A.G., D.A. Is that correct?

3 A. That was the upshot of Rich's notion that
4 Eliot and David shared that we should at this
5 point refer.

6 Q. Again, in the next paragraph is that they
7 misrepresented themselves in the flight requests;
8 right?

9 A. Yes.

10 Q. What is that statements based on?

11 A. They didn't say they were doing legislative
12 business. Instead, they said, "None of your
13 business."

14 Q. That's not in the flight requests, though;
15 that's in the article?

16 A. Remember, flight requests said: We're going
17 to conduct legislative business on those days.
18 What they failed to do when asked what they were
19 doing on those days is confirm what they said and
20 attested to.

21 Q. But they have no obligation to do that to
22 the press; is that correct?

23 A. They do if they want to avoid getting
24 hammered.

1 Q. That's a PR issue, if you will. It's not a
2 legal issue from your perspective? They have not
3 misrepresented to you in the flight requests.

4 A. We always had that concern as to whether
5 they were or they wouldn't. Our suspicions were
6 raised to level orange when they didn't do that
7 here. All's they had to say is: Of course, we're
8 doing official business. And, A, we would not
9 have run that story and, B, we wouldn't be
10 considering referring to any other outside agency.

11 Q. So, you are making these determinations now
12 based on Odatto's articles?

13 A. Not me; the group.

14 Q. And the group is --

15 A. Nocente, Baum, Spitzer, me.

16 Q. And, that determination both that they have
17 misrepresented themselves --

18 A. They may have misrepresented themselves.

19 Q. -- and that they may have misrepresented
20 themselves and that this will be referred is based
21 on the press, the July 1st article?

22 A. We read this and concluded that the only
23 alternative is to do the things that I describe
24 here.

1 Q. Can you relate the conversation? What does
2 Rich Baum say?

3 A. Pretty much it follows that e-mail you
4 pointed out earlier. Rich was -- why the hell
5 didn't they just say they were doing legislative
6 business, because -- I relayed to you before
7 Rich's constant believe that you've just got to
8 say so. Whether it's true or not, they've just
9 got to say they're conducting official business at
10 the Sheraton or some of these other venues,
11 whether they were or weren't. Rich was skeptical.
12 Nocente had the same kind of view; that of course
13 they're just going to say that. But when they
14 didn't, it's: Why wouldn't they? It doesn't make
15 any sense. So, the natural conclusion that we all
16 had was they must have something to hide and we'd
17 better quickly refer.

18 Q. Did Rich Baum at this time indicate he had
19 had earlier discussions with Senate counsel who
20 indicated they were not revealing that?

21 A. I'm sorry. When I said I never heard that,
22 I said then, now, any other time, until you just
23 described it.

24 Q. And following the July 1st article,

1 Commission 85, does William Howard provide you
2 with any additional information?

3 A. He comes down and kind of like expresses his
4 own shock that they had not handled the matter
5 better. But, you know, remember what happens in
6 the days that follow. A host of questions come up
7 from a range of reporters, and what do we do in
8 that regard, I turned to Bill for the answers to
9 those questions.

10 One of the questions soon to be on your
11 list is: Is Dicker antagonistic and says: Well,
12 why are we looking into this matter if you never
13 had any complaints about it? And I then say, "No,
14 not us, but the previous administration.

15 Q. What were those complaints?

16 A. When I asked Bill had we ever had complaints
17 about it, he sort of thought for a moment and he
18 said. There was the weirdest one in which Mike
19 Long called Cahill who was the secretary to the
20 Governor to complain about Joe bringing state
21 troopers to his fund-raising event and how they,
22 in his words, scarfed up all the food. I thought
23 it was kind of hilarious. It was neither here nor
24 there because it happened on the previous watch.

1 And Fred asked me: Were there ever any
2 complaints? And I pointed to a series of e-mails
3 and I also said to him verbally the anecdote I
4 heard. You've got to check it out. Whether it's
5 true or not, I don't know.

6 Q. I am going to show you Commission's 53. And
7 this is the Fred Dicker article of July 5th. And
8 in the second column Mr. Dicker quotes you. It
9 starts in the first column, "Spitzer spokesman
10 Darren Dopp told the Post that the records on
11 Bruno began to be assembled because there was an
12 incident late last year in which Mike Long called
13 to complain about Joe Bruno bringing armed
14 troopers to fundraising events. Long thought it
15 was highly inappropriate, and it probably was.
16 Recalling that incident, the state police made
17 some changes. And, yes, keeping basic records,
18 i.e., logs."

19 A. I hope you don't like take offense to it,
20 but what Fred Dicker writes he fabricates,
21 embellishes, and writes in a way that suits his
22 purposes. He had turned on us long ago, and his
23 characterizations here are discreet are and in a
24 range of areas. Remember, before, in the e-mails

1 I learned that the records were being kept from
2 way back, so that contradicts this notion that
3 they just began to be tracking. I told him that,
4 but he ignored it, though.

5 Q. But I think you testified earlier that you
6 since had not been provided with those records.

7 A. Yes. They were maintained, but not
8 retained. That was clear.

9 Q. I am going to show you what was previously
10 has been marked as Commission's 54. This is an
11 e-mail from you, Darren Dopp, to FUD31 dated July
12 3, 2007. In the third paragraph, "I am told that
13 the logs were kept, in part, to protect the S.P.
14 who were driving him. There was an incident late
15 last year in which Mike Long called to complain
16 about Joe Bruno bringing armed trooper into this
17 fundraising event. Recalling that incident, the
18 S.P. made some changes keeping our people in the
19 background and, yes, keeping basic records; i.e.,
20 logs.

21 A. Again, this is what I was by Bill at the
22 time. It doesn't in my mind contradict what I was
23 told by Billy with regard to records going way
24 back. But, again, remember this notion of they

1 had them, they had to have them in order fulfill
2 their mission of sending somebody out.

3 Q. But I think Mr. Dicker is virtually quoting
4 your e-mail in his July 5th article.

5 A. Right. But the cast and spin on what I am
6 saying is lost, and he's pretending as though, you
7 know, appropriate recordkeeping was never done.
8 Appropriate recordkeeping was always done, I was
9 told. And the Times Union sort of verified that
10 this weekend. But there was an inexplicable
11 period at some point when they stopped retaining
12 them.

13 Q. But you didn't know about the Times Union
14 records of last weekend; you hadn't seen those at
15 the time you wrote this e-mail to Mr. Dicker.

16 A. That's correct. All's I know is what Bill
17 was representing to me early on; that records were
18 kept. Records exist going way back.

19 Q. But you had never seen those records. And
20 when he told you he was going to provide them you
21 had not?

22 A. No, I never saw them. When the time came
23 for me to ask him for them he said: Weird
24 situation. They weren't retaining them. And that

1 sort of comports with what I'm saying here. I
2 believed at some point they started retaining
3 them. Whether it was me or Rich making the call,
4 I don't really know for sure. But at some point
5 they did begin to retain the records.

6 Q. And, the second paragraph of your e-mail:
7 "You need to know the following: Joe's request
8 for S.P. coverage was quite out of the ordinary.
9 It went directly to local barracks." What is that
10 based upon?

11 A. Only as good as what I am being told by my
12 people, and that's what Bill Howard suggested to
13 me. He said this was not coming through the brass
14 as normal requests were. Joe was calling up
15 directly somebody he knew in the City barracks
16 obtaining coverage."

17 Q. Did you follow up on that at all with the
18 State Police?

19 A. Again, I never had any interaction with the
20 State police whatsoever. My only interaction was
21 with Bill. I understood -- but I can't verify
22 when I learned it -- that someone came to Richard
23 saying: We have always had this problem with Joe.
24 How do you want us to handle it? Rich relayed

1 that information to me and said, "I just told him
2 follow your standard procedure, whatever that is."

3 Q. Someone relayed to Rich Baum. Do you know
4 who that was?

5 A. It would either have been Bill Howard or
6 someone at the State Police.

7 Q. And when they say "we have always had this
8 problem with Bruno" what did your understand that
9 to mean?

10 A. The issues Bill described to me about Bruno
11 from the past, calling directly into the
12 administration to arrange without going through
13 the state brass, requesting investigators rather
14 than troopers, requesting suburbans with lights
15 and asking that those lights be used, and all of
16 that. I understood Rich to say -- he told me at
17 one point that they came to him saying: Do you
18 want to continue to provide the ground travel to
19 him? It was neither here nor there for my
20 purposes, but I understood Rich to say: Do
21 whatever you think is appropriate.

22 Q. When you say you "understood Rich to say,"
23 did he relate to you that he had had these
24 conversations?

1 A. Yes. He said, "I just told them to follow
2 their normal procedure. Did I do something
3 wrong?" Rich asked me.

4 BY MS. SULLIVAN:

5 Q. When you say "follow the normal procedure,"
6 are you talking about requests for ground
7 transportation or are you talking about keeping
8 the records?

9 A. What I think we were talking about is, we
10 were a brand new administration. Both Rich and I
11 are not guys that tell anybody: Do this, do that.
12 Instead, we would say: Do whatever you think is
13 appropriate. And, so, that's what Rich was
14 conveying to me. But Rich was having second
15 doubts due to his position, his powerful position
16 as Secretary to the Governor. "Should I have done
17 more?" I really couldn't help him with that
18 answer because I was a little bit leery here that
19 we might not have provided proper due diligence on
20 this part of it. And there's two parts, use of
21 the aircraft and --

22 Q. Talking about the driver?

23 A. The driver.

24 BY MS. TOOHER:

1 Q. When did you have the conversation with Rich
2 Baum?

3 A. I can't peg it, but it was sometime in May.

4 Q. Was it prior to the May 17th discussion?

5 A. Forgive me for not knowing whether it was
6 before or directly afterwards.

7 Q. So, now, you have got some level of
8 information that there may be inappropriate use of
9 ground itineraries. Does that come up in your
10 discussion about what to do in this matter?

11 A. Definitely in terms of the internal
12 dynamics. We talked about that type of stuff.
13 And, again, Rich was nervous: Was I doing all
14 that I should, he said, in terms are policing
15 this.

16 Q. In terms of policing use of the state
17 aircraft?

18 A. And the ground transportation issue.

19 Q. So, he brought that issue to the table with
20 you?

21 A. Yes. He mentioned it.

22 Q. Did he mention it in front of David Nocente?

23 A. I think so, but I'm not positive.

24 Q. Did he mention it in front of the Governor?

1 A. I'm pretty sure he did, because I remember
2 the Governor asking a question about that. And I
3 remember Rich saying to the Governor it's really
4 important to him. And we all kind of -- because
5 we were in the phase of trying to close down the
6 legislative session, we just didn't want to do
7 anything that would disrupt the ultimate goal of
8 getting a good legislative resolution.

9 Q. On Commission's 54, the last paragraph on
10 the first page, "It came to me that Lovell and
11 McArdle are calling around to lobbyists urging
12 them to say that they met with Bruno at the
13 Sheraton on May 17th." You are now providing
14 information to Mr. Dicker?

15 A. Remember, my relationship with Fred is like,
16 you know, we were like engaging. And I said, "Oh,
17 come on, Fred. This wasn't surveillance." And,
18 more to the point, Joe had begun at this point to
19 finally to come off of death threats, come off of
20 spying a little bit and tampering, and say we
21 really were conducting legislative business. And
22 understand what that would have been. Understand
23 the cover that they were trying to establish: I
24 met with a lobbyist in a hotel at the event where

1 we're holding a fundraiser. And I was trying to
2 suggest to Mr. Dicker, come on. Is that really
3 government business? You are holding your annual
4 fundraiser, and you consider it governmental
5 business talking to a lobbyist who is giving you
6 money at a fundraiser to be governmental business?

7 Q. Had you referred the matter yet to the I.G.
8 or the D.A.?

9 A. That wouldn't have been my thing. I'm sure
10 Nocente at this point is either contemplating or
11 has engaged, you know, the appropriate authority.
12 Again, I wouldn't have called up Soares or
13 Christine Hammond saying: You really auto look
14 into that.

15 Q. Did you relay that same information to David
16 Nocente?

17 A. To Rich.

18 Q. To Richard Baum?

19 A. Actually, it came from Rich.

20 Q. Mr. Baum told you?

21 A. That this is what the scuttlebutt was.

22 Q. Do you know where he had gotten that
23 information?

24 A. We were aware of two lobbyists who were

1 friendly to us who told us they were going to do
2 it and didn't want us to be mad at them for doing
3 so. That was the comment I heard.

4 Q. Did Bill Howard provide you have with
5 additional information following the July 1st
6 article on Senator Bruno's schedules?

7 A. I think he said it on the 27th when it
8 finally became available.

9 Q. I am going to show you what has been marked
10 as Commission's 71. Can you identify this
11 document?

12 A. Commission's 71 describes the trip that was
13 finally available from the sixth month as opposed
14 to the fifth month.

15 Q. And I will show you Commission's Exhibit 4.

16 A. Yes. That would correspond to that.

17 Q. When you say "that," Commission's 71?

18 Commission's 71 corresponds to Commission's 4?

19 A. Right.

20 Q. Does Bill Howard provide both of these to
21 you?

22 A. Yes. He would have forwarded them to me.

23 Q. He forwarded Commission's 4 to you?

24 A. Yes. It's an e-mail to me. And, then,

1 Exhibit 4 he would have sent to me as well.

2 Q. And, did you ask him why he is continuing to
3 send you information?

4 A. Because Odatto submitted a subsequent FOIL or
5 announced that he was submitting -- or announced a
6 subsequent FOIL for the sixth month.

7 Q. Again, you are receiving this information in
8 an e-mail, Commission's Exhibit 71 and then
9 Commission's 4?

10 A. Yes.

11 Q. Did you ask Bill Howard about why he is
12 providing this to you in both forms?

13 A. No. It was in direct response to Odatto's
14 request for the sixth month.

15 (Commission's Exhibit 88 was marked for
16 identification.)

17 Q. Providing you with a document which as been
18 marked as Commission's 88 --

19 A. Yes.

20 Q. -- can you identify this document?

21 A. Yes. This is -- Jim would have said, "What
22 about the sixth month?" And, then, he would have
23 submitted this seeking the sixth month.

24 Q. This is now July 10th?

1 A. Yes, a couple of weeks after the story had
2 been provided. It's basically -- he wanted more.
3 He was sticking with the story and thought it was
4 interesting and worthwhile.

5 (Commission's Exhibit 89 was marked for
6 identification.)

7 Q. Let me show you what has been marked as
8 Commission's exhibit 89, an e-mail from you to J.
9 Odato. Can you identify this document?

10 A. Yes. I am actual writing for the very thing
11 he is seeking. I just want to look at the timing
12 on it. Yes, 1:02 and he immediately follows up
13 with 1:11. And it would have been at the specific
14 request of Nocente and the others. I would have
15 informed them if he looking for --

16 Q. You would have informed them or you did?

17 A. I did. I informed them that he is looking
18 for the sixth month and, okay, where is the FOIL
19 for that.

20 Q. So, now we are requiring a FOIL for
21 everything?

22 A. In this matter, yeah, especially since we
23 are contemplating quickly turning it over to an
24 investigative body.

1 Q. So, you asked for the FOIL?

2 A. I don't actually remember doing this
3 exactly. But he is badgering me for: What about
4 the sixth month? What about the sixth month?

5 Q. And you said: Would you submit a FOIL
6 request for the flight records for the month of
7 June?

8 A. Right.

9 (Commission's Exhibit 90 was marked for
10 identification.)

11 Q. Showing you what has been marked as
12 Commission's 90, can you identify this document?

13 A. Yes. That would be the rationale for my
14 request of it.

15 Q. That would be, "The reason is the lawyers
16 believe there is some question as to the original
17 request covers June"?

18 A. Yes.

19 Q. Who are the lawyers?

20 A. Probably David.

21 Q. Do you know it's David?

22 A. David.

23 Q. Did you discuss this with anyone else?

24 A. I don't think so.

1 Q. Well, plural, the lawyers.

2 A. It's just my reference to the guys on the
3 inside.

4 Q. Did you discuss this with Richard Baum?

5 A. I don't think so. I just sort of informed
6 him that he's looking for the sixth month as well.

7 Q. Did you discuss this with the Governor?

8 A. No.

9 Q. So, at this juncture you are asking Mr.
10 Odato to submit an additional FOIL request?

11 A. At the direct request of the lawyers.

12 Q. At the direct request of David Nocente?

13 A. Correct.

14 BY MS. SULLIVAN:

15 Q. Didn't the original request cover it?

16 A. I thought so, however it was worded. But,
17 remember, I only had the first five months. And
18 when I went back to him saying: He's asking for
19 the sixth, "Well, tell him to FOIL for it again."

20 Q. Even when your earlier position had been no
21 FOIL was necessary?

22 A. I do what that my people ask, and I don't
23 deviate from it.

24 Q. Was there any other response to Mr. Odato's

1 FOIL request?

2 A. In terms of from whom?

3 Q. From you, when he gave you the second FOIL
4 request, the July 10th FOIL request.

5 A. "I will get to work on it. I think it's
6 here. Stand by, and I will see what I can do.
7 But something intervened. We referred it, and I
8 think we stood down from honoring it at this
9 point. I'm not positive. At that point I'm kind
10 of segueing out of Nocente's request and not
11 responding to further inquiries.

12 Q. You stepped down from the July 10th FOIL
13 request?

14 A. I don't think we honored it. I can't be
15 sure, but I just don't think we honored it
16 because at that point this was being in the
17 process of being referred. And what I was telling
18 you about ongoing investigations are a reason for
19 you not to follow through on FOIL requests and
20 other normal requests for information that you
21 might provide.

22 Q. Did you relay that to Mr. Odatto?

23 A. I believe so, but I may not have because we
24 were clamming up at that point. We were just

1 simply saying: It's under review and we're not
2 going to engage any further.

3 Q. When you say "we are clamming up at that
4 point" who are you referring to?

5 A. The press officer, the administration is not
6 engaging further on the topic.

7 Q. And, that's on instruction?

8 A. Yes.

9 Q. And, who was giving you that instruction?

10 A. David. And you will see subsequent e-mails
11 when people are calling and asking questions that
12 I send to him via e-mail. And he said, "Since
13 it's been referred, you ought not to engage
14 further on this topic. Since it's under review by
15 authorities you should not engage on the topic any
16 further."

17 Q. At that time had you retained Mr. Kindlon?

18 A. It was before that. And, basically, I
19 pushed back a little bit saying the story is going
20 to sort of go out of control. It was stupid from
21 a communication standpoint because this is when we
22 began to give them the ability to issue charge
23 after charge against us without aggressively
24 responding.

1 Q. So, once you received the July 10th FOIL
2 request you are no longer responding to Mr.
3 Odatto's inquiries?

4 A. No. I'm pretty sure that's -- I know that I
5 never responded to that FOIL request. And I did
6 so because David told me we should really stand
7 down.

8 Q. Did you discuss that with Mr. Baum at all?

9 A. Yes. I said that the story is going to spin
10 out of control, but I'm doing what y'all want me
11 to do.

12 Q. What was Mr. Baum's response?

13 A. "I know. I know. But this is what they
14 want to do." This is the Secretary to the
15 Governor sort of saying that the lawyers were
16 intervening and even he didn't have much ability
17 to sort of interact at that point.

18 Q. When you say "The lawyers" at this juncture
19 who you are referring to?

20 A. Mr. Nocente, Mr. Pope, and Mr. Maloney have
21 sort of emerged at that point to sort of be the
22 ones that were commencing the internal review to
23 see what might have happened and to control the
24 process moving forward.

1 Q. Did you discuss with the Governor at all
2 this standing down with the press?

3 A. I think I would have conveyed to him --

4 Q. Did you convey to him?

5 A. Yes. I said to him, "It's a jackpot moving
6 forward because if you have got one side leveling
7 charge after charge and you are not refuting those
8 things, there's a tendency for things to spin out
9 of control. And charges, no matter how outrageous
10 they are, they get repeated and reported on
11 without an aggressive defense on our part tend to
12 become currency. And it's not a good thing.

13 (Commission's Exhibit 91 was marked for
14 identification.)

15 Q. I am showing you what has been marked as
16 Commission's Exhibit 91, it's an August 14, 2007
17 letter to James Odatto from Mariah Treisman. Have
18 you ever seen this document?

19 A. I have not, but it comports to what I have
20 just be describing where they wanted to stand
21 down.

22 Q. So, when you say "comports" to standing
23 down, could you please explain that?

24 A. If we had referred the matter or in the

1 process of referring of the matter to a law
2 enforcement agency who is conducting an
3 investigation that is, as I described before, the
4 rationale in the region for saying to the
5 reporter: While this investigation is underway
6 you are going to have to hold in abeyance your
7 FOIL request and any other information on this
8 while it's being investigated.

9 Herb expressed some incredulity about
10 that, but I would submit to you that this is
11 verification of my point in that regard. They are
12 saying no, we are not going to provide that to
13 you.

14 Q. I think what they are saying is, in the
15 second paragraph, "After a thorough review of our
16 files I have located 34 pages of documents or
17 portions of documents that are responsive to your
18 request for records for the month of June."

19 A. Forgive me for being awfully tired, but --

20 Q. We are all awfully tired.

21 A. I'm just now reading this. And that, to me,
22 strikes me as bizarre and an indication of what
23 happened after this scandal broke where they
24 suddenly, based upon what Peter Pope and others

1 were saying did an about face and, oh, be better
2 not release this stuff. I am at this process on
3 the 14th. You know, I have sort of like been
4 pushed aside. And, I mean, this is their view in
5 that regard. I disagree with it because these
6 matters are clearly public documents. I am
7 learning now what and why, you know, things
8 happened with regard to me that I didn't have any
9 clue about. But I submit to you it's bizarre
10 given the fact that we all talked about it.

11 Q. What is bizarre, Mr. Dopp?

12 A. That they would say that you're not entitled
13 to something that we just provided and all just
14 discussed as being okay to provide.

15 Q. I don't know that they are saying you are
16 not entitled. I think what they're saying is: I
17 have located 34 pages of documents or portions of
18 documents that are responsive to your request."

19 A. Oh, I see. Again, I'm sort of coming to the
20 point where I'm kind of like not thinking clearly.

21 Q. I understand. And take your time, please.
22 I know it's late. We would all like to end this.

23 A. I can't give you a response to it because I
24 don't know what the documents there are that they

1 consider exempt. And I don't know the documents
2 there are that they can provide. I assume it's
3 the manifests. I assume it's the itineraries. I
4 assume it's the schedule. And I assume it's the
5 other stuff that was provided by Eliot.

6 (Commission's Exhibit 92 was marked for
7 identification.)

8 Q. I am going to show you 34 pages of Exhibit
9 92. Take a moment and look through them.

10 A. Yes. These are manifests and schedules for
11 the period. It appears that they are not
12 providing the flight requests and the ground
13 transportation assignments that we talked about
14 before. It just appears to be schedule and
15 manifest. So, I guess the decision --

16 MR. KINDLON: 148,000 miles.

17 A. I guess the decision they made was they
18 apparently found problematic the release of the
19 flight request documents and travel itineraries.

20 Q. If you look at Bates 364 there is a flight
21 request from Senator Bruno at 364 for the 6/27
22 flight.

23 A. So, they conclude that that's okay, but I
24 guess they conclude the remaining itinerary from

1 the 27th transportation assignment is not
2 appropriate to release.

3 Q. And if you go to Bates 365, the Governor's
4 schedule --

5 A. It appears to be more heavily redacted.

6 Q. More heavily than what?

7 A. Than what I would have provided previously.

8 Q. So, these documents do have redactions in
9 the schedule as provided for the governor; is that
10 right?

11 A. It looks like they are whacking telephone
12 numbers and contact information.

13 Q. And, apparently, some events as well?

14 A. Yes. Again, I just -- that is not
15 consistent with our commitment from Mr. Spitzer
16 and myself to be more open in that regard. The
17 State Broadcasters Association wants to get rid of
18 Joe Riley's telephone number. That is a state
19 secret.

20 See, this takes us back to a kind of
21 thing that I always was trying to push back
22 against. Every time you do this it raises
23 suspicions among the reporters that you are not
24 being forthright. And, all I can say to you is --

1 Q. But, these are the documents Mariah Treisman
2 provided as a response to the July 10th FOIL
3 request to from Mr. Odató?

4 A. Obviously, they got more cautious with
5 regard to the information they were disclosing and
6 were redacting more heavily.

7 Q. And, you didn't receive instructions
8 regarding your responses to Mr. Odató concerning
9 redactions and not providing the flights requests?

10 A. Remember, I am no longer communicating
11 because I am closed down.

12 Q. When you were responding to Mr. Odató
13 requests.

14 A. Everybody looked at the materials. Nobody
15 said to me: You should have redacted this or
16 that. And I showed it to just about everybody.

17 Q. When you say you showed it to just about
18 everybody, would you identify for the record who
19 that was?

20 A. Baum, nocente, Pope, Rifkin, and Spitzer.

21 Q. Did you ever discuss the full implications
22 of providing the documents and whether or not
23 there should be redactions?

24 A. Again, I keep coming back to that same point

1 of stuff was provided to me with the specific
2 request: What would be responsive to a FOIL. I
3 trusted the information I received was accurate,
4 properly obtained, and ready for release to the
5 media.

6 As an offhand comment here, what I would
7 say is like the changes that they made are de
8 minimus with the exception of not including the
9 ground transportation. I don't understand why you
10 would feel there's a security -- or need to
11 redact.

12 David Patterson is attending the Puerto
13 Rican Day Parade and contact into for the parade
14 is blank, blank, and blank. They got cautious.
15 They pulled way back and were doing things totally
16 by the book at this stage. I guess that is
17 understandable given the furor that had just
18 arisen. I guess they didn't want to go down a
19 path where someone was saying that you were doing
20 something improperly again. But, all's I can tell
21 you is that matters were discussed ad nauseam
22 internally and went repeatedly to everyone to
23 point out what I would be providing. And I sought
24 clearance for providing it.

1 Q. You are no longer with the executive
2 chamber; we established that earlier, Mr. Dopp?

3 A. Right.

4 Q. Were you ever advised as to the basis for
5 your suspension?

6 A. No, although I kept asking for the
7 rationale. And the only thing they told me is
8 that --

9 Q. Who were you asking?

10 A. Nocente and, at the moment, Baum -- I take
11 it back. Nocente is the only one I could ever
12 engage once it occurred. I read about it. I
13 wasn't informed the way that I should have been.
14 And I said, "David, why? Why? Why?" And he
15 said, "Darren, we had an appearance problem. And
16 you remember what Andrew was saying. He was
17 insisting on disciplinary action." Andrew was
18 calling me throughout the period and saying, "I
19 mentioned you three times in the damned report,
20 Darren. I never expected they would discipline
21 you."

22 Q. Did he indicate who he thought they would
23 discipline?

24 A. Howard and Felton.

1 Q. The Governor made remarks on July 23, 2007
2 in which he indicates, "Unfortunately, serious
3 errors in judgment on behalf of two members of the
4 executive chamber occurred in this circumstance."
5 Do you know what errors in judgment he is
6 referring to?

7 A. I always tried to gain that information.
8 And I believe it was a product of Peter Pope and
9 Sean Maloney going to him saying that, or leaving
10 the impression that I was involved in
11 reconstruction of documents and that reaching out
12 to the State Police was somehow inappropriate.
13 This, despite of the fact that I told him I never
14 talked to anybody in the State Police.

15 Q. Told who?

16 A. Pope and Maloney -- that I never talked to
17 anybody at the State Police, nor did I ever
18 contemplate doing so. Moreover, didn't know
19 anything about reconstruction of documents. If I
20 did, that would have been a red flag that I would
21 have brought to everybody's attention.

22 Q. Did you ever discuss that with the Governor?

23 A. I have had no communication with the
24 Governor. The only thing I can tell you is

1 through some intermediaries subsequent to that
2 they have sort of let it be known that the
3 information they were working with at the time was
4 flawed. They know I didn't do anything wrong.
5 They really want to bring me back and have
6 something, but they can't engage on the topic
7 until later on.

8 Q. Who are "they"?

9 A. It's just mutual friends that Eliot knows
10 that I would be talking to, close friends of mine
11 that he has relationships with as well. And
12 subsequently, I believe he stood to say a number
13 of things regarding, you know, "there's no
14 ethical, legal, or other error that he made." And
15 he said that at the state fair.

16 Q. He also made statements that this was an
17 instance of politicizing the State Police. Do you
18 believe that occurred here?

19 A. No. And, remember, Mr. Spitzer, Mr. Pope,
20 and Mr. Maloney are brand new to state government
21 at that level. There was no alternative but to
22 engage the state police on the matter. There is
23 no other source of information.

24 Furthermore, if you saw Glen Valle's

1 testimony and heard his testimony before the
2 Senate Committee he said nothing inappropriate
3 occurred: We, of course, maintain these records
4 and, of course, respond when people ask for that
5 information. It is perfectly within the right of
6 the executive chamber to request such information
7 because they are ultimately on the hook for doing
8 so.

9 Q. If Mr. Howard was aware that these documents
10 were reconstructed and knew you were releasing
11 them to the press and were doing so in an effort
12 to smear Senator Bruno, would that be a
13 mischaracterization of the State Police in your
14 opinion?

15 A. There is an awful lot of "ifs" there. And I
16 still don't know what transpired between Felton
17 and the rest of the State Police and Billy. I
18 just know he never conveyed to me, nor did I
19 convey to anybody else, any notion of
20 reconstruction and any notion that there was a
21 debate internally at the State Police about this
22 was appropriate or not. But, truthfully, if it is
23 as you describe, that could raise an issue and I
24 could see how I would like at least to ask those

1 types of questions and try to get into the mindset
2 of the people. But in that man's defense, I never
3 picked up animus toward Bruno on the topic.

4 What I did pick up on and shared was
5 taxpayers have the right to know this information
6 because of the factors that I described at the
7 beginning. It costs \$20,000 a pop. And every
8 time a pol is using it, it can't be used for
9 emergency service.

10 And then lastly, the thing that I'm
11 mostly concerned is we get criticized if we -- if
12 the possibility of misuse is brought to our
13 attention we would be criticized in the media for
14 not doing something about it, for not reviewing it
15 intensely. More to the point, Mr. Pope just told
16 me I had a personal criminal jackpot for not doing
17 something about it. So, if someone is telling me
18 that I pushed, if someone is telling me that I
19 seemed eager to have something done on the topic,
20 it was the result of my firm belief that it's all
21 public and my second belief that Pope spooked the
22 hell out of me saying that I was on the hook
23 personally.

24 Q. If Mr. Howard knew these were not public

1 documents and was providing them to you knowing
2 that you were releasing them to the media, would
3 that be a politicization of the State Police in
4 your opinion?

5 A. It could be. It could be because -- I guess
6 I would go back to the notion of: Was it
7 accurate? Was somebody being pressured to do
8 this? Did they volunteer it, you know? Was it as
9 he described to me? Remember, he said to me --

10 Q. As Mr. Howard described to you?

11 A. Mr. Howard described to me -- he said,
12 again, it's like, well, this is faxed directly
13 over; that was called in and that's why it's in
14 that form. I accepted that. And I didn't like --
15 I wasn't like -- I thought it was weird, but I
16 said, "But it's cool; right?" It's like everybody
17 is cool with it? And he's like "yes." But,
18 again, I didn't stop there. I then took it to the
19 others to say: Look at this. This is what was
20 supplied by the State Police.

21 Q. When you took it to the others, did you show
22 them Commission's 2 as well as Commission's 5?

23 A. Pretty much it was Commission's 2, 5 and 3.

24 Q. 1, 3 and 5?

1 A. 1, 3 and 5, yes. Sorry. And everybody
2 looked at it. And, again, it was such a yawn with
3 regard to what we were providing from the Governor
4 that nobody thought it's a big deal.

5 MS. TOOHER: Mr. Dopp, I think we are
6 done here. You indicated earlier that you would
7 like to put something on the record. And I will
8 certainly give you the opportunity to do that.

9 INTERVIEWEE: I'm kind of pooped, but I
10 had walked in thinking that I wanted to elaborate
11 on the draft statement. And Herb demanded that we
12 do that, and I'm glad we did that.

13 I wanted to underscore the level of
14 internal discussion and just in two seconds. I
15 need you to understand. We conducted an internal
16 review; that's is May 17th. Consider referrals:
17 I.G., A.G., D.A., Ethics, Legislative Ethics,
18 feds, two versions of the feds. Each entity was
19 rejected for a specific reason. We talked about
20 the reasons why.

21 Thorough internal discussion of the
22 matter that would go beyond anything that I was
23 ever familiar with in regard to FOIL, okay.

24 So, on the first point, I just want to

1 underscore to you is like Darren is no rote.
2 Darren brought options to people. The thing that
3 came up today that alarms me is that: Someone
4 said you were told to stand down and never engage
5 in that matter again. Not true. Never true.
6 Outrageous for anybody to suggest that. Why? We
7 were constantly getting new information. We had
8 the absolutely serious obligation to ensure the
9 proper things were being done. If Rich or Eliot
10 are telling me that -- I don't believe that would
11 ever been the case. Rich and Eliot and I were
12 constantly worried about this issue, leading right
13 up until the moment when the story appeared. We
14 didn't want to get whacked and we didn't want to
15 get whacked for Bruno's possible misuse.

16 Lastly, the last two points, in summary:
17 I hope it doesn't sound like a speech or
18 something, but -- three or four points.

19 I believed then and now we had a serious
20 obligation to review the situation with the
21 aircraft for the reasons I have stated. We
22 control it. It costs the taxpayers tens of
23 thousands of dollars. When politicians use it
24 that means it's not available for everybody else.

1 Not to look into it when there is possible
2 concerns about it would have been wrong. I don't
3 want to insult you by saying unethical, but it
4 really would have been wrong to ignore, to look
5 the other way. Not an option for me, and I tried
6 to underscore that with my people.

7 Second, then and now the public most
8 assuredly has a right to know who is using the
9 aircraft. This wasn't a plot smear Joe Bruno
10 because everybody who was using the aircraft had
11 the available information provided to the reporter
12 from fair decisions made.

13 I can't -- and this is my business for
14 twenty years. You can't tell a reporter what to
15 write. You provide information to him that he
16 requests and you ask him to consider some things.
17 But it's his decision, him and his editor's
18 decision.

19 Again, I came back to the same point I
20 made. I never act without consultation, referral,
21 and approval from my colleagues in the matter.
22 Eliot, Rich, Nocente, Baum. Now, were they
23 focused entirely on this matter? Yes and no
24 because we're in such a dramatic period. Eliot's

1 main concern wasn't Bruno. It was whether he was
2 going to get whacked or Silver was going to get
3 whacked for their use of aircraft.

4 Rich's main concern was: Should I have
5 done more to police the use of the aircraft?
6 Should I have denied Bruno use at some point?
7 Again, we all came back to the notion of: We
8 really don't know absent a review of the
9 schedules.

10 The last thing: Alternatives to the
11 conduct that I have described. What would they
12 have done? Ignore it? Wrong. Have the State
13 police handle it? Again, it is our
14 responsibility. We are making the decisions. It
15 would have been weird at best to say: You talk
16 about this matter even though we're the ones
17 deciding what to do. You know, I say that to my
18 people and I say: A request is coming to me. The
19 documents have been assembled. We have all looked
20 at the documents. Is it okay to release at this
21 moment? They said go ahead. And that's how we
22 come to this moment.

23 Herb has insightful, intelligent things:
24 Might you not have added this to your statement?

1 Might you not have added this to the cover letter?
2 I agree. Those were valid things. I move
3 quickly. I do the best I can. Is it artwork?
4 No. Why was I the guy involved in the end? Three
5 people are running the show pretty much. They ran
6 it for the Attorney General and they are running
7 it for the Governor until such time as we are
8 fully staffed. We weren't fully staffed in the
9 fourth month of the year. The first year we were
10 doing our best. It fill to me. Then and now I
11 believe I did the right thing throughout.

12 I guess that's it. Sorry for blabbing a
13 bit and belaboring my points. But i have some
14 things I'll follow up on that Herb and you
15 requested. And I will provide those as soon as I
16 can.

17 MS. TOOHER: Terry, is this anything
18 else you want to put on the record?

19 MR. KINDLON: No, thank you.

20 MS. TOOHER: Thank you.

21 Thank you for coming in, Mr. Dopp.

22 INTERVIEWEE: Thanks.

23

24

1 STATE OF NEW YORK)
) SS:
2 COUNTY OF ALBANY)

3

4 I, BETH S. GOLDMAN, Certified
5 Shorthand Reporter, Registered Professional
6 Reporter and Notary Public in and for the County
7 of Albany and the State of New York, hereby
8 certify that the proceedings recorded hereinabove
9 were recorded stenographically by me and reduced
10 to computer-generated transcription.

11

12 I FURTHER CERTIFY that the foregoing
13 transcript of said proceedings is a true and
14 correct transcript stenographically recorded at
15 the time and place specified hereinbefore.

16

17 I FURTHER CERTIFY that I am not a relative
18 or employee, attorney or counsel of any of the
19 parties, nor a relative or employee of such
20 attorney or counsel, or financially interested
21 directly or indirectly in this action.

22

23 IN WITNESS WHEREOF, I have hereunto set my
24 hand this 13th day of October, 2007.

25

26

27

28

29 BETH S. GOLDMAN
30 Certified Shorthand Reporter
31 Registered Professional Reporter
32 Notary Public

33

34

35

36