

1 STATE OF NEW YORK

2 COMMISSION ON PUBLIC INTEGRITY

3 -----

4 IN THE MATTER OF AN INVESTIGATION

5 INTO THE ALLEGED MISUSE OF RESOURCES

6 OF THE DIVISION OF STATE POLICE

7 -----

8 VOLUME I

9 STENOGRAPHIC MINUTES OF SWORN TESTIMONY

10 Conducted of TERENCE L. KINDLON, ESQUIRE, held on the
11 23rd day of January, 2008 at the offices of the
12 Commission on Public Integrity, 540 Broadway, Albany, New
13 York, commencing at 2:00 o'clock, p.m., before Theresa L.
14 Klos, a Shorthand Reporter and Notary Public in and for
15 the State of New York.

16

17

18

19

20

21

22

23

24

1 APPEARANCES:

2 ON BEHALF OF COMMISSION:

3 NEW YORK STATE ETHICS COMMISSION
4 Alfred E. Smith Building
80 South Swan Street
rk 12210-8004

5 [REDACTED]
6 [REDACTED] SQ.
7 Investigative Counsel

8 NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY
540 Broadway
rk 12207

9 [REDACTED]
10 [REDACTED] Director

11 [REDACTED] te Counsel

12 [REDACTED]
13 ROBERT J. SHEA, Associate Confidential
Investigator

14 BARRY GINSBERG

15
16 ON BEHALF OF WITNESS:

17 [REDACTED] KS, P.C.

18 [REDACTED]

19 [REDACTED] NKS, ESQ.

20
21 ON BEHALF OF DARREN DOPP:

22 [REDACTED] IG, LLP

23 [REDACTED]

24 [REDACTED] OENIG, ESQ.

1 P R O C E E D I N G S

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

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

6 EXAMINATION BY COUNSEL FOR THE COMMISSION

7 BY MS. TOOHER:

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

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

12 Q. And where are you employed?

13 A. Kindlon, Shanks & Associates.

14 Thereupon

15 TERENCE L. KINDLON, ESQUIRE,

16 (Being duly sworn by the Notary Public, was

17 examined and testified as follows:)

18 BY MS. TOOHER:

19 Q. I apologize.

20 A. I reaffirm that my name is Terry Kindlon.

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

23 A. Yes.

24 Q. What is your capacity there?

1 A. I'm the president.

2 Q. And what functions do you perform?

3 A. I practice law.

4 Q. And you represent individuals?

5 A. I do.

6 Q. In that capacity?

7 A. I do.

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

10 A. Yes.

11 Q. When did that occur?

12 A. It began on the -- late on the afternoon of July
13 20, 2007 and it ended some time thereafter. I apologize.
14 I don't know the exact date. But there came a time when
15 I felt it would be my ethical obligation to withdraw from
16 further representation of Darren Dopp.

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

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

22 I think it should be clear for the record
23 that my name is Michael Koenig, K-O-E-N-I-G. I'm
24 an attorney at Greenberg Traurig in Albany and I

1 began representing Mr. Dopp roughly in early
2 November, '07 and I currently represent Mr. Dopp.
3 And I am here today in the event any questions
4 were to be asked that would breach or impinge upon
5 Mr. Dopp's attorney-client privilege and I am
6 solely here for that purpose and will interpose
7 objections if and when it becomes necessary.

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

12 MS. SHANKS: If it's okay with you, I'd like
13 to make a statement for the record. When Mr.
14 Kindlon received a subpoena, our office contacted
15 Mr. Koenig to indicate that Mr. Kindlon was being
16 subpoenaed and that his proposed testimony
17 appeared to be concerning his representation of
18 Mr. Dopp. And I told him I did not believe that
19 it was appropriate now that Mr. Dopp had
20 independent counsel for either me or Mr. Kindlon
21 to interpose privilege objections on behalf of Mr.
22 Dopp and if Mr. Koenig wished to be here, he
23 should contact the Commission and make
24 arrangements so that he could interpose objection.

1 And it is my anticipation today that Mr.
2 Kindlon will answer questions unless there is an
3 objection interposed on Mr. Dopp's behalf by his
4 present attorney, Mr. Koenig.

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

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

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

22 A. Yes.

23 Q. And for purposes of your representation of Mr.
24 Dopp, how did that come about?

1 A. I had just gotten off an airplane at Albany
2 Airport. It was late on the afternoon of July 20th, a
3 Friday, 2007. I was walking from the exit ramp to the
4 baggage area. My BlackBerry I had just turned back on
5 again. I had been in London and the BlackBerry had been
6 turned off for a week. I was walking through the lobby
7 area at the airport. I received a telephone call from
8 Judith Ank, a woman I know who works in the Capitol,
9 somewhere on the second floor, and she indicated to me
10 that one of the people who worked in the Chamber needed
11 legal representation.

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

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

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

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

24 A. I spoke -- oh, I gave Judith my cell phone number

1 to give to the person. Whether she told me his name or
2 not, I don't remember. She gave me no details at all
3 about what the legal problem was. And given that about
4 80 percent of my practice is criminal defense and given
5 that about 95 percent of that is blue collar as opposed
6 to white collar criminal defense, I anticipated, for what
7 it's worth, that somebody in the Chamber had gotten, you
8 know, mixed up with another woman or something and, quite
9 frankly, it was what I expected. So --

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

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

16 Q. Did you receive a call in that regard?

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

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

1 telephone, the cell phone."

2 I said, "Where are you?"

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

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

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

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

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

24 A. I did, yes.

1 Q. And did you speak with anyone else concerning your
2 representation of Darren Dopp that evening?

3 A. Not that evening, that I recall.

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

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

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

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

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

24 Q. Did you bring a copy of those with you today?

1 A. It may be -- I think I left them in my office,
2 because I wasn't asked to bring anything here.

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

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

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

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

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

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

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

24 I'm also telling you even apart from the

1 attorney-client privilege that may or may not
2 exist, I am going to call Linda Griggs about this
3 transcript.

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

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

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

10 THE WITNESS: No.

11 BY MS. TOOHER:

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

15 A. I mean --

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

21 MS. TOOHER: But if they were said during the
22 course of the interview, I think the
23 attorney-client privilege would effectively be
24 waived during that juncture.

1 MR. KOENIG: I don't know the parameters of
2 that interview. I don't know if it was under
3 "queen for a day". I don't know the answer to
4 that.

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

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

19 I'm also not sure whether or not the District
20 Attorney's Office -- again, I can't assert any
21 privilege on behalf of them. It's not for me to
22 do or whether or not they want that transcript out
23 there, so I can't take position with regard to
24 that.

1 But with regard to Mr. Dopp, I think that
2 there are certain portions of that that could be
3 attorney-client privilege. If there's a more
4 specific question other than what was discussed,
5 maybe we can do it on a question-by-question basis
6 and, perhaps, get through that.

7 Q. Can you tell me the date of the interview?

8 A. I don't remember it off the top of my head, but
9 maybe if I just talk to counsel for a second, we can
10 reconstruct when that was.

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

16 Q. Was this interview prior to Mr. Dopp testifying
17 before the Commission?

18 A. Oh, yeah, yeah.

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

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

24 Q. In the course of that interview, did you discuss

1 the statement that Mr. Dopp had given to the Attorney
2 General's Office?

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

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

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

10 MS. TOOHER: I'm asking if the subject matter
11 was discussed. I'm not --

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

15 MS. TOOHER: Correct.

16 MR. KOENIG: He can answer that.

17 A. I believe so.

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

21 A. I just can't recall.

22 Q. And is that detailed in the transcript?

23 A. Well, I mean, the transcript is a fairly accurate
24 replica of the questions that were asked and the answers

1 that were given. It wasn't recorded by a certified
2 shorthand reporter. It was recorded on a little digital
3 dictating machine that was just left on the desk in front
4 of us.

5 Q. And did you have an opportunity to review that
6 transcript?

7 A. I did, yeah.

8 Q. And when you say it's somewhat accurate --

9 A. I mean, there were typographical errors. There
10 were inaudible portions of questions and answers. It was
11 not a high quality recording and it was not really a high
12 quality transcript. And it was not a sworn transcript.

13 Q. Do you recall what other subject matters were
14 discussed at the District Attorney's Office?

15 A. Yes.

16 Q. And can you identify those subject matters?

17 A. There were questions asked about Darren's
18 employment, the scope of his authority within the
19 Chamber. There were questions asked about the build-up
20 to the conflict that had gotten a lot of publicity
21 between Senator Bruno and Governor Spitzer.

22 There were questions about Darren's relationship
23 to the other people who were employed in the Chamber
24 but -- and no disrespect to any person on the face of the

1 earth that's attended here -- the questions that were
2 asked by the questioner were, for the most part,
3 unfocused, poorly constructed and not very probing.

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

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

14 MR. TEITELBAUM: William Howard?

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

19 Q. And in terms of the July 22nd statement and your
20 discussions with Mr. Dopp in the District Attorney's
21 Office, did you or Mr. Dopp raise any concern about the
22 nature of his statement and any discussions he had with
23 members of the Chamber about not wanting to sign that
24 statement?

1 THE WITNESS: Can I --

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

4 MS. TOOHER: Correct.

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

8 MS. SHANKS: Can I just have one moment?

9 (Conferring.)

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

15 MR. KOENIG: Can I just say Sunday was the
16 22nd? We established that.

17 A. Sorry. Monday, the 23rd. I apologize. And let
18 me push the pause button here for a second. I'm trying
19 to be as accurate as I can possibly be. The problem is
20 that, I mean, I'm answering questions about the interview
21 by Griggs of Darren Dopp and I don't know if my
22 recollections at this moment are coming from the things
23 that were said during that interview or from the things
24 that happened that were being asked about at that

1 interview; okay?

2 Because, obviously, since I was present at both,
3 you know, in both time periods, I have knowledge that
4 comes to me from both of those areas and I am concerned
5 about giving you information from my recollection based
6 upon having been present in the Capitol building on the
7 21st or the 22nd that may not be in the record from the
8 interview at the District Attorney's Office. So I'll do
9 the best I can here.

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

15 And to sort of give some context to that, when I
16 was first in the Chamber on the second floor on Saturday,
17 the 21st, when I met Peter Pope for the first time and
18 Sean Patrick Maloney for the first time, one of the very
19 first pieces of information that I received was that
20 Darren's testimony was not going to be required. But my
21 best recollection is that that information came to me
22 from Peter Pope and, in fact, it came in the men's room,
23 because I think I got something on my hands and I had to
24 go wash them and Peter and I walked in there together and

1 we were chatting. And I believe it was in the men's room
2 on the second floor that he said to me that the public
3 integrity -- not public integrity; that's you -- the
4 Inspector General matter had been, I think he said,
5 called off. That's my recollection.

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

9 A. Correct.

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

13 A. Correct.

14 Q. -- the 23rd?

15 A. That is correct, yeah.

16 Q. And did he tell you why?

17 A. No.

18 MR. KOENIG: I want to object to that and
19 this is an issue that may arise later, so I just
20 want you to be aware of it. There is an
21 outstanding issue as to who represented Darren
22 Dopp prior to Mr. Kindlon's representation, the
23 basis for the privilege article I sent you on
24 January 10th.

1 There is an issue over whether or not Peter
2 Pope and/or Sean Patrick Maloney was serving as
3 Mr. Dopp's attorneys in the period leading up to
4 the time where he retained Mr. Kindlon. And it is
5 Darren's position and belief that, in fact, Pope
6 and Maloney were representing him in those days
7 leading up to it.

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

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

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

23 MS. TOOHER: But I believe the testimony Mr.
24 Kindlon's giving now concerned after Mr. Kindlon

1 has been retained as his attorney and after Mr.
2 Pope is no longer representing him as his
3 attorney.

4 MR. KOENIG: No, I agree with that, but
5 anything -- I agree with that. Anything that Mr.
6 Pope and/or Mr. Maloney would have conveyed to Mr.
7 Kindlon that Mr. Pope and Mr. Maloney learned in
8 the course of representing Mr. Dopp would be
9 protected by the privilege.

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

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

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

23 MR. TEITELBAUM: And have Pope and Maloney
24 taken any position on that?

1 MR. KOENIG: I've been advised by others in
2 Executive Chambers' counsel's office that they
3 would disagree with that. They believe they made
4 it clear they were always representing the Chamber
5 and not Mr. Dopp.

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

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

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

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

24 MR. KOENIG: No, let's make the record very

1 clear. Darren Dopp believed that up until the
2 time he retained Mr. Kindlon on July 20th that Mr.
3 Pope and Mr. Maloney were acting as his attorney.
4 I've learned from people in the Executive Chamber,
5 though not Pope directly, not Maloney directly,
6 that they would disagree with that. That issue
7 has never been adjudicated.

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

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

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

20 MR. TEITELBAUM: Personally?

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

23 MR. GINSBERG: Getting back to the question
24 that was posed, Mr. Kindlon learning information

1 from Mr. Pope about some communication he had with
2 somebody else about the necessity or lack thereof
3 for Dopp's testimony, you're not claiming
4 privilege as to that; right?

5 MR. KOENIG: You gotta repeat the question.
6 I don't think I --

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

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

10 MR. TEITELBAUM: You objected --

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

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

17 MR. TEITELBAUM: Can you read it back?

18 (Directing to the court reporter)

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

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

1 ANSWER: "Correct."

2 QUESTION: " -- the 23rd?"

3 ANSWER: "That is correct, yeah."

4 QUESTION: "And did he tell you why?"

5 ANSWER: "No.")

6 MR. TEITELBAUM: Okay.

7 BY MS. TOOHER:

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

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

16 THE WITNESS: Yes.

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

20 THE WITNESS: I spoke directly with David
21 Soares and David and I sat down in Dunkin Donuts
22 across the street from my building and had coffee
23 on a morning -- I forget exactly what morning it
24 was. And that was at a time before Mr. Soares had

1 decided whether or not his office was going to
2 take any action one way or the other.

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

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

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

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

24 THE WITNESS: Yeah.

1 MR. TEITELBAUM: -- concerning the -- for
2 purposes of shorthand, we'll call the July 22nd,
3 2007 statement that Mr. Dopp signed the Dopp
4 statement. Did he ask you questions about the
5 Dopp statement?

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

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

18 THE WITNESS: I believe there was generalized
19 discussion concerning that. I think there was
20 generalized discussion concerning Attorney General
21 Cuomo. There was generalized discussion
22 concerning the Inspector General, some questions
23 about the individuals who were in the, for lack of
24 a better term, inner circle in the Chamber and,

1 again, questions about Mr. Felton and Mr. Howard.

2 And I recall that the dominant theme during
3 that conversation that I had with Mr. Soares was
4 that he was intensely interested in doing the
5 right -- the best right thing or the right best
6 thing possible as District Attorney of Albany
7 County in connection with this matter, but at that
8 point in time, he had not formed any opinion as to
9 what that was. And he told me he'd be discussing
10 it with some of his assistants and attempting to,
11 you know, formulate some kind of plan of action.

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

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

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

22 THE WITNESS: No, sir, he never did.

23 MR. TEITELBAUM: What did the District
24 Attorney tell you concerning the Attorney General?

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

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

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

19 THE WITNESS: He just asked me what I knew
20 about it and, frankly, I didn't know that much
21 about it, because I don't -- you know, I didn't
22 even -- I had -- before July the 20th, 2007, I had
23 never heard of Peter Pope. I had heard of Sean
24 Patrick Maloney, because he was running for

1 Attorney General at some point. I had never heard
2 of David Nocenti. They were all strangers to me.
3 I just didn't know them or really know anything
4 about them.

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

13 MR. TEITELBAUM: That would be --

14 THE WITNESS: Pope.

15 MR. TEITELBAUM: -- Pope and Maloney?

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

23 Most of the conversation that I had was with
24 Peter Pope, and that was on Saturday. I never --

1 I didn't see David Nocenti on Saturday at all, to
2 my recollection. I never met him until Sunday.

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

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

15 MR. TEITELBAUM: We're talking weeks?

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

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

21 THE WITNESS: Yes. Yeah. He raised that it
22 was a possibility. There was no decision made at
23 that time as to whether or not he would, but he
24 said to me would Darren Dopp be willing to be

1 interviewed and I said yeah, by all means. I
2 said, "He's dying to be interviewed by somebody
3 and you're a good candidate, Mr. Soares. He would
4 be delighted to talk to you."

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

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

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

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

20 MS. SHANKS: I don't know.

21 THE WITNESS: There was an almost brand-new
22 Assistant District Attorney and I apologize, but I
23 can't recall his name either, but he was
24 brand-new, just out of law school, just in the

1 office, and he may have been the person who
2 telephoned me.

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

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

12 THE WITNESS: I did.

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

15 THE WITNESS: No; just the first.

16 MR. TEITELBAUM: The first one?

17 THE WITNESS: Yes.

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

20 THE WITNESS: Not that long. Maybe an hour.

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

24 THE WITNESS: No. He only went there twice

1 and, both times, we went together.

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

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

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

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

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

22 THE WITNESS: That is correct.

23 MR. TEITELBAUM: Were you told the reason why
24 the District Attorney wanted a second interview?

1 THE WITNESS: The only information that I was
2 given in that regard was -- and I believe this was
3 in a telephone conversation and I believe it was
4 with Linda Griggs -- that they wanted to clarify a
5 few things. And my understanding is that the
6 second interview by members of the District
7 Attorney's Office of Darren Dopp came after all of
8 the other individuals who were interviewed had
9 been interviewed.

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

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

19 THE WITNESS: There was actually nothing new
20 and the -- my recollection is that at that second
21 interview, there was nothing new or different or
22 unique or even, you know, more particularized
23 asked about than had been for the first interview.
24 So I was a little puzzled as to why we had to even

1 go in at that time.

2 MR. TEITELBAUM: Did the District Attorney's
3 Office raise an issue as to any conflict in what
4 they were being told between what Mr. Dopp had
5 told them in the first interview and what other
6 people told them?

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

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

17 BY MS. TOOHER:

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

20 A. No. The next conversation that I had was -- and,
21 again, I don't recall the date. Forgive me. But I did
22 receive a telephone call from Linda Griggs and I want to
23 think it was right around Election Day. I'm pretty sure
24 it was right around Election Day. It might have been the

1 Friday before Election Day or the Monday before Election
2 Day, but it was in there some place.

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

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

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

24 A. Actually, no, she didn't. I mean, the statement

1 itself was sort of purposefully vague, was my impression,
2 or badly written. Pick one. And you know, I was,
3 however, concerned -- I wasn't really -- I wasn't really
4 clear as to what it was that was the thing at issue here,
5 but I just decided the best thing for me to do would be
6 to just get out on the theory that, you know, if there's
7 any ethical issue that comes up at all, the best thing to
8 do is try to avoid it so -- but no, she didn't tell me
9 exactly what it was that she had in mind.

10 Q. And have you spoken with the District Attorney's
11 Office since that communication?

12 A. Not concerning this case, no, not concerning this
13 matter.

14 Q. And has the District Attorney's Office contacted
15 you in regard to Mr. Dopp since that communication?

16 A. Nobody from that office has contacted me since
17 then.

18 Q. I'm going to take you back to Commission 113, a
19 one-page e-mail from Peter Pope dated 7/20/2007 to Darren
20 Dopp. The front of the e-mail starts with Mr. Dopp
21 relaying to Mr. Pope at 7:55 p.m. on 7/20 "Terrence
22 Kindlon will call you this evening," and Mr. Pope
23 apparently responds "Thanks. He has placed call and we
24 will talk in about 30 minutes."

1 A. Okay.

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

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

6 MS. SHANKS: Excuse me just a moment.

7 (Conferring.)

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

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

20 I do remember driving my car from the airport to
21 the Capitol. I remember thinking that I was really tired
22 and that I just barely had the energy to have this brief
23 conversation with Darren and that, really, nothing other
24 than we met each other and shook hands and agreed to get

1 together the next day came as a result.

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

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

10 A. Correct.

11 Q. Do you recall approximately when that was?

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

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

22 And I very specifically remember I met Darren in
23 the parking lot of Borders Books on Wolf Road, because it
24 was halfway -- it seemed like it was roughly halfway

1 between my house in Glenmont and his house in Saratoga
2 County and it just was the quickest way for us to get
3 together. We met briefly.

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

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

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

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

21 A. Not to my recollection, no.

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

24 A. Yes.

1 Q. And that you then spoke with him and met with him
2 again in the Borders parking lot --

3 A. Yeah.

4 Q. -- early Saturday morning?

5 A. Saturday morning, yeah.

6 Q. And you don't even have any conversation with
7 anyone from the Executive Chamber during that time frame?

8 A. No.

9 Q. Did there come a time when you spoke to someone in
10 the Executive Chamber on Saturday morning?

11 A. At some point during the day, there was a
12 determination made that I should go to the Capitol to
13 meet with people in the Chamber.

14 Q. And how was that determination made?

15 A. Again, I don't specifically recall. It may have
16 been a telephone call. And I went down to the Capitol in
17 the afternoon and I had conversation -- as I recall, it
18 mostly was Peter Pope. Again, Sean Patrick Maloney was
19 in and out.

20 I remember that -- I think it was Sean Patrick
21 Maloney mostly who was concerned about the fact that a
22 conflict or divergence of interest, to use his phrasing,
23 had developed between Darren and others, non-specified
24 others, in the Chamber, which was why they felt he should

1 get a different lawyer.

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

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

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

11 MR. KOENIG: Can you repeat the question?
12 Just read it back or repeat it.

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

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

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

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

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

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

24 A. I mean that there was not a whole lot of

1 information coming my way from them other than that they
2 felt that, which was very clearly stated to me, Darren
3 needed, quote-unquote, a different lawyer because of the
4 way things were developing in the conflict with Senator
5 Bruno.

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

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

19 And in large measure, this early in the game,
20 I didn't even know what questions to ask yet so that I
21 was at a bit of a disadvantage and I was trying really
22 hard to understand what was going on. I was working on
23 Saturday to try to get caught up with this thing, and I
24 am afraid that I don't have a lot of the information

1 which, if I were a little bit smarter, I'd been at this a
2 little bit longer, I would have.

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

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

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

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

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

19 A. Yeah, absolutely. I said, you know, "You guys are
20 light years ahead of me here and I'm doing the best I
21 can." And I think that they needed -- I mean, they would
22 have to understand that reality, because again, they had
23 all been very intensely -- I mean, it was clear to me
24 based on my observation that they had all been intensely

1 engaged in these issues that we were dealing with for a
2 period of time.

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

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

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

23 It had been going for a while and, you know, there
24 was just a lot of information that was completely foreign

1 to me, foreign to me not only because I hadn't been there
2 when these things were happening but foreign to me
3 because this is a slightly different environment from the
4 one that I normally work in. And, you know, references
5 were being made to, you know, political issues and
6 personal issues and legal issues and it was all spun
7 together. And as I say, I was trying very hard to
8 understand this as quickly as I possibly could and to
9 understand what exactly it was that they were concerned
10 about as far as Darren's actions. So Saturday, you know,
11 began and ended, I'd say, sort of inconclusively.

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

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

23 And, also, you know, just as a practical
24 matter, if you walk into the Chamber, which I did,

1 on Saturday afternoon in the summer when
2 everybody's supposed to be at the beach, you've
3 got all these people with type A personalities
4 sitting behind their desks grinding away on a
5 Saturday afternoon and you realize that this is a
6 different level of existence we're dealing with
7 here. Everybody was working as hard as they could
8 and, you know, that leaves an impression, too,
9 so --

10 BY MS. TOOHER:

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

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

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

20 A. Exactly.

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

23 A. To my knowledge, no. But, again, you know, I'm a
24 criminal defense lawyer and I don't trust most people as

1 far as I can throw my car. So, you know, I take
2 everything that people say with a grain of salt.

3 Q. And did they identify to you what the problem was
4 for Darren Dopp at that time?

5 MR. KOENIG: That's a potential problem.

6 MS. TOOHER: Yes or no.

7 MR. TEITELBAUM: Yes or no.

8 MS. SHANKS: I think you've already answered
9 no, they didn't tell you what the problem was.

10 THE WITNESS: Yeah. I mean, I really I can
11 say they didn't tell me that and I couldn't really
12 discern it that early on.

13 MR. TEITELBAUM: I think the prior question
14 had to do with divergence of interest.

15 MS. SHANKS: Okay.

16 MR. KOENIG: The question now is: Did they
17 tell you what Darren Dopp's potential problems
18 were? Did they tell you that? You can certainly
19 answer yes or no, not what they told you.

20 THE WITNESS: No, they didn't. You know,
21 it's like -- honestly, it's like I'd shown up in
22 calculus class having never taken anything more
23 than algebra and I didn't understand much of what
24 they were talking about. Things were moving so

1 quickly and I was so completely unfamiliar with
2 the issues that I did not that early in even know
3 what questions to ask.

4 Now, from this vantage point looking back,
5 it's a different thing, but this was really day
6 one for me and I felt like I'd shown up, you know,
7 at some sort of a big accident scene and I didn't
8 know whose fault it was or even why it happened.

9 I mean, there was just -- nothing made a
10 whole lot of sense to me and I knew that it was my
11 job to have to figure it out. I was in a good
12 spot, because it was summer, my practice was
13 quiet, my family was away. I had nothing but time
14 to devote to this problem and I intended to do
15 that. And I thought it would probably be
16 something that would -- you know, I'd be
17 dedicating a lot of time to over the next week or
18 so.

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

22 BY MS. TOOHER:

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

1 next?

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

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

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

17 MR. KOENIG: Go ahead.

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

22 MR. KOENIG: IG or AG?

23 THE WITNESS: AG.

24 Q. Had you discussed the issue of Mr. Dopp testifying

1 in front of the AG with Mr. Dopp?

2 A. Not --

3 MR. KOENIG: Yes or no is the question.

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

6 THE WITNESS: Oh, okay. Yes.

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

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

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

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

20 MR. TEITELBAUM: Mr. Dopp answered it.

21 MR. KOENIG: The question was: Was the
22 Executive Chamber's position concerning Darren
23 Dopp testifying to the AG at odds with Darren
24 Dopp's position?

1 Can you answer that question without anything
2 you learned from Darren Dopp in the context of a
3 privileged conversation as opposed to what may
4 have been said to the Commission?

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

8 MR. KOENIG: I want to see the transcript.

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

12 MR. TEITELBAUM: Line 9, page 70.

13 MR. KOENIG: I need to see it. Line 9, page
14 70.

15 MR. TEITELBAUM: There, you go.

16 MS. TOOHER: (Handing to Mr. Koenig)

17 MR. KOENIG: Dopp says, "I want to testify
18 for the Attorney General, encouraged not to --"
19 okay. Your question is: The Chamber's position
20 regarding Dopp's testimony was at odds with
21 Darren, so was what the Chamber told him different
22 than what Dopp says here?

23 MR. TEITELBAUM: No. Let's -- do you see the
24 transcript? Do you see the transcript?

1 THE WITNESS: Yes, sir, I do.

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

4 MR. KOENIG: That's privileged.

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

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

10 MR. TEITELBAUM: Not if he disclosed it.

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

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

13 MR. KOENIG: He's given his answer.

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

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

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

20 MR. KOENIG: Say that again.

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

23 MR. KOENIG: Right. There's no communication
24 that he told to Mr. Kindlon.

1 MR. TEITELBAUM: Well, I'm asking him.

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

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

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

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

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

22 MR. TEITELBAUM: We understand.

23 MR. KOENIG: I have a solution here, I think,
24 because if I understood Meave's question, it was:

1 Was the Executive Chamber's position
2 regarding Darren Dopp's testimony before the AG at
3 odds with the position articulated here?

4 MR. TEITELBAUM: That was not the question.

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

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

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

17 MR. TEITELBAUM: Yes, he can, because he has
18 already given testimony to it and once he's given
19 testimony to it, he has waived the attorney-client
20 privilege on this subject. Because what your
21 position is, counsel, is that Mr. Dopp could have
22 testified ad nauseam on subject matters that he
23 also discussed verbatim with his lawyer, but the
24 fact that he discussed it with his lawyer means

1 that his giving testimony about it does not
2 constitute a waiver. That's at odds with
3 everything that I know about the attorney-client
4 privilege in New York State, but maybe I haven't
5 read it recently.

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

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

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

19 MR. KOENIG: Right.

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

21 MR. KOENIG: Okay.

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

1 BY MS. TOOHER:

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

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

6 A. I don't think so.

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

11 A. Uh-huh.

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

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

17 MS. TOOHER: Correct.

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

23 In other words, the reason why the
24 information was not given at that meeting is

1 because of what his client told him he had
2 discussed with other members of the Chamber who he
3 considered to be his lawyers at previous times.

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

5 BY MS. TOOHER:

6 Q. Who was at that meeting?

7 A. Which meeting are we talking about?

8 Q. The Saturday meeting.

9 A. Oh, okay. Peter Pope, Sean Patrick Maloney --
10 Peter Pope, the dominant presence, Sean Patrick Maloney
11 in and out, going somewhere else, doing some other thing.
12 I don't recall any other person being there. There may
13 have been a young, young, young, young, baby lawyer
14 running back and forth photocopying things and like that
15 but --

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

1 he then related to Mr. Kindlon.

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

7 THE WITNESS: Let me give you --

8 MR. KOENIG: I agree with that.

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

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

22 A. And I think --

23 MS. SHANKS: Right. I just want to be clear
24 that I don't want someone to say later, "Well,

1 don't you agree that there was no way for Peter
2 Pope to know that Darren wanted to testify?
3 Because right here, there's a transcript that says
4 Mr. Kindlon didn't tell him. How else would he
5 know?" So I just want the record to be clear.

6 MS. TOOHER: I understand.

7 MR. KOENIG: Is there a question pending?

8 MR. TEITELBAUM: There is.

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

11 THE WITNESS: Can you ask it again?

12 BY MS. TOOHER:

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

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

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

22 A. Yes.

23 Q. Who relayed that to you?

24 A. I can't specifically remember, but it had to be

1 either Sean Patrick Maloney or Peter Pope, because I
2 don't recall speaking with anybody else that afternoon.

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

6 A. Yes.

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

9 A. That would be an understatement.

10 Q. They --

11 MR. TEITELBAUM: What did they say?

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

14 Q. Did they say anything else?

15 A. No.

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

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

1 legal representation issue.

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

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

13 What? You disagree with that?

14 MS. TOOHER: No.

15 MR. TEITELBAUM: I disagree with your
16 position --

17 MR. KOENIG: You disagree with what?

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

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

24 MR. TEITELBAUM: I understand that. That

1 doesn't foreclose us of inquiring of this
2 witness --

3 MR. KOENIG: Of what?

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

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

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

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

16 I am the new guy and I said to Darren, "I
17 don't understand the situation well enough to
18 advise you one way or the other." So default
19 position for a lawyer, being what it is, I said,
20 "Don't say anything to anybody. Hold tight. Let
21 me spin up here. Let me find out. Let me make
22 myself understand what's going on and, you know,
23 exercise your right to remain silent," I said to
24 him.

1 And what happened was by the very next day,
2 it was clear that Mr. Cuomo had already finished
3 his report and there was nobody to go talk to
4 anymore anyway. It was too late. It was a done
5 deal.

6 BY MS. TOOHER:

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

10 A. Yes. Yeah.

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

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

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

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

20 Q. Is that all he said?

21 A. Well, I mean, that was all he needed to say at
22 that point, because again, I mean, I was not in a
23 position, I felt, to question it one way or the other. I
24 was trying to understand this situation in which they

1 were at that time and I was advised by Peter Pope that
2 Darren was not going to testify before the Attorney
3 General.

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

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

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

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

24 A. Boy, he -- well, he said that there wasn't gonna

1 be any testimony before the Inspector General at all.
2 That was just -- that was not gonna happen. So that
3 there couldn't be -- this is a distinction here; that
4 there could not be any testimony before the Inspector
5 General, because the Inspector General wasn't gonna be
6 taking any testimony or doing anything else. The
7 Inspector General had dropped off the radar. And that
8 Darren was not going to testify before the Attorney
9 General.

10 Q. And that's it?

11 A. That's what I recall, yeah.

12 Q. And did Mr. Maloney say anything?

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

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

24 Q. So Mr. Dopp was present during this meeting?

1 A. Mr. Dopp was present, yes.

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

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

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

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

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

19 THE WITNESS: Yeah.

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

22 THE WITNESS: Well, I --

23 MR. TEITELBAUM: Or is it your testimony that
24 the three of you at that time -- that they

1 continued to represent him and you were also
2 representing him?

3 THE WITNESS: That's the sense that I had,
4 that they were winding down and I was spooling up;
5 that I was taking over from them and I was
6 substituting as counsel. But there wasn't --
7 there couldn't possibly be in a dynamic situation
8 like this a clean break. I mean, it isn't "At
9 3:51, you stop and at 3:52, you start." It didn't
10 work like that.

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

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

22 MR. TEITELBAUM: I want to focus on that
23 moment in time. At that point in time, you had
24 been told that you were being retained at least in

1 part because the interests of Mr. Dopp were no
2 longer parallel or consistent with the interests
3 of the Executive Chamber?

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

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

9 THE WITNESS: Right.

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

13 THE WITNESS: (Nods head)

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

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

23 I was a public defender in Phoenix, Arizona
24 for years. It was a very large office. It is a

1 not-at-all-unusual situation where I will pick up
2 my clients at a preliminary hearing. So I would
3 go to a preliminary hearing and I would have a
4 stack of files and I would find out that Juan
5 Garcia was my client and I would go introduce
6 myself to Juan Garcia and I would talk to him and,
7 clearly, anything he said to me was privileged and
8 anything I found out in the course of the
9 representation of Mr. Garcia was privileged. And
10 come to find out three weeks in that the major
11 witness in the case against Juan Garcia was Joe
12 Jones, and Joe Jones was represented by Ms.
13 Gonzalez who was my colleague and she said, "Oh,
14 my God, Laurie. I just found out that, you know,
15 my client is the witness against your client. You
16 need to get -- you can't represent him any
17 longer."

18 And I say, "Okay. Wait til I tell Juan,
19 because I really like him and his mother really
20 likes me." And so then I call -- they don't have
21 AFD lawyers in Arizona. They have conflict
22 lawyers. So I call up Mike Terabiel (phonetic),
23 and I say, "Mike, can you take on this case?" He
24 says yes. I say okay.

1 So at that point, I absolutely know that I
2 have a conflict and Mike Terabiel comes in the
3 office and Juan Garcia's in the office and Juan's
4 mother is in the office and I say, "Mike, I need
5 to bring you up to speed. Juan, I really like
6 you. I don't want you to take this personally. I
7 can't represent you any longer."

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

16 So I absolutely know I have a conflict and
17 that I can no longer represent Juan and that Mike
18 Terabiel is going to be his lawyer from then on.

19 If, at some later point in my life, they ask
20 me to divulge what happened or what Juan said at
21 that meeting, I would say, "I absolutely will go
22 to jail before I will divulge what happened at
23 that meeting." Because even though I know I can't
24 be Juan's lawyer from the time I find out I have

1 an absolute conflict, anything I'm telling Mike at
2 that meeting in my mind is privileged, because
3 Juan certainly believes I'm still his lawyer and
4 that anything is privileged.

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

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

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

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

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

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

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

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

12 THE WITNESS: Okay.

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

18 (Conferring.)

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

23 THE WITNESS: Okay. Let me just consult for
24 a second.

1 MR. TEITELBAUM: I'm asking you to please not
2 consult while a question's pending unless there's
3 an attorney-client privilege matter.

4 (Conferring.)

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

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

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

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

17 MR. TEITELBAUM: Sure.

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

24 I was coming aboard as independent legal

1 representation. I instructed him, you know, in
2 that attorney-client relationship that he couldn't
3 do -- I couldn't advise him to do anything except
4 not say a word to anybody until I had a better
5 understanding of the facts and circumstances as
6 they were exploding around us, which is what they
7 were.

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

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

13 MS. TOOHER: 47.

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

17 MS. SHANKS: Page 47?

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

19 MR. KOENIG: What line, counsel?

20 MR. TEITELBAUM: It starts with 13. "Q: Who
21 said that you couldn't talk to him," meaning
22 Andrew Cuomo, and the answer: "Administration,
23 Peter Pope and Sean Maloney. There was a critical
24 moment where it was conveyed to me 'You can't do

1 it. He is not going to listen.' And I objected
2 and I wanted to turn to Terry. I didn't have
3 counsel when those discussions were underway.
4 When I finally obtained counsel, we just didn't
5 have the time to sort of interact with Andrew."

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

10 MR. KOENIG: Yes. Yes.

11 MR. TEITELBAUM: Okay.

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

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

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

22 MR. TEITELBAUM: What did you learn?

23 THE WITNESS: Not enough so that if you
24 gave me a quiz on it at 10:00 o'clock that night,

1 I'd be able to pass. I mean, it was all very
2 confusing.

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

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

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

24 This was a monstrously, incredibly

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

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

21 THE WITNESS: Right.

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

24 What we're trying to find out, Mr. Kindlon,

1 and we haven't been able to find out yet is: What
2 was said to you by these people about politics?
3 What was said to you about the office? What did
4 they say? Whether you understood it or not, what
5 did they say?

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

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

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

16 MR. TEITELBAUM: Ivan? Lacewell?

17 THE WITNESS: Might have been Lacewell. They
18 said words to the effect of, you know, she's a
19 killer. She's brutal. She's incredibly
20 aggressive. She listens to nobody. And, you
21 know, okay, I hear things like that all the time.
22 I mean, that's not unusual. I heard -- you know,
23 I heard derogatory things said about Andrew Cuomo.
24 I mean, obviously --

1 MR. TEITELBAUM: What was said?

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

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

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

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

17 MS. SHANKS: Good.

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

22 MR. TEITELBAUM: Mr. Kindlon, you will not
23 find me defending either Mr. Dicker or anybody who
24 talks to Mr. Dicker.

1 THE WITNESS: All right.

2 MR. TEITELBAUM: I can assure you.

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

5 I said, "I've been hearing that for the last
6 25 years"; okay?

7 MR. TEITELBAUM: Who said that?

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

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

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

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

21 THE WITNESS: Yeah, I think that's probably,
22 you know, fair to say. The fact is that there
23 seemed to be very little trust of Andrew Cuomo and
24 his -- and the women -- there were two women and a

1 man, I recall, who were named and, again, I didn't
2 record their names.

3 MR. TEITELBAUM: Does Ben Larski --

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

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

21 MR. TEITELBAUM: What was said?

22 THE WITNESS: Just, you know, he's -- just
23 he's -- I can't recall specifically. I mean, they
24 were just derogatory remarks of the sort of thing

1 people say when they're sitting around a barroom
2 yacking about people.

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

5 MR. TEITELBAUM: After this, we certainly
6 can.

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

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

1 I was having a very difficult time understanding
2 that.

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

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

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

23 THE WITNESS: No. I think I can --

24 MR. TEITELBAUM: That's what's puzzling me.

1 THE WITNESS: I think I can respond to that
2 question intelligibly. I'm there as a lawyer.
3 I'm talking to lawyers, talking to lawyers. We
4 lawyers talk to each other about my client, a
5 client. And when they spoke to me, my
6 understanding was that this was legal advice that
7 they had given him.

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

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

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

22 MS. SHANKS: Yes.

23 (A short break was taken.)

24 (Commission Exhibit No. 114 was marked for

1 identification.)

2 BY MS. TOOHER:

3 Q. I'm showing you what's been marked as Exhibit 114.
4 It's an e-mail thread from Sean Maloney to Peter Pope.
5 The top thread is 7/21 at 1:07 a.m. The next thread is
6 7/20/2007 at 1:23 p.m. to Nocenti and Maloney.

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

9 Q. Correct.

10 A. Okay.

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

14 A. Okay.

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

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

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

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

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

23 A. I first learned that there was going to be a
24 report on Sunday when I was told that the report was

1 done.

2 Q. Okay. We'll get to that in a moment. I just want
3 to take you back to the e-mail, this from Sean Maloney to
4 Peter Pope. "Agree, though, he may not want it to be on
5 advice of counsel. He may prefer that it's a Chamber
6 strategy."

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

10 A. Not as such. I was told --

11 Q. By whom?

12 A. I believe Peter. I believe Peter Pope.
13 (Continuing) -- that Darren was not going to testify;
14 that he was going to give a statement instead of
15 testifying.

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

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

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

24 A. I was told that -- I believe it was at the

1 Saturday meeting, yeah. I'm quite certain it was at the
2 Saturday meeting, to my recollection.

3 Q. And what was your response to that statement?

4 A. I didn't question it. I didn't discuss it. I
5 just accepted that information. I filed it along with
6 the other information that I was accumulating at that
7 time.

8 Q. And did you relay at some point to Pope that Dopp
9 wanted to testify; he didn't want to give a statement?

10 A. Well, no, but the -- the fact that there was going
11 to be a report -- as I said before, the first I heard
12 about there was going to be a report was when the report
13 was done and it was done very, very quickly after I came
14 into this situation.

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

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

23 A. Correct.

24 Q. And how did you learn that?

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

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

13 A. It may have been on Saturday afternoon.

14 Q. At the meeting or afterwards?

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

19 Q. And how is that?

20 A. I learned from somebody that Darren would be
21 giving a statement and it may have been on Saturday
22 afternoon. I'm just not -- I'm not completely certain
23 about that, but I learned that. On Sunday morning, there
24 was a statement that came to me from the Chamber.

1 Q. And how did that come to you?

2 A. I believe it was an e-mail.

3 Q. And who did it come from?

4 A. I don't specifically recall. And I didn't keep a
5 copy of it and I couldn't find one in my -- you know, in
6 my e-mail trough. It doesn't seem to be in there.

7 Q. Did you have conversations concerning the content
8 of the statement prior to the arrival by e-mail?

9 MR. KOENIG: With who?

10 Q. With anyone.

11 MR. KOENIG: Well, except for conversations
12 you had with Dopp.

13 Q. Okay. With anyone from the Chamber prior to the
14 statement's arrival.

15 MR. TEITELBAUM: Including Dopp. That's not
16 a privilege.

17 MR. KOENIG: I'm sorry. Not the substance --
18 well, was your question did you have --

19 Q. Conversations with anyone --

20 MR. KOENIG: I thought she was getting to
21 substance. You can answer whether or not you had
22 conversations.

23 A. Right. On Sunday, there were conversations had, I
24 believe, with Peter Pope, I believe, and Darren. And I,

1 of course, discussed it, but I don't think I can --

2 MR. KOENIG: No.

3 THE WITNESS: Yeah.

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

6 A. I may have.

7 Q. And what about David Nocenti?

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

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

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

20 Q. Did you --

21 MR. TEITELBAUM: Forget the exact language.

22 Words or substance.

23 THE WITNESS: Words or substance, you know, I
24 honestly -- I just don't remember. I just don't

1 remember. And, I mean, I can't -- I can't discuss
2 conversations that Darren and I had with each
3 other.

4 Q. What about conversations with the Executive
5 Chamber?

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

8 Q. To anyone in the Executive Chamber?

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

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

15 A. I probably said that.

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

18 MR. TEITELBAUM: To the Executive Chamber.

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

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

23 A. Yeah.

24 Q. Did you relay that to the Executive Chamber?

1 A. Well, again, I don't specifically recall that, but
2 that certainly sounds like something I would have said a
3 couple of hundred times early on, because I didn't get
4 it. I didn't know what he supposedly had done that was
5 incorrect or unlawful or unethical or untoward or
6 anything.

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

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

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

22 A. Well, the statement originated with the Executive
23 Chamber and it was given to me and the statement that I
24 was initially given was something that I didn't like the

1 way it was written. I spent time during the day
2 proposing modifications to it. I was in contact with
3 Darren during the day. I can't --

4 MR. KOENIG: Don't say --

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

7 MR. KOENIG: She's not asking that.

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

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

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

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

22 A. Correct.

23 Q. Was that the first version that you got was an
24 e-mail version of the statement?

1 A. To the best of my recollection, yes.

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

4 BY MS. TOOHER:

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

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

10 Q. And is this the first version you saw?

11 A. I can't say.

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

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

16 Q. Do you have any idea how many?

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

22 Q. You and Darren had a number of conversations?

23 A. Darren and I. And I think I may have had
24 conversations with Peter Pope or somebody else in the

1 Chamber earlier or, you know, during the course of the
2 day.

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

5 A. Uh-huh.

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

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

13 MR. TEITELBAUM: Off the record.

14 (Discussion off the record.)

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

17 THE WITNESS: Right.

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

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

23 MR. TEITELBAUM: On July 22nd, 2007, at 1:00
24 p.m., was it your understanding -- withdrawn.

1 Were you negotiating the language of what
2 would ultimately be the Dopp statement?

3 THE WITNESS: Oh, yeah.

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

6 THE WITNESS: Definitely.

7 MR. TEITELBAUM: When did those negotiations
8 start?

9 THE WITNESS: In the morning.

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

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

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

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

22 MR. TEITELBAUM: Is your answer yes?

23 THE WITNESS: I'm not sure. You'd have to
24 ask the question again before I answer.

1 Patrick Maloney. And if David Nocenti had been
2 there, and if it was the 22nd, not the 21st, then
3 also David Nocenti would have been there as well.
4 And Darren was -- Darren was clear that, you know,
5 he wanted to go talk to Andrew Cuomo.

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

9 THE WITNESS: Yeah, and me.

10 MR. TEITELBAUM: And that was in your
11 presence?

12 THE WITNESS: Correct.

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

15 THE WITNESS: Yeah.

16 MR. TEITELBAUM: And what did he say?

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

21 MR. TEITELBAUM: And what did they say to him
22 in response, the Executive Chamber
23 representatives? And do you think you could
24 remember who it was --

1 THE WITNESS: Well, in that context, they
2 said words and substance just, you know, "It isn't
3 necessary. Don't do it."

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

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

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

13 THE WITNESS: That's my recollection, yeah.

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

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

22 MR. TEITELBAUM: That would have been on the
23 22nd?

24 THE WITNESS: Yeah. And after I became aware

1 that the report was written, I think I can say
2 this without violating any confidences, I said --

3 MR. KOENIG: Don't say anything that Darren
4 Dopp told you.

5 THE WITNESS: Yeah. No.

6 MR. KOENIG: Keep going about anything but
7 not --

8 MR. TEITELBAUM: I think he was about to say
9 what he said.

10 THE WITNESS: Yeah. I can say what I say.

11 MR. KOENIG: Fine. Then, he also said "I
12 don't want to violate --" he can't say something
13 he heard if he's parroting Dopp. What he said
14 would be fine as long as he's not parroting what
15 Dopp told him.

16 THE WITNESS: After the report was written,
17 my position was that there was no testimony to be
18 given by Darren, that there was no statement to be
19 made, that there was no forum for him to speak to
20 Cuomo, that it was done. I mean, it was a done
21 deal.

22 MR. TEITELBAUM: Did you feel blind-sided by
23 the fact that you weren't told that there was a
24 report that was essentially prepared when you met

1 on the 21st?

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

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

7 MS. SHANKS: Blind-sided by whom?

8 MR. TEITELBAUM: By the Executive Chamber.

9 MS. SHANKS: Oh.

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

13 THE WITNESS: Absolutely.

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

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

21 THE WITNESS: Yeah, I mean I --

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

23 THE WITNESS: Well, on the 21st, to my
24 knowledge, there was no report written or even

1 being written on the 21st. I mean, I didn't --
2 that -- nobody ever said to me that the Attorney
3 General is engaged in activity which will result
4 in a report being written and issued and made
5 public. Nobody said that.

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

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

16 MR. TEITELBAUM: From whom?

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

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

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

24 MR. GINSBERG: Do you know when in the day

1 that was?

2 THE WITNESS: Sorry?

3 MR. GINSBERG: When in the sequence of
4 events, approximate time.

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

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

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

21 BY MS. TOOHER:

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

1 statement --

2 A. Uh-huh.

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

5 A. No.

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

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

10 Q. You were told?

11 A. Yeah, I was told.

12 Q. By members of the Chamber?

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

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

17 A. Well --

18 Q. -- or whatever it is?

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

1 Q. But you knew the report was from the Attorney
2 General's Office?

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

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

9 A. No, none at all.

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

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

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

15 A. To my knowledge, nobody notified them.

16 Q. And when you were doing the statement, the July
17 22nd statement that you're drafting here --

18 A. Uh-huh.

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

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

23 Q. And was it to have -- did it have anything to do
24 with the report?

1 A. Well, I presume that it was going to and, you
2 know, again, we're in the situation where we're working
3 on the statement. We're told that the Attorney General
4 has finished his report. We finished the statement. We
5 executed the statement. Again, it was later in the day.
6 And we learned -- or I was informed that the report was
7 brutal and the next morning, it became clear that it was
8 brutal. So, again, these things were all evolving
9 quickly.

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

14 THE WITNESS: To give to the Attorney
15 General.

16 MR. TEITELBAUM: For what purpose?

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

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

23 THE WITNESS: About the issues involving the
24 use of aviation resources by Senator Bruno, the

1 FOIL request, the James O'Donnell from the Times
2 Union's formal and informal FOIL requests.

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

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

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

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

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

24 MR. KOENIG: Don't go into conversations with

1 Darren Dopp. (Directing to the witness)

2 THE WITNESS: No, no.

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

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

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

12 MR. KOENIG: I understand that.

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

22 And, you know, I'll tell you very candidly
23 that the statement that was ultimately signed was
24 very deliberately drafted to be -- you know, to

1 say next to nothing. I think I previously
2 characterized it as being analogous to a
3 non-apology apology.

4 BY MS. TOOHER:

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

8 A. No.

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

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

14 Q. A placebo to what?

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

18 Q. And where did you get that understanding from?

19 A. From inside my brain.

20 Q. Based on what?

21 A. Based on 35 years of practicing law and knowing
22 that, for all intents and purposes, the best thing for
23 Darren to do at this point was to admit to nothing. And
24 my understanding from the Chamber, I think I can say, was

1 that if Darren gave -- you know, if Darren closed the
2 circle so to speak that he would suffer a little piece of
3 discipline, five-day suspension, something like that, the
4 matter would be concluded and he could go back to work.

5 Q. And where did that understanding come from?

6 A. I believe it came from Peter Pope.

7 Q. And what did he say to you in that regard?

8 A. Words or substance -- and I mean -- and, again, I
9 mean, this is not a world where people speak in simple
10 declarative sentences; okay? I mean, there's a lot of --

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

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

15 MS. SHANKS: Can I just have one moment here?

16 (Conferring.)

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

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

22 MR. KOENIG: What was the question?

23 THE WITNESS: Why don't you two talk because
24 it's --

1 MR. KOENIG: I don't know what you're
2 conferring on. You want to step out and tell me
3 what the issue is?

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

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

17 So when you say, you know, how did you find
18 this out, I think that a privilege is impacted,
19 because they were not one-on-one conversations,
20 for instance, between Mr. Pope and Mr. Kindlon.
21 They were statements made by Mr. Pope, Mr.
22 Nocenti, Mr. Maloney to Mr. Dopp even though he
23 was represented by a different attorney. And I
24 think that that may at some later forum factor

1 into whether or not he believes that they were
2 still either representing him, advising him,
3 consulting with him, negotiating with him. I
4 don't know how you would characterize it. But the
5 information that Mr. Kindlon got, some of it was
6 from his client -- was from these individuals
7 through his client. And that's why I want to make
8 it clear that I don't believe that he can answer
9 the question other than when you ask specifically
10 what did Mr. Nocenti, for instance, tell you, but
11 I don't want the inference to be that if he didn't
12 specifically say something, then Mr. Kindlon
13 didn't have any information.

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

17 THE WITNESS: I do, yeah.

18 MR. TEITELBAUM: And as your own testimony?

19 THE WITNESS: Yes.

20 BY MS. TOOHER:

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

24 A. Well, that he'd be sidelined for about a week and

1 then returned to his position in the Governor's office.

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

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

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

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

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

18 Did your conversations at that time in the July
19 22nd meeting encompass the benefit to Darren from
20 executing the statement?

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

23 MR. TEITELBAUM: Talking about this meeting.

24 MS. TOOHER: This meeting at that point, if

1 he's talking to Darren or anyone else.

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

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

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

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

16 Q. And how did you obtain that understanding?

17 A. Out of the --

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

20 THE WITNESS: Right.

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

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

24 MR. TEITELBAUM: I know, but you got

1 instructions based upon the rules here that you
2 all established, that if Mr. Koenig raises an
3 issue, we understand that the witness is not gonna
4 testify, but we don't need two lawyers doing it.

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

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

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

22 BY MS. TOOHER:

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

1 A. Okay.

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

4 A. Right.

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

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

9 A. Yeah.

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

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

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

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

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

19 Answer: "Right."

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

22 A. Well, that's an accurate recitation of what Darren
23 said in response to, I think, your questions. The --
24 there were conversations going on in the room, you know,

1 on and off between and among Darren and Maloney and, I
2 believe, Nocenti. Those things may have been said. I
3 don't specifically recall hearing those things said.

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

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

15 A. Correct.

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

18 A. Correct. That is correct.

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

21 A. Well, I don't know if it was contingent upon him
22 signing the statement. I don't know if that was a
23 condition precedent or something. I think that was just
24 the way it was being handled. I don't think anybody was

1 saying that that was the only way it was going to be
2 accomplished, but it certainly was the way it was being
3 handled. He wasn't going to give a statement written --
4 I mean, he wasn't going to testify. He was going to give
5 a statement and that would be the end of it.

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

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

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

14 A. I think just the tenor of the conversation, Pope
15 and Maloney, that -- I mean, nobody said to me, "If we
16 give him this statement, then that will satisfy him and
17 he won't bother us anymore", but it seemed to be a given.

18 And, again, to put this in context, the perception
19 in the room at the time was that Cuomo's investigators
20 who were working for him, that they were being more
21 aggressive in their investigation than he intended for
22 them to be and that they had sort of -- they'd become
23 kind of like a runaway grand jury, that they couldn't be
24 stopped, that they were just on a mission and I had --

1 and again, now, I've got information that I'm aware of,
2 but I'm not sure it didn't come from Darren, so I can't
3 go there. It's kind of -- I don't know if I heard
4 certain things from Pope and Nocenti or Maloney or
5 Darren, so that's what troubles me.

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

8 MR. KOENIG: What pages?

9 MS. TOOHER: This is page 56.

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

12 THE WITNESS: 47.

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

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

1 it was crime "-- and that this was best for all concerned
2 that I did sign it."

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

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

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

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

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

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

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

23 THE WITNESS: In conversations with me?

24 MR. TEITELBAUM: Yeah.

1 THE WITNESS: Never.

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

8 THE WITNESS: Yeah.

9 MR. TEITELBAUM: At that 22nd meeting?

10 THE WITNESS: Yes.

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

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

15 MR. TEITELBAUM: In lieu of signing the
16 statement?

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

1 testify.

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

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

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

17 MR. TEITELBAUM: From his perspective?

18 THE WITNESS: Yeah.

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

24 MS. SHANKS: What line are you on? Sorry.

1 MR. TEITELBAUM: 21.

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

5 "Repeatedly."

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

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

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

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

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

23 THE WITNESS: Yeah.

24 MR. TEITELBAUM: And did he make that

1 statement in your presence on the 21st or the
2 22nd?

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

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

16 And that particular statement, you can gather
17 from the question that's from 9 to 18 meaning
18 referring the matter to the state police.

19 Was that the truth, that he did not
20 wholeheartedly believe that particular statement,
21 to your knowledge?

22 MS. SHANKS: I'm going to --

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

24 THE WITNESS: How can I answer that?

1 MS. SHANKS: I'm also going to object that
2 that's --

3 MR. TEITELBAUM: He could have told you.

4 MS. SHANKS: Excuse me?

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

6 MR. KOENIG: Objection.

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

15 MR. TEITELBAUM: Show him the document.

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

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

23 MR. TEITELBAUM: And to your knowledge, was
24 he telling the truth when he testified on page 61?

1 MR. KOENIG: He can't answer that. It would
2 be based on what Darren told him.

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

8 MR. KOENIG: Okay.

9 MR. TEITELBAUM: Do you differ?

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

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

22 He says in there that what he means by
23 wholeheartedly is that that was one option, there
24 were different options, not that he was saying

1 something untruthful but that there were different
2 options and either for political reasons or other
3 reasons, not because it was illegal or improper.

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

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

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

14 MR. KOENIG: I've got to leave here in about
15 10 minutes.

16 MR. TEITELBAUM: You said 5:30.

17 MR. KOENIG: 5:15.

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

21 On line 21 of page 62 to 63, starting at 21,
22 "Now, I want to know whether on July 22nd, 2007
23 when you signed this if that was your genuine view
24 that this was something you should have done and

1 you didn't do? And I think you can say yes or no
2 to that, if you can."

3 Answer: "Not then and not now."

4 MS. SHANKS: Can you say yes or no?

5 (Directing to the witness)

6 MR. KOENIG: What is the question?

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

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

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

15 MR. KOENIG: Objection to the question.

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

17 MR. TEITELBAUM: What's your ground?

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

22 And, also, I would ask that if, in fact,
23 you're going to ask further questions along these
24 lines that we be provided with this copy so that

1 Mr. Kindlon can review Darren's complete answer if
2 you're going to then ask him whether based on
3 something other than Darren's conversations with
4 him, he has some basis for a belief as to whether
5 or not this is a truthful answer.

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

9 MR. TEITELBAUM: Because it's speculative?

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

13 MR. TEITELBAUM: Take your --

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

15 MR. TEITELBAUM: Take your time to review it.

16 MS. SHANKS: Secondly, you're asking him to
17 speculate. And, thirdly, you're asking him to
18 opine about something for which he is not
19 competent, which is what is in the heart -- I
20 mean, an analogy -- I mean, if I say to a child,
21 you know, "Say you're sorry." "Sorry." Did he
22 really mean he was sorry? Well, I don't know.
23 Did he really mean he was sorry? Is that a legal
24 question? I don't know.

1 MR. TEITELBAUM: I don't have to ask legal
2 questions and I can ask speculative questions.

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

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

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

11 MR. TEITELBAUM: Take your time.

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

13 MR. TEITELBAUM: Take your time.

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

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

18 (Discussion off the record.)

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

21 QUESTION: "My question is: Was it your
22 understanding when Mr. Dopp signed the
23 statement on July 22nd that it was not his
24 genuine view that he should have referred the

1 matter to the state police?)

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

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

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

18 MR. TEITELBAUM: The question stands.

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

21 MR. TEITELBAUM: Off the record.

22 (Discussion off the record.)

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

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

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

8 THE WITNESS: Okay.

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

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

16 * * * * *

17

18

19

20

21

22

23

24

(Continued in Volume II, page 140.)

1	INDEX TO WITNESS	
2	EXAMINATION BY MS. TOOHER.....	PAGE 3

3

4 INDEX TO EXHIBITS

5	COMMISSION	
6	EXHIBIT NOS.	FOR IDENT.
7	113 1-pg e-mail	39
8	114 1-pg e-mail thread	88
9	115 Early version of statement by Darren Dopp; 1-pg	97

10

(EXHIBITS WERE NOT PROVIDED TO THE COURT REPORTER.)

11

12

13 REQUESTS FOR DOCUMENTATION/INFORMATION

14

Pg 11/Ln 3 Copy of notes

15

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

16

17 QUESTIONS WITNESS DIRECTED NOT TO ANSWER

18

Pg 12/Ln 12 "Mr. Kindlon, in the interview that you
had with Linda Griggs, just quickly
before we discuss this, can you tell me
what was said during that interview?"

19

20

Pg 53/Ln 7 "And was the position that the Chamber
was now taking concerning Mr. Dopp's
testimony at odds with your discussion
with Mr. Dopp?"

21

22

Pg 127/Ln 19 "Was that the truth, that he did not
wholeheartedly believe that particular
statement, to your knowledge?"

23

24

1 QUESTIONS WITNESS DIRECTED NOT TO ANSWER CONTINUED

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

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

1 STATE OF NEW YORK

2 COUNTY OF

3

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

8

9

10

11

TERENCE L. KINDLON, ESQ.

12

13 Sworn to before me this

14

day of

, 2008.

15

16

17

18 Notary Public

19

20

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

C E R T I F I C A T I O N

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

THERESA L. KLOS

Dated: January 24, 2008.