

STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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

March 19, 2008
11:00 a.m.
NYS Commission on Public Integrity
540 Broadway
Albany, New York 12207

A P P E A R A N C E S:

FOR THE COMMISSION:

MEAVE M. TOOHER, ESQ.
Investigative Counsel
NYS Commission on Public Integrity
540 Broadway
Albany, New York 12207

FOR THE DEPONENT:

SUSAN R. NECHELES, ESQ.
HAFETZ & NECHELES
500 Fifth Avenue
New York, New York 10110

ALSO PRESENT:

Herbert Teitelbaum, Executive Director
Joan Sullivan, Associate Counsel
Robert Shea, Associate Confidential Investigator

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 P E T E R P O P E ,
2 having been first duly sworn by the notary public, was
3 examined and testified as follows:
4 BY MS. TOOHER:
5 Q Can you state your full name for the record?
6 A Peter Pope, P-O-P-E.
7 Q And Mr. Pope, where are you employed?
8 A I'm employed in the Executive Chamber of the New
9 York State Governor's Office.
10 Q And what is your position?
11 A Director of Policy.
12 Q And how long have you been in that position?
13 A Since the first day of the then Spitzer
14 Administration.
15 Q And that would be January 1, 2007?
16 A Correct.
17 Q And what are your responsibilities in that
18 position?
19 A They're pretty broad-ranging. I negotiate
20 legislation. I work on policy positions internally,
21 and I also did a -- during a period of time, I was also
22 appointed Special Counsel to David Nocenti in
23 connection with an investigation being conducted by the
24 Office of the Attorney General.
25 Q And what was the nature of that investigation?

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 A The nature of that, it sprang from a July 1
2 newspaper report in the Albany Times Union.

3 Q And what was the report concerning?

4 A It was concerning Senator Bruno's alleged misuse
5 of state aircraft.

6 Q And in your role as Special Counsel in that
7 investigation what were your duties?

8 A My duties were to be lawyer for the Chamber and
9 to respond to the investigative requests of the
10 Attorney General's Office.

11 Q And you were representing the Executive Chamber
12 in that capacity?

13 A The Executive Chamber and some employees in
14 their official capacity.

15 Q And who were the employees you were representing
16 in the official capacity?

17 A Anybody that the Attorney General's Office
18 needed to speak to at that time.

19 Q Anybody from the --

20 A The --

21 Q -- Executive Chamber?

22 A Yes, anybody from the Executive Chamber. There
23 was also an Inspector General investigation. I was
24 representing the Chamber in connection with that as
25 well.

1 Q And were those separate investigations or joint
2 investigations?

3 A At different times I believe that they had
4 different status, and it's difficult for me to
5 characterize them. It's probably best if you ask them.

6 Q About specific --

7 A Yeah.

8 Q And did you represent anyone in your capacity as
9 a special counsel individually?

10 A Only in their official capacity.

11 Q So not in their personal capacity?

12 A Not in their personal capacity.

13 Q And was it made clear to individuals in the
14 Executive Chamber that you only represented them in
15 their official capacity?

16 A Yes, it was.

17 Q When were you appointed Special Counsel?

18 A Friday the 13th.

19 Q That's Friday the 13th of July?

20 A Yes.

21 Q 2007?

22 THE COURT REPORTER: Can everyone
23 speak up just a bit, please.

24 THE WITNESS: Sure. If I could,
25 just let me turn this off.

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 MR. TEITELBAUM: Off the record.

2 (Discussion was held off the record.)

3 Q And in your capacity as Special Counsel you
4 indicated you were appointed by David Nocenti?

5 A That's correct, a designation letter.

6 Q And can you describe Mr. Nocenti's position with
7 the Chamber?

8 A He's counsel to the Governor, was and is.

9 Q And just getting back to your duties within the
10 Chamber, what was your reporting status?

11 A My official reporting status was to the
12 secretary of Rich Baum, and I also had a reporting
13 status, kind of a dotted line reporting status to the
14 Governor as director of policy.

15 Q And when you say "dotted line reporting status,"
16 what do you mean by that?

17 A I worked with the Governor for many years so
18 that if he asked me to work on a project he would
19 frequently follow up directly with me. For example,
20 one of the things I did was the worker compensation
21 negotiation, and he would frequently call me directly
22 and ask me --

23 Q And did you report to anyone else?

24 A After being designated Special Counsel to David
25 Nocenti, I also reported to him.

1 Q And did you report to Mr. Nocenti in any other
2 capacity?

3 A No, but obviously communicated with him
4 frequently.

5 Q And what was your relationship to Darren Dopp?

6 A Darren and I had known each other through the
7 former Governor Spitzer's tenure as Attorney General.
8 At that stage, he was the Director of Communications
9 for the Attorney General's Office. I was variously the
10 Special Counsel to the Governor and the head of the
11 criminal division.

12 Q How long were you in the Attorney General's
13 Office?

14 A Eight years.

15 Q And where were you prior to the Attorney
16 General's Office?

17 A I was the Inspector General for the New York
18 City School Construction Authority. I held that post
19 for two years. I was the first assistant to the
20 Inspector General for two years before that. Prior to
21 that, I was the vice president at Goldman Sachs. And
22 before that, I was the Deputy Chief of the Labor
23 Racketing Unit in New York County.

24 Q That's with the New York DA's office?

25 A Yes, it is.

1 Q And in terms of Mr. Dopp, what were the types of
2 issues you would discuss with Mr. Dopp within the
3 Chamber?

4 A Within the Executive Chamber?

5 Q Yes.

6 A We would talk about the -- when I had an issue
7 that was getting ripe, I would talk to him about how it
8 was getting ripe, and I would also talk to him
9 occasionally to see how he thought the Administration
10 was going.

11 Q And Mr. Dopp, what was his position with the
12 Chamber?

13 A He was Director of Communications in the
14 Chamber, as well.

15 Q And when you say an issue was getting ripe what
16 do you mean by that?

17 A For example, it was important for him to know
18 how close we were getting to resolution on the workers
19 compensation negotiations, because a successful
20 negotiation would also involve communication strategy
21 afterwards, or leading up to it, so he would like to
22 know how far along things were.

23 Q And would Mr. Dopp come to you with issues?

24 A Rarely. I would stop by -- our offices were on
25 the same hallway in the Executive Chamber, and I would

1 sometimes go in and sit down and just see what was
2 going on.

3 Q And did you also have a personal relationship
4 with Mr. Dopp?

5 A We have been friendly over the eight years, but
6 we never socialized together outside of the office.

7 Q So to the extent you had a personal relationship
8 with Mr. Dopp, it was a business-office friendship?

9 A Correct.

10 Q And did Mr. Dopp ever discuss with you Senator
11 Bruno's use of the aircraft?

12 A He did.

13 Q Do you recall when the first time that was?

14 A I don't recall -- I don't, I don't. I don't
15 remember the dates. I remember I wandered into his
16 office for something else, and I don't remember exactly
17 what it was. And he shoved a piece of paper at me,
18 which was a flight request form signed by Senator
19 Bruno. And he said if Bruno was going to a
20 fund-raising thing, would that be a false statement.
21 And I explained to him that it would not be, and asked
22 him, Look, you've been to more fund raisers than I've
23 been to, is it possible in any way for him to go to a
24 fund raiser and have no-one talk to him about
25 legislative business? Would somebody come up to him

1 and talk to him about legislative business? And he
2 said, Of course, they would. And I said, You don't
3 have a case; it's literally true. I explained to him a
4 case that the former Governor had worked on when he was
5 a young DA, the Ornstein case, and said there's nothing
6 there. The case didn't -- the conversation didn't last
7 for very long at all.

8 Q When you said -- when you explained to him the
9 Ornstein case, what did you tell him about that case?

10 A I told him that there is a case, and ironically
11 the Governor worked on it when he was a young
12 assistant, and that it stood for the proposition -- I
13 think, although I'm not positive, I described the
14 holding to him; that is, that people who are working on
15 a campaign or the Court of Appeals construed it to be
16 within their legislative duties. And then I talked
17 about how false statements in New York are extremely
18 strict; literal truth is a defense, so that if he did
19 legislative business it was literally true.

20 Q And did you explain to him how that related to
21 Senator Bruno's use of the craft?

22 A I asked him if there was any possibility that no
23 legislative business would be discussed. And he said,
24 No, of course it would be discussed, and I think I made
25 a gesture with my hands like, you know, okay, it's

1 literally true.

2 Q So it was -- it was your understanding, based on
3 your conversation with Mr. Dopp, that Senator Bruno's
4 use of the plane in this fashion was not a problem.

5 A I had pretty limited facts. I mean it was
6 presented to me as if he's attending a fund raiser, is
7 this a false statement.

8 Q I'm going to show you what has previously been
9 marked as Commission's 28B and ask you if you can
10 identify this document?

11 A I can't identify this document, but it looks
12 similar to the one that was shown to me.

13 Q Do you recall if the one that was shown to you
14 was the May 17th and 18th itinerary?

15 A I have no idea when it was.

16 Q But it was this type of a flight request form?

17 A It was a flight request form. I don't remember
18 whether or not it was a photo -- a faxed copy, and I
19 don't remember whether or not it was this precise
20 wording, the legislative business meetings. I do
21 remember it had something about legislative business
22 because that's what, to me, made it a literally true
23 statement if any legislative business was discussed.

24 Q And in the context of discussing legislative
25 business was it your understanding then, when you had

1 your initial conversation with Mr. Dopp, that even at a
2 fund raiser Mr. Bruno could arguably be conducting
3 legislative business?

4 A It was I was looking at this from the point of
5 view of a criminal case that I would feel comfortable
6 bringing if I were in any of my past roles.

7 Q Sure.

8 A And in a beyond-a-reasonable-doubt situation, it
9 seems to me that it would be insuperable if anybody at
10 that meeting had a conversation with him about
11 legislative business then the purpose of the flight
12 request would be literally true.

13 Q Did you and Mr. Dopp discuss at that time the
14 need for additional information in making a
15 determination concerning Senator Bruno?

16 A I don't think so.

17 Q Did Mr. Dopp provide you with any additional
18 information --

19 A No.

20 Q -- in that conversation?

21 A No.

22 Q I'm going to show you what has previously been
23 marked as Commission's Exhibit 5 and ask you if you've
24 seen this document before?

25 A I'm not positive, but I believe that I saw this
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 document, or a document similar to this, as we were
2 gathering documents for either the Inspector General or
3 the Attorney General.

4 Q So after the July 1st article.

5 A Correct, after July 13.

6 Q So after your appointment as Special --

7 A Correct.

8 Q -- Counsel.

9 A Yes.

10 Q And you had not seen this document prior to that
11 time?

12 A No.

13 Q And had Mr. Dopp ever shown you this document
14 prior to that time?

15 A I don't believe so.

16 Q Had he shown you a document similar to this
17 prior to that time?

18 A I don't think so.

19 Q Did Mr. Dopp ever discuss with you, prior to the
20 July 1st article, obtaining Senator Bruno's
21 itineraries?

22 A Itineraries? I don't believe so.

23 Q Did he ever discuss with you obtaining
24 information concerning Senator Bruno?

25 A It was implicit in this conversation. He must

1 have gotten this from somewhere. I'm talking about --

2 Q 28B.

3 A 28B, thank you. I mean it's their -- it was a
4 document about Senator Bruno's problem.

5 Q But did he ever discuss with you obtaining
6 further information concerning Senator Bruno?

7 A No.

8 Q I'm going to show you what has been marked as
9 Commission's 30 and ask you if you've seen this
10 document before?

11 A I have, again in the --

12 MS. NECHELES: I just want to make
13 one, one clarification. I understand when
14 you're asking him whether he has seen documents,
15 you mean other than with your attorney.
16 Instruct him that when he answers, he's
17 answering other than this and discussions have
18 you ever discussed something other than with
19 your attorney.

20 THE WITNESS: You mean you.

21 MS. TOOHER: You mean you.

22 MS. NECHELES: Right, meaning me.

23 MS. TOOHER: Absolutely.

24 MS. NECHELES: And that will just
25 apply to everything. We'll just assume that

1 that applies to everything.

2 MS. TOOHER: Fine.

3 A I believe that this is a document that I also
4 first saw in connection with gathering documents, but
5 it was -- if I remember right, it was discovered after
6 the AG's report was issued.

7 Q And when you say "it was discovered," how did
8 that happen?

9 A I think that it must have been in response to a
10 document demand from the Public Integrity Commission.

11 Q And how was the document discovered? How did it
12 come into your hands?

13 A I'm not positive. I think it came into my hands
14 through Sean Maloney, but I'm not positive.

15 Q And when you say this came into your hands after
16 the Attorney General's report was issued, that was
17 issued on July 23?

18 A It could have been a demand from DA source
19 instead. I'm sorry, a lot of people made a lot of
20 demands over time, so I don't know whether or not the
21 search that produced this document was done pursuant to
22 your request or source's request, but your
23 investigation was running side by side at that time, I
24 believe.

25 Q And what was your reaction when you saw this

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 document?

2 A I was surprised and distressed that it had not
3 been disclosed to the lawyers before.

4 Q When you say "surprised" what do you mean by
5 that?

6 A If I remember right, this document, or a
7 document like this, was attached to e-mails that went
8 from Darren, I believe, to Rich Baum, and I'm not sure,
9 and I think also to Chrissy Dean Anderson; although,
10 I'm not positive. I don't -- the e-mails obviously
11 will display who was on them. One of the big issues
12 was whether or not the tendering of documents to the
13 Albany Times Union had been in response to a press
14 request. We had been unable to find documents that
15 showed that. And the first sentence of this
16 document -- and if I remember right, the e-mail was
17 also dated May 17 -- was our office has received
18 inquiries regarding Senator Majority Leader Joe
19 Bruno's use of state aircraft. So it was a document
20 created May 17 that, at least on its face, purported to
21 say that there had been an inquiry.

22 Q And did you --

23 A And so I was upset that I had not had this
24 document before the issuance of the reports or that
25 anyone had told us about it.

1 Q And did you discuss that fact with anyone, that
2 it had not been provided previously and you were
3 somewhat upset about --

4 A It was less a matter it hadn't been provided.
5 It was a matter of -- I think it was a different
6 search, and I don't remember exactly what search did
7 it, but it was some different search and up it came.
8 Yeah, I did, I discussed it with Sean and with David,
9 David Nocenti and Sean Maloney.

10 Q And what were their reactions?

11 A I think pretty much the same. We, surprised and
12 upset that an exculpatory document hadn't shown up
13 until later.

14 Q And did Mr. Nocenti indicate he had seen this
15 document before?

16 A I don't believe he did.

17 Q Did Mr. Nocenti provide you with any information
18 concerning this document?

19 A I don't know.

20 Q Did Mr. Nocenti ever discuss with you a meeting
21 concerning this document at or about May 17 with other
22 members of the Executive Chamber?

23 A I don't believe so.

24 Q Did there come a time where you learned about a
25 meeting concerning this document on or about May 17?

1 A Yes.

2 Q And what were the circumstances under which you
3 learned that?

4 A I believe I learned that before the Governor
5 made a statement to District Attorney Soares in
6 connection with his investigation.

7 Q And what did you learn at that time?

8 A I learned at that time that there had been a
9 meeting between Darren Dopp and the Governor and Rich
10 Baum and maybe others about this.

11 Q And what was your understanding as to what
12 occurred at that meeting?

13 A That the Governor did not want this issued
14 because --

15 Q This being, Commission's --

16 A This being --

17 Q -- 30?

18 A -- Commission Exhibit 30 -- because he believed
19 it would be a distraction to the ongoing negotiations
20 between the executive and the legislature at that time.

21 Q And when you had your discussions with Mr.
22 Nocenti about this document, did he indicate to you
23 that he was present at that meeting?

24 A No.

25 Q And has he ever indicated to you that he was

1 present at that meeting?

2 A No, I don't believe so.

3 BY MR. TEITELBAUM:

4 Q Mr. Pope, just a few questions on some of the
5 material that you've gone over. With regard to the
6 conversation that you described with Mr. Dopp in which
7 he came and asked you some questions about Senator
8 Bruno's use of the aircraft --

9 A He didn't come to me.

10 Q You went into his office?

11 A I went into his office.

12 Q Okay.

13 A And while I was there he pushed a document that
14 looks very much like 28B across to me and said, "Take a
15 look at this," and I did.

16 Q Did that conversation occur before or after the
17 July 1st article?

18 A Before.

19 Q Talking about weeks before, months before?

20 A I wish I could tell you, Mr. Teitelbaum, I
21 can't.

22 Q We're dealing with the first six months of 2007.
23 Can you tell us whether it was in the latter part of
24 those first six months or the early part of those six
25 months?

1 A I just can't, I'm sorry. There is no event that
2 I could pin it to. I tried remembering what matter I
3 was going to see him, in an effort to pin it to that
4 time, and I just don't know.

5 Q And if I understand your testimony correctly you
6 had indicated to Mr. Dopp that, at least if you were to
7 put on your hat as a prosecutor in your former life,
8 you didn't think that there was a criminal case to be
9 made on the basis of --

10 A 28B.

11 Q -- 28B.

12 A It's a case I would not have brought.

13 Q How was the -- how was the issue raised as to
14 whether or not the conduct of Senator Bruno's use of
15 the state aircraft might constitute or might not
16 constitute criminal conduct?

17 A In substance, it was take a look at this. If he
18 was going to lobby in meetings, would it make this a
19 false statement.

20 Q And did you infer from Mr. Dopp's asking you
21 whether it would constitute a false statement --

22 THE COURT REPORTER: Excuse me, I'm
23 sorry, can you speak up? The air is --

24 MR. TEITELBAUM: Absolutely.

25 THE COURT REPORTER: Please? Thank
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 you.

2 MR. TEITELBAUM: Let me start all
3 over again. Okay?

4 Q And did you infer from Mr. Dopp's question that
5 he was asking whether this were a false statement that
6 he was inquiring about criminal conduct?

7 A Yes.

8 Q Now turning to Exhibit 30 for a moment, which is
9 the May 17, 2007 document, did you or, to your
10 knowledge, anybody else look into whether there were in
11 fact inquiries received regarding Senator Bruno's use
12 of the state aircraft as set forth in the first
13 sentence of that document?

14 A At any time?

15 Q Correct.

16 A It was very clear, after I had been appointed
17 Special Counsel, that that was one of the main facts
18 that the OAG was seeking to determine. And I had
19 conversations with Mr. Dopp in which I told him that I
20 wanted him to try to determine and see if there was a
21 document that showed when such inquiries had been made.
22 I had been scheduled -- and let me make sure I'm
23 getting the dates right. If I remember right, it is
24 the 23rd that the Attorney General issued his report.
25 The Thursday, the week before that, and I believe

1 before then, but as of Thursday Mr. Dopp was scheduled
2 to testify before the Inspector General on that Monday,
3 the 23rd. I was scheduled to prepare Mr. Dopp for that
4 on Friday. That preparation never took place, and
5 instead he obtained -- retained private counsel, so I
6 did not get the answer to the question that I told him
7 I was going to want answered.

8 Q And the question that you wanted answered was --

9 A When, the very question that you asked, whether
10 an investigation was done when the press inquiries were
11 made.

12 Q And did you ever find out whether there were in
13 fact press inquiries?

14 A I don't know to this day. Well, let me make
15 sure --

16 Q I'm excluding now the OdatO FOIL requests of --
17 in June and July 10.

18 A Are you asking whether I know whether this was
19 initiated by Mr. Dopp or by a reporter?

20 Q That's a question I'd like to --

21 A Okay.

22 Q -- ask you, but that's not the question I'm
23 asking you now. Really, what I'm asking now is, is
24 that had you ever learned whether in fact, other than
25 the OdatO data FOIL request that were received, whether

1 there were in fact inquiries regarding Senator Majority
2 Leader Joe Bruno's use of state aircraft as set forth
3 in the first sentence of --

4 MS. NECHELES: Do you mean did
5 anybody tell you that or --

6 MR. TEITELBAUM: Did anybody tell
7 him that, or did he see a document that
8 indicated it other than --

9 A Other than this document.

10 Q Other than 30, yes.

11 A I don't believe that other than 30, and I think
12 that there -- I saw in the course of the -- in
13 representing the Chamber a handful of e-mails that went
14 back and forth around the time of the -- after, after
15 the formal FOIL had been filed, I believe there was a
16 follow-up e-mail from Odat; although, I'm not
17 positive.

18 Q It would have been after the July 27th FOIL
19 request?

20 A Correct.

21 Q I'm sorry, the June 27th FOIL request.

22 A Correct.

23 Q Yeah.

24 A Yes, but no I never received an answer as to
25 what date, for example, or a description of a specific

1 conversation.

2 Q And to go back to the question that you posed.

3 A I don't know who initiated it.

4 Q Who initiated the --

5 A I do not know whether Jim Odatto spoke to Darren
6 about Senator Bruno first, or whether Darren Dopp spoke
7 to Jim Odatto about Senator Bruno first. I just don't
8 know.

9 Q Was that ever asked of Dopp, to your knowledge,
10 by any -- to your knowledge?

11 A Yes. I asked him, and was expecting to get an
12 answer on the Friday before, which I believe was the
13 20th, and instead counsel was retained for him at that
14 stage.

15 Q And that was the first time that you had asked
16 that question?

17 A I had told him during -- it was Friday the 13th
18 that I was Special Counsel.

19 Q Yes.

20 A The 14th was Saturday. The 15th was Sunday. I
21 spoke to him several times Monday through Thursday and
22 set him to the task of trying to find a piece of paper
23 that would document the request.

24 Q Did he tell you that his -- that the Odatto July
25 1st article was initiated by Odatto and not by him, or

1 words to that effect?

2 A He said that there was a press request by Odató.

3 Q And did he indicate to you that that press
4 request came without his prompting it?

5 A He was trying very hard to remember, and he
6 didn't have specifics, which is why I sent him back to
7 his e-mails and phone logs and to see if anything there
8 would refresh his recollection. Blogs, he thought a
9 blog might have triggered it.

10 Q Now, at that point in time that you sent him
11 back, the Office of the Attorney General had an going
12 inquiry.

13 A Correct.

14 Q And, I take it, that the Office of the Attorney
15 General had requested documents.

16 A Correct.

17 Q And would, to your knowledge, the scope of the
18 document request, made by the Office of the Attorney
19 General, include e-mails or other documents concerning
20 the subject matter that you asked Mr. Dopp to look for
21 before your scheduled meeting to prep him?

22 A I, actually, believe that what I asked him to
23 look for was outside of their document request. I
24 don't have their document request in front of me, but
25 if I remember, it was a request primarily about Bill

1 Howard's e-mails.

2 BY MS. TOOHER:

3 Q You indicated that you sent Mr. Dopp looking for
4 documents after speaking with him following your July
5 13 appointment.

6 A Correct.

7 Q What was that request based upon? Did you have
8 a conversation with him concerning the origin of the
9 requests?

10 MS. NECHELES: Can I? I just
11 didn't understand. The origin of what requests?

12 MS. TOOHER: The requests for --
13 the requests for --

14 MS. NECHELES: His, Mr. Popes's
15 request?

16 MS. TOOHER: No, Mr. Dopp's -- the
17 inquiry concerning Senator Bruno.

18 A You know, it's difficult for me to remember
19 exactly what I knew at which stage, because there had
20 been so many newspaper articles, and I've seen so many
21 documents subsequent. I believe at that stage there
22 had been a lot of newspaper articles, and I had had
23 over the course of that weekend at least one, and maybe
24 more conversations with Ellen Nachtigall from the
25 Attorney General's Office, and it was clear -- and I

1 can't tell you how I knew it was clear. It was clear
2 that it was going to be an important question whether
3 it was a press inquiry or whether it was -- I believe
4 the charge was surveillance. So if the charge is
5 surveillance, the question is, in one sense, is it a
6 request from the press or is it surveillance, and
7 that's why I wanted to see documents.

8 Q And I can certainly understand that, but you
9 indicated that during the weekend of the 13th --

10 A Right.

11 Q -- you had, in effect, sent Mr. Dopp --

12 A No, no, no. I believe, I believe I said that it
13 was sometime that Monday or subsequent days that I sent
14 him looking.

15 Q I stand corrected. But that you had sent
16 Mr. Dopp, in effect, looking for documents proving a
17 press inquiry, if they existed.

18 A Yes.

19 Q That request of Mr. Dopp, was that in response
20 to him saying those inquiries existed?

21 A Yes.

22 Q And did you have a discussion with Mr. Baum
23 about whether or not there were press inquiries?

24 A I did not.

25 Q And did you discuss --

1 A Not in -- later in the investigation Mr. Baum
2 said that he had been told by Mr. Dopp that there was a
3 request from the press, but I would -- did not have a
4 conversation similar with Mr. Baum to the one that I
5 had with Mr. Dopp.

6 Q Did you have a conversation with Mr. Baum
7 concerning Commission's 30?

8 A I don't believe that I've ever had a
9 conversation with Mr. Baum about Commission's 30.

10 Q And did you ever discuss with Mr. Baum the
11 meeting following Commission's 30?

12 A No.

13 Q The meeting at which you indicated --

14 A No.

15 Q -- Dopp and Baum and the Governor were present?

16 A No, I did not.

17 Q And did you ever --

18 A I'm not certain whether, at the time I learned
19 of Commission's 30, Mr. Baum was separately represented
20 or not.

21 Q Did you ever have a conversation with the
22 Governor about that meeting?

23 A Yes.

24 Q And what was the sum and substance of that
25 conversation?

1 A It's the conversation that I repeated to you
2 earlier, that the Governor thought it would be a
3 distraction.

4 Q And was the Governor aware, to your knowledge,
5 at the time of that meeting that Mr. Dopp was
6 collecting information concerning Senator Bruno?

7 A I think --

8 MS. NECHELES: Which meeting are
9 you talking about? The meeting where the
10 Governor --

11 MS. TOOHER: The May 17th meeting.

12 MS. NECHELES: The meeting where
13 the Governor and Mr. Dopp discussed this press
14 release and Mr. Pope was not present?

15 MS. TOOHER: Correct.

16 A I believe that the Governor said that he was
17 shown a copy of this, and he said that -- and he said
18 that he believed it would be a distraction and didn't
19 want it issued. I don't think that I asked or he said
20 whether or not he was aware that documents were being
21 collected at that time.

22 Q Did the Governor ever indicate to you that he
23 was aware that documents were being collected
24 concerning Senator Bruno following the May 17th
25 meeting?

1 A I believe that the Governor knew that documents
2 had been compiled in order to turn them over to Odatto,
3 and that he knew that shortly before they were turned
4 over that they had been collected, so yes.

5 Q And he was aware that Mr. Dopp was part of
6 collecting those documents?

7 A Yes.

8 Q And do you know when he became aware of
9 Mr. Dopp's activities in collecting those documents?

10 A No, but he was certainly aware at least shortly
11 before the 27th when they were actually turned over.

12 BY MR. TEITELBAUM:

13 Q Do you have any knowledge that the Governor knew
14 that Dopp was collecting documents receiving
15 information from the state police and before the point
16 in time that the Governor -- before the point in time
17 that you're referencing, which sounds to me like right
18 before the documents were turned over to Odatto? Do you
19 have any knowledge that he knew of Dopp's activity
20 before that point in time?

21 A I have no personal knowledge. All of my
22 knowledge is from conversations during the course of
23 the representation. And I know that he was aware of --
24 you know, I'm not sure he saw this press release, this
25 being Commission's 30, but I know that the issue was

1 discussed with him, and I have no -- I don't know
2 whether or not he asked, or was otherwise told, that
3 there were documents collected at that time, and indeed
4 I don't know whether documents were collected at that
5 time.

6 BY MS. TOOHER:

7 Q Mr. Pope, I'm going to show you what has been
8 marked as Commission's 122. It appears to be an e-mail
9 from you to David Nocenti and Sean Maloney. Can you
10 identify this document?

11 A Yes. This is an e-mail from me to David Nocenti
12 and Sean Maloney.

13 Q And this was created 7/16 2007.

14 A Yes.

15 Q Can you tell me the circumstances under which
16 this document was created?

17 A Yes. This is the Monday morning after I had
18 been appointed, and I believe that I had told each of
19 them that I had these prior contacts with Darren and
20 thought that they should know, so I summarized it and
21 sent it to them.

22 Q And you indicate in the first line of the e-mail
23 that this is during the events leading up to July 1.

24 A Right.

25 Q So you had two conversations with Mr. Dopp about

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 the circumstances of the AG investigation prior to July
2 1, 2007; is that correct?

3 A That's correct.

4 Q And the first of those conversations is the one
5 we discussed a short while ago.

6 A That's correct.

7 Q Where you happened into Mr. Dopp's office and he
8 asked you about the flight manifest; is that correct?

9 A That's correct.

10 Q And then you had another discussion with
11 Mr. Dopp prior to July 1.

12 A Correct.

13 Q And you refer to that in the second or, I'm
14 sorry, the --

15 A The third paragraph.

16 Q The third paragraph. Can you tell us the facts
17 and circumstances of that conversation?

18 A Very similar. I wandered into his office, and
19 he said -- he asked whether or not this could be
20 referred to a district attorney. And I reminded him
21 that I didn't think it was a crime because of its
22 literal truth. There was a discussion about whether it
23 could be referred somewhere else. And I remember that
24 I came around his desk and stood behind his chair, and
25 he pulled up the IG statute on his screen, and we

1 looked at it together. And it seemed as if that
2 statute could be read as if it was part of the
3 mandatory reporting to the IG, so I suggested that he
4 print a copy out and take it to David Nocenti and see
5 whether or not it was -- it was counsel, and see
6 whether or not it was a matter that needed to be
7 referred to the Inspector General.

8 Q And do you have any recollection how close to
9 July 1 that conversation occurred?

10 A I don't, but it -- I don't believe it was right
11 on the eve.

12 Q Do you think it was a month before, a week
13 before?

14 A I just don't know. I mean things were so busy.
15 You know, we were in the middle of enormous, enormous
16 negotiations, and these were conversations -- you know,
17 if these each took a full 10 minutes, I would be
18 surprised.

19 Q Did you at any time during that conversation
20 indicate to Mr. Dopp that he could be potentially
21 liable for not complying with the mandatory reporting
22 requirements?

23 A I indicated to Mr. Dopp that it was imprudent
24 for him to have this information as just the director
25 of communications. And that's among the reasons that I

1 wanted him to take this to David Nocenti along with a
2 copy of the statute. Keep in mind the circumstances. I
3 didn't have a copy of the printed out statute in my
4 hand. I wasn't doing parsing. I wasn't in counsel's
5 office. I hadn't been appointed Special Counsel at
6 that. What I did think was that it didn't make sense
7 for him to have this, and I wanted to get it to a place
8 where it did make sense for it to be.

9 Q And when you say --

10 A And, also, for many years I've done public
11 integrity cases. And as a general rule it is prudent,
12 when you have allegations, to get them to an
13 appropriate authority.

14 Q And when you say "this information" that
15 Mr. Dopp had his in control, what information was that?

16 A The thought that Senator Bruno was using state
17 aircraft for non-state purposes. This was also, you
18 remember, not too far after the Hevesi case so that the
19 issue of a public official using state resources for a
20 non-state purpose was high in everybody's mind.

21 Q So at the juncture of your second conversation
22 with Mr. Dopp you are certainly expressing concerns to
23 him that this information should be potentially
24 provided to someone to take a look at.

25 A Correct.

- 1 Q But you did not believe it was a criminal issue.
- 2 A Correct.
- 3 Q And you reminded Mr. Dopp of that --
- 4 A Correct.
- 5 Q -- during the second conversation --
- 6 A Yes.
- 7 Q -- as well. Did Mr. Dopp give you any other
- 8 information at the second meeting that he had not
- 9 provided in the first?
- 10 A No. These were quick conversations.
- 11 Q Did he again show you the flight manifest or a
- 12 flight manifest?
- 13 A I don't believe so.
- 14 Q And did he indicate to you anything else
- 15 concerning Senator Bruno's activities that he had not
- 16 provided at the first meeting?
- 17 A I don't think so, but I can't imagine that it
- 18 would have made a difference to me because the law,
- 19 unlargely by false pretenses and false statements, in
- 20 New York is so stringent.
- 21 Q And in terms of the timing of this second
- 22 meeting, how soon after the first meeting did this
- 23 occur?
- 24 A I don't know.
- 25 Q Was it the same week? The same month?

1 A I don't believe that it was the same week. I
2 don't believe that it was the same week, but I just
3 don't know other than that.

4 Q And you indicated that you advised Mr. Dopp to
5 discuss the matter with David.

6 A Correct.

7 Q That would be David Nocenti.

8 A That's correct.

9 Q And to your knowledge did Mr. Dopp do that,
10 follow up with that?

11 A He told me that he would, and I don't know
12 whether he did.

13 Q Did you ever discuss with Mr. Nocenti whether he
14 did?

15 A I did not. Although, in the course of the
16 investigation, I did see an e-mail from Darren to David
17 that reported that Richard Rifkin and I both thought it
18 should go to the IG. I don't know if that was the only
19 communication between the two of them on that subject.

20 Q And when you saw that e-mail, do you know the
21 context of that e-mail?

22 A Again, I don't have them in front of me. If I
23 remember right -- and this is my memory of looking at
24 documents during the course of the investigation. If I
25 remember right, it was a series of documents where

1 David was trying to get Darren on the phone to discuss
2 a different matter, and then there was a back-and-forth
3 on it, but they are what they are. I mean it's --

4 BY MR. TEITELBAUM:

5 Q Mr. Pope, are you able to elaborate on the last
6 sentence of the second paragraph on 122, which says, I
7 believe, we then discussed whether it could be a civil
8 matter along the lines of the Hevesi case?

9 A I think he said, after I said "not a criminal
10 case," he said could it be a -- the statute that we
11 operated under was Executive Law 63C. And I think that
12 he said, Could it be a 63C, or could this be something
13 that Andrew Cuomo could do? And I think I said, I
14 don't know, maybe.

15 Q Did you -- what was your reaction to Mr. Dopp
16 raising with you on two occasions, potentially
17 referring the matter out to a criminal prosecutor
18 besides the fact that you thought that you wouldn't
19 take the case if you were the prosecutor?

20 A I thought that this needed to go somewhere other
21 than his desk. And I thought that because there is at
22 least an allegation of improper use of the state
23 aircraft, one by Bruno, and then there is also a
24 potential criticism of the Chamber for allowing
25 aircraft to be improvidently used. And it seem to me

1 that it needed to go somewhere where someone would take
2 a look at it in an appropriate away.

3 Q Who made the allegation of improper use by
4 Senator Bruno at that time?

5 A By that, I mean Darren's conversation with me,
6 saying, Is it a crime if he's using it to go to a fund
7 raiser?

8 Q So you -- when you say that an allegation was
9 being made you're referring to Dopp's question?

10 A I'm referring -- yes, it's an inartful use --

11 Q I understand.

12 A -- of the word. In my old world when somebody
13 came to me and posited a factual situation, I regarded
14 it as an allegation that I'm afraid I'm carrying that
15 over to.

16 Q And what was it doing on Darren Dopp's desk? He
17 was a communications guy. Were these kinds of matters
18 such that would fall within his jurisdiction, as far as
19 you knew?

20 A Well, I don't know what it was doing on his
21 desk, but if it was a press inquiry, that's one of the
22 places it would have belonged. But as I just told you,
23 I thought that there were other places that it probably
24 belonged also. It could have belonged in operations.

25 It could have belonged in counsel's office. It

1 certainly, particularly if there was a request from the
2 press, is appropriate for it to be on his desk. I just
3 didn't think it should be the only place it should be.

4 Q Was the exploration as to whether or not Senator
5 Bruno's use of the state aircraft constitute a crime
6 something that you would expect, given your knowledge
7 of the roles of people in the Executive Chamber, fall
8 within the purview of Dopp's jurisdiction?

9 A There was no clear jurisdiction, particularly in
10 those early days, and I think that there is much
11 clearer -- there was clearer jurisdiction even before
12 the most recent events leading to Governor Spitzer's
13 resignation, so I'm not sure I can answer the question
14 as to jurisdiction. I can say that I do -- did think
15 that others needed to be involved as well.

16 Q Did that include yourself?

17 A No. As policy director, there was a very tight
18 cadre of people who were making decisions in the
19 Executive Chamber at that stage. I was not among them,
20 and indeed it led me to wonder whether or not Albany
21 was the right place for me.

22 BY MS. TOOHER:

23 Q You indicated that Mr. Dopp came to you and
24 discussed the option of taking the issue of Senator
25 Bruno's potential misuse to the IG and the DA and

1 possibly the AG?

2 A He did not raise the IG. He asked about the DA.

3 Q And --

4 A And I suggested that -- now a DA could take
5 this, because DA jurisdiction allows the DA to do grand
6 jury reports. I just didn't think it made sense. I
7 would not have wanted it as a DA.

8 Q Did Mr. Dopp ever raise the issue of addressing
9 this as a newspaper article with you?

10 A In one of these conversations, and I don't know
11 which one, the name Odatto came up.

12 Q In what sense?

13 A I have been trying to remember, and was trying
14 to remember during the investigation, whether or not he
15 told me that Odatto had asked for this or not, and I
16 cannot remember.

17 Q Do you remember --

18 A But I remember the name coming up.

19 Q Do you remember if he ever asked you if this was
20 something he could give to Odatto to look at?

21 A I don't remember. I don't remember whether --
22 Odatto's name came up, and I don't remember whether it
23 was Odatto asked for it or I could give it to Odatto, I
24 don't remember.

25 Q During this timeframe that you're having these
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 discussions with Mr. Dopp, would it be fair to
2 characterize the relationship between the Chamber and
3 Senator Bruno as fairly tense?

4 A I don't think it's for me to characterize that.
5 I wasn't in the negotiations.

6 Q When Mr. Dopp brought the issue of Senator
7 Bruno's potential misuse of the aircraft to you, did he
8 relate to you that this was an important issue?

9 A No. These were really quick conversations. You
10 know, at the time there were huge negotiations over all
11 kinds of different statutes, and I didn't get a sense
12 of grave importance out of this from him, and they were
13 both brief.

14 (Commission's Exhibit 161 was marked for
15 identification.)

16 Q I'm giving you a document that has been marked
17 as Commission's 161, and ask if you can identify this
18 document?

19 A Yes, I recognize this.

20 Q And what is this document?

21 A This is the e-mail exchange I was trying to
22 summarize for you a few minutes ago.

23 Q And about halfway down the page in the thread is
24 an e-mail from Darren Dopp to David Nocenti dated July
25 1, in which he indicates Rifkin and Pope thought it was

1 imperative that we send to the IG. That's the
2 reference you made earlier, that Mr. Dopp had relayed
3 your opinion --

4 A Yes.

5 Q -- on the IG? And did Mr. Nocenti have any
6 discussions with you on July 1 concerning that
7 reference?

8 A No.

9 Q So you did not discuss with Mr. Nocenti prior or
10 on or about July 1 the concept of referring this matter
11 to the IG?

12 A Correct.

13 Q Did Mr. Nocenti discuss with you at all Senator
14 Bruno's use of the aircraft on or about July 1?

15 A No.

16 Q Did anyone discuss with you Senator Bruno's use
17 of the aircraft and the potential for referring it on
18 or about July 1?

19 A Yes. I believe it was the Friday before -- July
20 1 was a Sunday? I'm not positive it was the Friday
21 before, but I believe Friday morning there was a staff
22 meeting at which Rich Baum said that there would be an
23 article over the weekend. And someone asked the
24 question of whether or not -- and I don't remember if
25 it was in the context of referral or alerting the DAS

1 that something was coming. And somebody looked at me,
2 and I opined that it would be appropriate for someone
3 from counsel's office to call district attorneys and
4 just say something is coming.

5 Q So prior -- July 1 being the article.

6 A Correct.

7 Q And that's on a Monday?

8 A I believe --

9 MR. TEITELBAUM: Sunday.

10 A -- that's a Sunday.

11 Q Sunday? On Friday there was a staff meeting at
12 which Mr. Baum advised the staff that --

13 A Yes.

14 Q -- this potential article was coming.

15 A Right.

16 Q And there was a discussion concerning referral
17 at that time?

18 A I don't remember whether it was referral or
19 notification or, you know, do we have to do anything
20 about the DAs, but there was a discussion about it.
21 And I remember opining it's perfectly appropriate to
22 not have DAs surprised. Counsel's office could call
23 and say this is what's coming.

24 Q And who was at that meeting?

25 A I believe Darren was not. Paul Larrabee was.

1 Rich Baum was. I don't remember whether or not David
2 was present, but I think that he was, David Nocenti,
3 and I'm not sure who else. They're relatively small
4 meetings. It is -- the people who normally attend are
5 Olivia Golden, Drew Warshaw, Jessica Schultz, Marlene
6 Turner, Sean Maloney. That's the -- I mean the others.

7 Q And when you say those people, were they at that
8 meeting or are they just normally at?

9 A The ones that I identified as -- I think that
10 they were there I believe were there. The others I
11 just don't -- I have no visual image of them being
12 there or not.

13 Q And was there any further discussion concerning
14 what to do about this matter and other entities or
15 agencies?

16 A No.

17 Q So this what a relatively short discussion?

18 A Yeah. There were a number of other things on
19 the agenda.

20 BY MR. TEITELBAUM:

21 Q What did Mr. Baum say was going to be the
22 content of the article?

23 A An article about Bruno flights and that it would
24 be an article that was not good for Senator Bruno.

25 Q Did he indicate how he knew this?

1 THE COURT REPORTER: Did he what?

2 MR. TEITELBAUM: Indicate how he
3 knew this.

4 A He did not, but this is -- if I'm remembering
5 the dates correctly, it's after the formal FOIL and
6 I believe -- at which I learned during the course of
7 the representation -- it's after the FOIL was received
8 and after the documents were delivered.

9 Q Did he indicate that he had any conversations
10 with Odató?

11 A Baum?

12 Q Yes.

13 A No.

14 Q Did he indicate --

15 A Neither way.

16 Q Did he indicate one way or the other whether
17 Dopp had conversations with Odató?

18 A No.

19 Q So if I understand you correctly, the basis for
20 the suggestion that the district attorneys be notified
21 about an article coming out on July 1, and that it
22 would be an article that they would want to know about,
23 was people's knowledge of what was going to be turned
24 over or what had been turned over to Odató?

25 A I don't know the basis.

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Q Did you know it was turned over to Odatto?

2 A No, not until I began representing the Chamber
3 at one of the requests from the AG's office was what
4 was turned over, and we tried to find out exactly what
5 was turned over and when.

6 Q So what was your basis for the advice that it
7 would be appropriate to notify the district attorneys?

8 A It seems perfectly proper, from my point of
9 view, if there's going to be a splash of some kind, to
10 not have the DA on Sunday wake up and see something and
11 wonder what in the world is going on. So for counsel's
12 office to call somebody at the DA's office and say be
13 advised there's this article coming, let us know if you
14 need anything, is a completely appropriate thing to do.

15 Q Had that been done before in the Chamber?

16 A I don't know.

17 Q Had it been discussed in another context, making
18 district attorneys aware of articles that were going to
19 be appearing in the newspaper?

20 A Not of articles. There was a discussion
21 regarding the Inspector General's report on NYRA as to
22 whether or not that needed to be sent to the U.S.
23 Attorney's Office, because it covered a number of the
24 items that the press said the U.S. Attorney was looking
25 at.

1 Q But not -- if I understand you correctly, it had
2 not been done before to your knowledge with respect to
3 an impending news article.

4 A Correct.

5 Q It was the idea of notifying district attorneys
6 that a news article was going to appear.

7 A I'm unaware of that.

8 Q And can you tell us more about the discussion
9 that occurred at that meeting concerning Senator Bruno,
10 the use of the aircraft, the impending article and the
11 possibility of contacting the district attorney or two?

12 A There wasn't much. Most of the meeting was
13 about other things. I think most of the meeting was
14 about getting the Governor on the road to talk about
15 our agenda, and this was -- these meetings are not
16 long -- were not long. There's a different structure
17 now.

18 Q Let me tell you what's puzzling about this,
19 Mr. Pope. I view engaging a prosecutor in a matter as
20 a serious business. Do you share that?

21 A Mr. Teitelbaum, I've been a prosecutor most of
22 my career.

23 Q I'm aware of that.

24 A And a prosecutor has enormous powers, including
25 looking into non-criminal allegations of public

1 mistrust, in issuing grand injury reports. As I told
2 you and as I told Darren at the time, this is not
3 something that I would refer to a prosecutor as a case
4 to be opened. On the other hand, prosecutors don't
5 like to be surprised, and I certainly would have
6 appreciated a call before, if something big were
7 coming, a call from someone just saying, Hey, don't
8 know if you want this; don't know if you don't want
9 this; don't want you to wake up on Sunday and be
10 surprised and have to scurry around; just checking in;
11 this is what there is. So I do see that as completely
12 appropriate. Have I answered your question at all,
13 Mr. Teitelbaum?

14 MR. TEITELBAUM: I think so.

15 BY MS. TOOHER:

16 Q When did you next -- following the Baum meeting,
17 when did you next engage with other members of the
18 Executive Chamber concerning the Bruno story and what
19 was going to happen with that information?

20 A Oh, I think it was well after the article ran,
21 and I believe, though I'm not positive, that -- I mean
22 it was the 4th of July week, and I don't think that I
23 was in the office for Tuesday and Wednesday. I think I
24 was just seeing headlines roll in.

25 Q Okay.

1 A So I didn't engage between -- now wait. It is
2 also, at some stage -- and I think that it had to have
3 been that Friday, but again I'm not positive -- I
4 walked into Darren's office. Rich and Darren were
5 talking, and there -- Rich was concerned about --

6 Q Rich, being Rich Baum?

7 A Rich Baum. There was a question about whether
8 or not it was appropriate for Senator Bruno to have
9 ground transportation, and Rich was concerned that he
10 had authorized it.

11 Q And when you say "appropriate for Senator Bruno
12 to have ground transportation," in what context?

13 A If the state police drove him to a fund raiser,
14 would that be appropriate or not.

15 Q So this would be a third conversation that you
16 had with Darren Dopp prior to July 1?

17 A Yes. It would be that -- I think that Friday
18 after that morning meeting.

19 Q And this conversation occurred with Rich Baum?

20 A Darren and Rich were in the office talking, and
21 I walked in.

22 Q And what was said in this meeting?

23 A Essentially, what I just told you. One or the
24 other of them -- there were press inquiries, a question
25 about whether or not the Chamber should have allowed

1 Senator Bruno to ride in a state police car.

2 Q And Mr. Baum was concerned about his own
3 exposure in that regard?

4 A That he had permitted it.

5 Q And what was his concern based upon?

6 A That if the press thought it was improper, then
7 he had authorized something that was improper.

8 (Commission Exhibit 162 was marked for
9 identification.)

10 Q Did you have any other conversations with
11 Mr. Dopp prior to the July 1 article?

12 A I don't believe so.

13 Q I'm going to give you what has been marked as
14 Commission's 162, and ask you if you can identify that
15 document?

16 A Yes. This is an e-mail that Darren sent to me.

17 Q And this was on July 2?

18 A Yes.

19 Q 2007?

20 A Yup.

21 Q And you apparently responded to Darren, "works
22 for me."

23 A Yup.

24 Q What does that mean?

25 A That I had no objection.

1 Q So this was the document, the second page, the
2 statement by Darren Dopp concerning Senator Bruno's
3 activities had been sent to you.

4 A Yes. This is the Monday after the article ran.

5 Q Correct. And did you have any discussions with
6 anyone else in the Chamber concerning this?

7 A No. I think that I was off that day. Got the
8 e-mail. I think I was off. I don't believe I spent
9 much time with it.

10 Q And was it your understanding, based on this
11 statement, that the Chamber was forwarding documents to
12 appropriate authorities?

13 A That's what I understand the statement to be
14 saying.

15 Q Did anyone ever relay to you that that was
16 actually occurring at that time?

17 A No, I don't think so.

18 Q And did anyone ever discuss with you, prior to
19 the July 1 article, a review of the Penal Code
20 concerning Senator Bruno's activities by members of the
21 Executive Chamber?

22 A Well, Darren had asked me was it a crime, but I
23 don't believe so, because I believe during the course
24 of the investigation I was surprised to see that work
25 had been on the Penal Code by members of the counsel's

1 office.

2 Q So when you had the discussion with Rich Baum
3 and Darren Dopp on the Friday prior to the article
4 there was no mention that other members of the Chamber
5 had provided research concerning the Penal Code and its
6 application to Senator Bruno's activities?

7 A No, I don't believe so.

8 Q When did you first learn of those activities,
9 the research activities?

10 A After becoming Special Counsel and gathering
11 documents.

12 BY MR. TEITELBAUM:

13 Q Why were you surprised?

14 A I had been asked about liability and no claim
15 that I didn't think that it was there.

16 Q And you anticipated it because you had opined
17 that there was, from your point of view, no liability
18 that further research would not be done?

19 A It didn't occur to me that further research
20 would be done.

21 Q Had this kind of research been done before by
22 Executive Chamber lawyers, potential criminal
23 liability?

24 A With respect to an individual event, I don't
25 know. With respect to negotiating new statutes, of

1 course.

2 Q I mean -- I mean the former not the latter.

3 A Not that I'm aware of.

4 Q Did you look into the circumstances under which
5 that research had been done after you found out about
6 it?

7 A No.

8 Q Did you learn what prompted the research?

9 A On this subject, I believe everything I know is
10 from the e-mails, and I'm not confident that I'm
11 remembering the e-mails right, but I believe that it
12 was an e-mail from Darren Dopp.

13 Q Did David Nocenti have any conversation with you
14 concerning this research, the substance of it and the
15 fact that it was done? Either one.

16 A Neither of those, but of course -- you mean at
17 the time?

18 Q At any time.

19 A As we were putting together a privilege log that
20 they were done was evidenced by the fact of the e-mails
21 and that they would go on the log, but not beyond that.

22 Q Anybody -- did you have any conversations along
23 those lines with anybody else, the substance of the
24 research or the fact that it occurred?

25 A No.

1 (Commission Exhibit 163 was marked for
2 identification.)

3 Q Mr. Pope, you've been provided a copy and
4 opportunity to review what has been marked as
5 Commission's 163. Can you identify this document?

6 A This is a document that I received from Terry
7 Kindlon.

8 Q What were the circumstances of that?

9 A It was on the Friday before the OAG report was
10 issued -- I believe this is a document provided by
11 Terry Kindlon. It was on the Friday before the OAG
12 report was issued that Darren retained Terry Kindlon.
13 It was either that night or the next day that Terry
14 told us that Darren had written a memo to me and to
15 Sean, and he wanted to provide it to us, and he did.

16 Q So Mr. Kindlon provided Commission's 163 to you
17 and Mr. Maloney?

18 A I don't remember whether he provided it to me,
19 or to Sean, or to me and Sean together, but he provided
20 it to the Chamber.

21 Q And so you did not have this document prior to
22 Mr. Kindlon providing it to you?

23 A I'm virtually certain of that.

24 Q And did you discuss with Mr. Dopp creating a
25 document like this prior to receiving it?

1 A I discussed with him pulling together materials
2 and trying to find e-mails and trying to pinpoint the
3 time that he received requests. I don't believe that I
4 directed him to write a memo.

5 Q And so what was your reaction when you received
6 this memo?

7 A Well, I received this memo pretty late in the
8 game. At the time that I received this memo, Darren
9 had private counsel. And it was private counsel at
10 that stage who was trying to hone in on the very
11 significant question of when it is that Darren received
12 press requests.

13 Q And when you say private counsel was trying to
14 hone in on that question, what's that based upon?

15 A When I spoke with Terry, I identified for him as
16 what I believed was a big issue for the Attorney
17 General, was when Darren got a request from the press,
18 when and whether Darren got a request from the press.

19 Q And when did you relay that to Mr. Kindlon?

20 A My first conversation with Mr. Kindlon was
21 Friday evening, at late afternoon or evening, I think
22 evening. I think I spoke to him twice -- once briefly
23 and once at a little greater length. And if I remember
24 right, I saw him next on Saturday, and I believe that I
25 discussed the issue of -- I mean the AG was leaving no

1 doubt but that they were interested in the
2 circumstances of whether and when Darren Dopp received
3 a press request.

4 Q And did Mr. Kindlon indicate to you during your
5 conversations on Friday or Saturday that he felt he was
6 not up to speed on this matter and he wasn't prepared
7 to discuss it?

8 A No. He was prepared to discuss it at every
9 juncture. He did say several times that he was trying
10 to absorb the information as quickly as he could.

11 Q And did he relate to you, with those
12 conversations, Darren Dopp's desire to testify before
13 the Attorney General?

14 A I don't remember. I do remember believing that
15 Darren would like an opportunity to tell his side of
16 the story, but I don't remember whether that was
17 Friday, Saturday or Sunday. I know Sunday, but I'm not
18 sure about the other two days. Mr. Kindlon also made
19 it clear to me that he did not believe, as I did not
20 believe, that that would be prudent from Darren's point
21 of view.

22 Q And did he indicate why?

23 A No.

24 Q Did you ever relay to Mr. Kindlon that Mr. Dopp
25 was not going to testify?

1 A I believe that I relayed to Mr. Kindlon that it
2 was the Chamber's position that Mr. Dopp should not
3 testify.

4 Q And what was that position based upon?

5 A There were a number of factors, one is that
6 earlier in the week Bill Howard had testified
7 uncounseled. He had received a phone call the night
8 before, been asked to come down for an interview, went
9 down, was told only after he arrived that it was going
10 to be under oath and that it was going to be sworn. He
11 was examined about the contents of documents that he
12 was not shown, was terribly afraid after the interview
13 that he had made a factual mistake about, I think about
14 a date or a sequencing. And after Howard's examination
15 under oath, I believe that David was the one who was
16 told that they believed that Howard had perjured
17 himself. And then in a subsequent conversation David
18 called back, and they said, Although, we believe he
19 perjured himself, we're not now conducting an active
20 perjury investigation. We, during the course of this
21 week, were trying very quickly to lay our hands on
22 documents. And indeed it was Friday that four
23 important documents came to light, four important
24 e-mails, which we immediately called them not -- within
25 hours, not within minutes, but within hours, called the

1 Attorney General's Office. And the Inspector General's
2 Office said that we had received these documents.
3 Those of us on the team, excuse me, were unaware of
4 these e-mails before Friday. They were rather
5 significant e-mails. They were e-mails that were then
6 quoted in the Attorney General's report. It gave us a
7 firm sense that we didn't know all of the documents
8 that were out there. Darren's --

9 Q What were these e-mails?

10 A They were the ones quoted in the report. I --

11 Q Substantively.

12 A -- believe -- discussions. I would need them in
13 front of me. You have them. There are fax cover
14 sheets on them, from me to Ellen Biben Nachtigall, and
15 from me to Ryan from the IG's Office. And they were --
16 I think one was an e-mail from Howard to Baum. They
17 were -- they appeared to be discussions. One was
18 concerning timing for that move. But again I need them
19 in front of me to be able to discuss them
20 intelligently. And Darren's state of mind that week
21 was very poor. He was agitated. He -- I don't believe
22 he had been sleeping. He was very worked up. He had
23 been attacked in the press for several days, I guess
24 almost a week by then. It also is extremely -- I think
25 it was described to me as unprecedented that anybody at

1 that level in the Executive Chamber would go testify
2 under oath. There were big issues about executive
3 privilege, so you put that entire set together, and the
4 judgment of the Chamber was that witnesses would not be
5 provided.

6 Q Witnesses would not be provided or Mr. Dopp?

7 A Mr. Dopp and Mr. Baum. They were not asked for
8 until late Friday. We had also been told that the
9 report was virtual and final at that stage, the AG's
10 report.

11 Q At what stage?

12 A Friday.

13 Q Friday when you --

14 A The request for the interviews came from the
15 AG's office Friday after several hours, after we had
16 faxed over the four e-mails. The AG's Office had
17 previously asked for neither Dopp nor Baum.

18 Q So the first request for Dopp and Baum is on
19 Friday?

20 A From the AG's office.

21 Q From the AG's office.

22 A Correct.

23 Q Had the IG's Office previously asked to
24 interview Baum?

25 A The IG's Office had asked to examine Dopp. I

1 don't believe they had asked to examine Baum, but I
2 know they had asked to examine Dopp which is why I was
3 going to prepare him that Friday.

4 Q And prior to his obtaining counsel had Mr. Dopp
5 indicated a desire to testify?

6 A Yes, to the IG. It was set up. It was
7 scheduled. It was all -- we were -- there was a very
8 clear path.

9 Q And was it your intent that Mr. Dopp would
10 testify before the IG --

11 A Yes.

12 Q -- on Monday?

13 A Yes.

14 Q And when did that change?

15 A It changed after the discovery of the e-mails
16 and after -- there was also a -- there was additionally
17 a potential conflict. The interests began to diverge
18 between the Chamber and Mr. Dopp as the question of
19 discipline for Mr. Dopp was raised by the Attorney
20 General's Office.

21 Q And --

22 A We had advised witnesses in writing of who we
23 represented and who we did not. I believe that you
24 guys have those notices. We also advised them orally.
25 This was -- and if I remember correctly, on Friday,

1 after the discovery of these e-mails, we gave Darren
2 Dopp a writing in which we said that we believed that
3 he should consult with counsel for the purpose of
4 deciding whether he needed to retain counsel.

5 Q And did you do the same thing with Mr. Howard at
6 that time?

7 A Mr. Howard we did earlier that morning. After
8 they had raised the issue of perjury with Howard, it
9 was unclear to us whether we could continue to
10 represent him, and we had a meeting that Friday morning
11 at which we decided that we needed to give him a
12 memorandum. The decision about Dopp came later in the
13 day after the four e-mails were turned over to us.

14 Q And what about Mr. Baum?

15 A I don't know those conversations. I believe
16 were largely between Baum and Nocenti.

17 Q When you indicate there was a divergence of
18 interest between the Chamber's interest and, at this
19 juncture, Mr. Dopp and Mr. Howard, what was your
20 understanding of what that meant? What was the
21 divergence?

22 A The Attorney General was asking -- had raised
23 the issue of our disciplining Dopp and Howard. And
24 when an investigative agency is asking you to take
25 action against one of your employees, that would seem

1 to raise a potential conflict. Very difficult to
2 represent both the entity and the individual.

3 Q And the context of disciplining Dopp and Howard
4 how did that arise?

5 A I think that it was -- I think it arose several
6 ways. I believe it arose in a conversation that Sean
7 Maloney and I had with Ellen Nachtigall Biben and, I
8 believe, Linda Lacewell, although, I'm not positive,
9 and, I believe, a similar conversation was taking place
10 between Nocenti and Benjamin Lawsky.

11 Q And did the issue of disciplining Baum come up?

12 A They did not raise the issue of disciplining
13 Baum.

14 Q I'm sorry, just one second.

15 MS. TOOHER: Could you read back
16 the last question and the response, please.

17 (The pending question and answer was
18 read by the court reporter.)

19 Q I'm going to show you what has been previously
20 marked as Commission's 45, 47 and 48, and ask you if
21 these are the e-mails you're referring to?

22 A I believe that there was a fourth one as well.

23 Q I'm going to ask you that in a moment. But yes
24 these are three of the four?

25 A Yes.

1 Q The fourth e-mail, do you recall the subject
2 matter of that e-mail?

3 A No, I don't. I mean they were all on this
4 subject, weren't they?

5 Q We weren't provided the e-mails in the form
6 you're speaking of, in terms of a fax cover sheet and
7 attached e-mails.

8 A I really would only be guessing.

9 Q Okay.

10 MS. NECHELES: We can provide that
11 to you.

12 MS. TOOHER: And I'm sure we can
13 check the AG's report.

14 Q But these e-mails are from Darren Dopp to Rich
15 Baum, William Howard to Rich Baum, Darren Dopp to
16 Richard Baum. I mean at this juncture these e-mails,
17 which you described as somewhat turning the tide --

18 A I believe the fourth one may have been the first
19 in the string of Commission 47. That is before some
20 went back and forth.

21 Q Okay, so the initial -- I guess we know why
22 Bruno's folks had --

23 A It may very well have been.

24 Q These e-mails all seem to involve Richard Baum.

25 A Correct.

1 Q But there was no discussion of Mr. Baum at that
2 juncture and a divergence of interests?

3 A The divergence seemed to be posed when the
4 investigative agency raised the question about
5 disciplining a specific person. They didn't raise the
6 question about disciplining Mr. Baum.

7 Q Did you raise the issue with Mr. Baum concerning
8 a divergence of interest as a consequence of these
9 e-mails?

10 A I was not the one communicating with Mr. Baum.

11 Q Do you know if that issue was raised with
12 Mr. Baum upon the emergence of these e-mails?

13 A I don't know.

14 Q Do you know if it was ever discussed with
15 Mr. Baum?

16 A The question of divergence of interest?

17 Q Correct.

18 A I don't know.

19 Q Did you discuss with -- are you aware of anyone
20 discussing with Mr. Baum his knowledge of Mr. Dopp's
21 activities during the May 17 through July 1 timeframe?

22 A I am not aware of that.

23 Q Are you aware of the level of Mr. Baum's
24 knowledge concerning that timeframe?

25 A No.

1 MS. NECHELES: Can we have a
2 minute?

3 (A brief recess was taken.)

4 A I did raise the issue after we received these as
5 to whether Mr. Baum should retain his own lawyer but
6 not with Mr. Baum.

7 Q Who did you raise that with?

8 A To Mr. Nocenti and Mr. Maloney.

9 Q And what was their response?

10 A I don't remember a precise response, but I
11 believe that the question was going to be raised with
12 Mr. Baum.

13 Q Are you aware of any actions that were taken as
14 a consequence of your raising this issue?

15 A No, but, of course, later Mr. Baum did retain
16 his own lawyer but not during this immediate period.

17 Q And are you aware when?

18 A No.

19 MR. TEITELBAUM: Off the record.

20 (Lunch recess was taken at 12:45 p.m.)

21 Proceedings resumed at 1:35 p.m.)

22 (The pending question and answer was
23 read by the court reporter.)

24 BY MS. TOOHER:

25 Q Mr. Pope, you mentioned earlier that the
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Attorney General's Office, in discussions with you,
2 raised the issue of disciplining both Mr. Dopp and
3 Mr. Howard. Did they raise the issue of disciplining
4 Superintendent Felton?

5 A Yes, they did.

6 Q And what occurred in that regard?

7 A There was a conversation about disciplining the
8 Superintendent, and at a certain stage there were
9 internal discussions about it. And we decided that it
10 was not properly his fault because he was getting
11 directions from Bill Howard, who was his contact with
12 the Executive Chamber, and that we did not want to be
13 an administration where responsibility was laid on the
14 people at the bottom but rather with the people at the
15 top.

16 Q Now, when you say there was a -- this was raised
17 by the AG's Office, who raised this issue?

18 A I don't remember. I don't remember whether it
19 was Biben to me and Maloney, or whether it was Lawsky
20 to Nocenti, or whether it was both.

21 Q And do you recall approximately when this
22 occurred?

23 A Oh, it would have had to have been the Thursday,
24 Friday, Saturday period. I mean, remember, the time is
25 enormously compressed here. I'm in the case on the

1 13th. By the 20th, it's very clear that the report is
2 coming out on the 23rd, and I think it's actually clear
3 a day or two before then that they have come to their
4 conclusions, so it's pretty much a dash for this.

5 Q So now when you say there were conversations
6 about the issue within the Executive Chamber, who were
7 those conversations with?

8 A There were conversations preliminarily between
9 me and David Nocenti and Sean Maloney. Later there
10 were conversations that included Lloyd Constantine and
11 the Governor and Christine Anderson.

12 Q Now, Christine Anderson is also in the
13 communications office; is that correct?

14 A That's correct.

15 Q Why would she be privy to conversations of this
16 sort?

17 A With a big report coming out on Monday, being
18 able to communicate the positions that we took to the
19 public is enormously important. She also has very good
20 judgment, and her input on issues is valued.

21 Q And was she privy to discussions concerning
22 discipline of Mr. Dopp?

23 A There was a discussion within the Chamber about
24 the appropriate length of the suspension, and I'm
25 confident she was there for at least one of those

1 conversations.

2 Q Now, you indicated that the determination was
3 made that it was not Superintendent Felton's fault, if
4 you will. What led you to that determination?

5 A It is a perfectly appropriate inquiry --

6 (Ms. Necheles takes phone call.)

7 MR. TEITELBAUM: Off the record.

8 (Discussion was held off the record.)

9 The last question and answer were read by the
10 court reporter.)

11 A -- for Felton to be explaining how it is that
12 state resources under his command are being used. And
13 the contact that he had was with the person in the
14 Chamber to whom he reported -- that is, Bill Howard.
15 And it was our judgment that the poor judgment
16 exercised was exercised in the chain of command above
17 his level, and that, therefore, a long and successful
18 career in the state police shouldn't be tarnished by
19 civilian misjudgments.

20 Q Now, there's evidence in the record that
21 indicates Superintendent Felton directed the creation
22 of certain documents in this matter, the itineraries of
23 Senator Bruno. Are you aware of that?

24 A Yes.

25 Q And were you aware of that at the time these

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 discussions were taking place?

2 A Yes.

3 Q And is it your opinion that Superintendent
4 Felton's actions in creating those documents were
5 appropriate?

6 A It -- let me back up. It seems to me that it is
7 perfectly appropriate to ask a subordinate to account
8 for the time that they expended, and one of the issues
9 is that --

10 (Ms. Necheles takes phone call.)

11 (Discussion was held off the record.)

12 A -- was that there were insufficient records, the
13 kind of records that don't create an audit trail that
14 existed at the time in the state police. It doesn't
15 seem to me that it's inappropriate to say to somebody I
16 don't know what it is, you work for me, and I don't
17 know what it is that you did on X day, account for it,
18 because I need to make a determination as to whether or
19 not that was a proper use of your time or a proper use
20 of our resources.

21 Q So the gathering of the information in and of
22 itself in your opinion does not present an issue in
23 terms of Superintendent Felton's actions; would that be
24 correct?

25 A That would be my opinion.

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Q My question to you is once the information was
2 gathered, the evidence and testimony is that it was
3 forwarded to Mr. Howard in the Executive Chamber, and
4 then that information was modified to be made to look
5 more official. And my question to you is if that was
6 done for the purposes of making these look like
7 official state police records, would that be
8 inappropriate on Superintendent Felton's behalf?

9 A Of course, I'm not privy to any testimony, so
10 it's difficult for me to answer this question in what
11 to me is somewhat of a vacuum. And I suppose it
12 depends on purpose, but to some degree, if you are
13 accounting for the previous use of resources, that is
14 an official request of some kind.

15 Q I'm not sure I understand your answer.

16 MS. TOOHER: Could you read back
17 the question, please.

18 (The pending question was read by the
19 court reporter.)

20 A And I think my answer is the same, is that those
21 continued to be official records.

22 Q That these records created by Superintendent
23 Felton were official records of the state police?

24 A If you're asking were they contemporaneously
25 made records, they're not. But if I work for you and

1 you say I don't know what you did last week, write it
2 up, and I write it up, and I hand it to you, it seems
3 to me that that is an official record of some kind. It
4 is obviously not like a police department memo book
5 where you're making hour-by-hour entries, but it is a
6 compilation of the things that I did while I worked for
7 you.

8 Q And if I give that record back to you --

9 A Right.

10 Q -- and ask you to make it look like the police
11 record book.

12 A That would be a different issue.

13 Q And did you ever discuss with anyone in the
14 Executive Chamber the circumstances under which the
15 documents that Superintendent Felton forwarded to the
16 Executive Chamber were created?

17 A We had seen the e-mails, and I think that,
18 rather, we were discussing relative levels of
19 culpability.

20 Q And did you discuss the creation of the
21 documents by Superintendent Felton with other members
22 of the Executive Chamber?

23 A We had a chronology that laid out the e-mails.
24 That's largely the extent of what we had available to
25 us, and we certainly read that account.

1 Q But did you discuss with members of the
2 Executive Chamber the creation of documents by the
3 state police?

4 A I'm not trying to unduly split hairs here.
5 There was a chronology that laid out the information
6 that we had.

7 MS. NECHELES: Regarding the
8 creation of records, is that what you're saying?

9 THE WITNESS: Some of the
10 chronology had creation of records material in
11 it. And with everybody having read that
12 chronology, there was a discussion about what
13 the appropriate sanctions were for everybody.
14 So I don't remember whether or not anybody
15 pointed to a paragraph on the page and said,
16 Well, what about this? But it was everything
17 was laid out. I believe you have that
18 chronology.

19 Q Based on that chronology, what was your
20 understanding, at the time you made the determination
21 concerning Superintendent Felton, as to how those
22 documents had been created and to whom they were given?

23 A My understanding at the time was exactly what's
24 in that chronology. That's what we had. That's what
25 we knew.

1 (Commission Exhibit 164 was marked for
2 identification.)

3 Q I'm going to just direct your attention to pages
4 10 and 11 of the document in front of you. I think
5 that's the relevant timeframe of the documents.

6 A I read these two pages.

7 Q Okay, and that's in what has been marked as
8 Commission's 164. And on page 12 it indicates Felton
9 e-mailed Howard the three documents which appear to be
10 rewritten versions of this e-mail. I'm going to hand
11 you what has previously been marked as Commission's 1
12 through 5. And, I apologize, they're in the packet,
13 and that's how you're being given them. These are --
14 are these the documents referred to 1, 2 and 3?

15 A I'm not sure. There was a fair amount of
16 confusion in our minds about these documents at the
17 time and -- because there were different versions, and
18 if I'm remembering right, there was a wrong date where
19 an investigator thought that he had performed a duty on
20 one day instead of the other day, so I just -- it has
21 been long enough now I don't remember which of these is
22 which in this puzzle, but I remember that we were
23 trying to figure out what they were.

24 Q And I would say to you that the evidence thus
25 far in the testimony that we have had has indicated

1 that Commission's 1, 2 and 3 were the documents annexed
2 to the e-mail that were provided to Mr. Howard.

3 A Okay.

4 Q And you are correct that Commission's Exhibit 2
5 and the dates contained therein do not match, if you
6 will, Commission's Exhibit 5, which was an itinerary
7 created by Senator Bruno's office for that date, but
8 it's my understanding that these documents were created
9 to be provided to members of the Executive Chamber.
10 And my question to you is this: Do these documents in
11 your mind and the provision of these documents as
12 documents of the state police to the press, does that
13 create any issues if that occurred?

14 A Well, of course it creates issues. I mean we're
15 here. We've been talking about it for almost a year in
16 five different investigations, so yes it definitely
17 creates issues.

18 Q Was that -- were those issues explored prior to
19 the determination not to discipline Superintendent
20 Felton?

21 A Not in detail of any kind, not in more detail
22 than you see in the chronology.

23 Q Of Commission's 164.

24 A Of Commission's 164. This is -- this is one
25 that bears writing on it that shows Sean's edit.

1 Q Yes.

2 A And I'm not confident if this was the actual
3 document that was used for these discussions, but it
4 was one very much like it. And I believe that most of
5 them early on bore the paragraph that you're talking
6 about, the one on page 12 currently.

7 Q And did there come a time following the issuance
8 of the Attorney General's report that you discussed the
9 issue of the creation of these documents with other
10 members of the Executive Chamber?

11 A No.

12 Q And did there come a time where you discussed
13 that issue with the District Attorney's Office?

14 A Not the -- not the -- not in the detail of the
15 creation of the documents.

16 Q So would I be correct if I said that in terms of
17 the creation of the documents that that is not an issue
18 that was explored by you with other members of the
19 Executive Chamber?

20 A In the submission that the Chamber meant -- made
21 to the Commission?

22 Q Yes.

23 A I believe that there's a discussion of this, and
24 I believe that we had a conversation among ourselves in
25 connection with drafting and sending that letter. But

1 again I don't believe that it was any kind of extended
2 conversation, but certainly people saw drafts with that
3 discussion in it.

4 Q And was this issue discussed with Bill Howard?

5 A No, because he had retained a lawyer as of
6 Friday, after we delivered to him the letter saying
7 that he should have a lawyer.

8 Q And --

9 A I don't think it was discussed with Bill before
10 that. It could only have been discussed with him
11 Monday through -- or Saturday through Thursday, but
12 certainly the kind of questioning about iteration after
13 iteration, no.

14 Q And did discussions about that occur prior to
15 Mr. Howard's discipline and his role?

16 A I believe that at some stage during that week --
17 and it had to have been before he retained counsel --
18 he expressed to me that he felt terrible for the
19 position that he had put Preston Felton in.

20 Q And in what regard?

21 A He didn't elaborate.

22 Q That was the full expression?

23 A Pretty close.

24 Q Did he say anything more concerning that?

25 A No. He felt terrible. That, being Preston

1 Felton.

2 Q Right.

3 A Yeah. He felt terrible.

4 Q And what was your understanding about what he
5 felt terrible about?

6 A Preston Felton had served in the state police
7 for a long time and had a really distinguished career.
8 And I understood him to feel terrible for having made
9 requests which had attracted attention and had the
10 possibility of bringing discredit on him.

11 Q And was the issue of the creation of documents
12 discussed concerning Darren Dopp's role in these
13 events?

14 A Again, it was in the chronology, but I don't --
15 it certainly was not a primary issue, and I couldn't
16 tell you for sure that it was a significant issue at
17 all.

18 Q To your knowledge, was Darren Dopp aware that
19 these documents were being created by the state police?

20 A They came from the state police.

21 Q Yes.

22 A I mean I can't assume what he knew, but they
23 came from the state police. The e-mails show they came
24 from the state police to him.

25 Q No. I think the e-mails show they came from the
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 state police to Bill Howard.

2 A To Bill Howard? Okay, I don't know.

3 Q To your knowledge, was Mr. Dopp aware of the
4 prior iterations of these documents?

5 A I don't know. To my knowledge, I have no
6 knowledge on his knowledge on that subject.

7 Q Did you ever discuss with anyone Darren's
8 familiarity with these documents and the various
9 iterations that they went through?

10 A No. Again, we did not regard the documents as a
11 primary issue.

12 Q So what was the basis for Bill Howard's
13 discipline?

14 A A document was not created that formally set
15 forth the basis for discipline of either Dopp or
16 Howard. It seemed apparent that both had made
17 misjudgments, and we spent a fair amount of time trying
18 to determine in this what was appropriate and what was
19 inappropriate. The two of you put this question to
20 Lloyd and me and Richard Rifkin some time ago at a
21 meeting, and I believe I responded that one of the
22 things that was unseemly was the combination -- well,
23 one of the things that was unseemly was getting
24 information from the state police about the Senator's
25 travels in advance of those travels and having that

1 information go to the communications director. That --
2 and that combination of factors existing together was
3 troubling. But again there is not a determination
4 somewhere, and I couldn't tell you that everybody who
5 was involved in the discussions viewed it in the way
6 that I viewed it, and view it, which is what I just
7 expressed to you. In other words, if operationally
8 somebody had said give me this information because I
9 want to make a determination as to whether it's proper,
10 a completely proper inquiry. And I think, similarly,
11 if somebody had said I want to make a determination
12 about this, tell me how it has been used and get me the
13 paperwork, completely proper to create that paperwork.
14 It is the combination of that request, coupled with had
15 legal been asking this question, had the director of
16 operations been asking this question, I don't think
17 that it would have been a judgment issue. It seemed to
18 us a misjudgment to have that combined with the
19 director of communications, and that's why we
20 sanctioned Bill and Darren.

21 Q So if it was the gathering of information --

22 A No, it wasn't the gathering of information.

23 Q It's not --

24 A It is not simply the gathering of information.

25 There is a whole host of completely proper reasons.

1 Q If I may finish.

2 A Okay.

3 Q If it was the gathering of information for the
4 purpose of giving it to the communications director for
5 the purpose of putting it to the media to obtain a
6 negative story about Senator Bruno, what is your
7 opinion on that?

8 A Well, we sanctioned -- the Chamber sanctioned
9 Darren, and the Chamber sanctioned Bill. And it is an
10 appearance issue. This is information, it remains
11 information that the public is entitled to have. The
12 public is perfectly entitled to know how state
13 resources are being used. Had this same set of
14 inquiries been conducted through different ways, I
15 don't believe that we would be sitting here today.

16 Q But if the information was gathered for the
17 purpose of being put out for a media story to smear
18 Senator Bruno, are we in agreement that that would be
19 an inappropriate purpose?

20 A Ms. Tooher, we disciplined Mr. Dopp for that.
21 How well -- to smear, I don't know whether we knew it
22 was to smear or not to smear. It was our determination
23 that that set of inquiries linked with the press
24 office. And I think if you look at the Governor's
25 remarks the next day, he talked about how important it

1 is to keep things separate. And, as we talked about
2 earlier when Mr. Teitelbaum was asking questions, I
3 think that in a circumstance like this, particularly if
4 there is a press inquiry, the communication shop could
5 be a place they could get this information. But I
6 certainly think that had this been bone through the
7 director of operations, had this been bone through
8 counsel's office, had -- I don't think that you guys
9 would be asking these questions today, and I don't
10 believe that the Chamber would have disciplined Dopp
11 and Howard. Obviously, the Chamber thought that there
12 was, at the very least, the kind of conduct that we
13 didn't want to stand for, and as a result we sanctioned
14 them.

15 Q And --

16 A I really think I'm agreeing with you, Ms.
17 Tooher. Okay.

18 Q I'm not arguing with you. If others in the
19 Chamber were aware of this conduct, would they have had
20 an obligation to act?

21 A You know, I think that there is a question about
22 what is good management and what is an impropriety. I
23 would certainly not characterize this as good
24 management.

25 Q When you say "not characterize this as good

1 management," what do you mean by this?

2 A Commission 48 and 45 and 47 show that the
3 secretary was aware of an issue, and that was a
4 management opportunity to get it into the right hands.

5 Q When you say they show the secretary was aware
6 of an issue, what is -- how do you read that? What do
7 you read that issue to be?

8 A Commission 45 reads, "Bill H. says the records
9 exist going way back, itinerary showing where the
10 individual was taken and who was in the car. Bill has
11 the last two trips in his possession." At that point,
12 there are a number of things that a manager could have
13 done. A manager could have sent it to counsel and
14 said, Do we need to do anything? A counsel could have
15 sent it to the then Ethics Commission and said, Could
16 we have a ruling on it? The manager could have sent it
17 to the director of operations; I want an audit of how
18 it's being used. The manager could have sent it to the
19 comptroller and said, We need a ruling on whether or
20 not this is being appropriately used. All of those
21 different inquiries would have resulted in nearly the
22 identical set of questions being asked of the state
23 police but performed by somebody in a different role
24 from the media, media liaison. And, again, had any of
25 those things happened, I do not believe you would be

1 asking me questions today.

2 Q And how do you read Commission's 47 and 48 in
3 that regard?

4 A I really think they speak for themselves.

5 Q In terms of what the documents say and the
6 reaction on the management level.

7 A Well, the documents say what they say. And,
8 again, I wish the management response had been to send
9 it to any of the places that I just described for you.

10 Q What do you read those documents to say?

11 A Well, they say what they say, Ms. Tooher.

12 Q How do you interpret those documents, Mr. Pope?
13 I know you're intimately familiar with the facts and
14 circumstances as they turn out to be, but in terms of
15 the statements contained in those documents, do you
16 read those as apprising the recipient of what's going
17 on in terms --

18 MS. NECHELES: What do you mean by
19 what's going on?

20 Q -- in terms of the gathering of information
21 concerning the travel activities of Senator Bruno?

22 A Well, certainly 45 says that because it's a
23 description of that. Forty-eight describes timing
24 right for that move. I don't know what that move is.
25 After reading these, I thought they were sufficiently

1 important documents that they should be sent forthwith
2 to the OIG, the Attorney General and the IG. And as I
3 testified earlier, it was my recommendation that Baum
4 should consider seeking his own counsel. As to
5 Commission 47, think a travel story would fit nicely in
6 the mix, it's a self-apparent statement, and indeed
7 they appeared in the OAG's report prominently featured.

8 BY MR. TEITELBAUM:

9 Q Mr. Pope, regarding Mr. Dopp's and Mr. Howard's
10 communications with the state police in gathering
11 documents, creation of documents, do you have any
12 information that Dopp was authorized to do that and
13 Howard was authorized to do that by members of the
14 Executive Chamber?

15 A Well, Howard was a member of the Executive
16 Chamber, and he was the assistant deputy secretary, and
17 I believe that the state police reported to him.

18 Q Yes.

19 A And so he would be authorized, I think, you
20 know, within a chain of command situation to ask for
21 information from the state police. With respect to
22 Dopp, the managerial lines were unclear.

23 Q I think my question is unclear, so let me make
24 it clearer. When I say authorized, I mean a specific
25 authorization that Dopp and Howard could monitor the

1 movements of Senator Bruno with respect to the use of
2 the state aircraft and afterwards the ground itinerary.

3 A Oh, I have no reason to believe that they were
4 given such a direction.

5 Q Do you have reason to believe that they were not
6 authorized to do --

7 A I have no first-hand knowledge on that at all,
8 and I haven't been told that. I have been told that
9 Baum was told that there was a press request, and I'm
10 not even sure that the Governor received that same
11 level of detail. He certainly was apprised shortly
12 before that the material had been gathered, and he
13 certainly was involved -- the document that we
14 discussed from May 17, I don't believe that he was -- I
15 don't believe I was told that he saw that document. I
16 believe I was told that the question was put to him,
17 but no-one -- I have not been told by anyone that a
18 direction was given to gather the information that you
19 just asked. Again, this is all based on what I have
20 been told, the documents that I've seen. I have no
21 first-hand knowledge of this.

22 BY MS. TOOHER:

23 Q Were you ever told that a direction was given
24 specifically not to pursue the issue of Senator Bruno's
25 travel?

1 A Yes. The direction on May 17, this will be a
2 distraction.

3 Q That was not to issue the statement.

4 A Correct, not and -- yes.

5 Q Were you ever given any indication that Dopp or
6 Howard were told not to pursue this issue, not to
7 gather the information?

8 A No, but at some level if the -- if the press is
9 inquiring about it, there is some obligation to respond
10 to the press. And, again, I don't -- as we sit here, I
11 don't know whether they inquired or not. When I say
12 that, I'm talking about the historical reality.

13 Q As opposed to --

14 A I've testified for hours about different things
15 that different people have told me over time.

16 Q We talked a little earlier about Darren Dopp's
17 desire to testify before the Attorney General and that
18 you were aware of his desire to testify, but his
19 attorney and you were in agreement that it was not in
20 best interest or the Chamber's best interest to do so;
21 is that correct?

22 A That's correct. The first desire, actually,
23 the -- remember, that the testimony at issue initially
24 was to the Inspector General not to the Attorney
25 General. And in fact we were gathering -- I had asked

1 him, as I told you earlier, to gather documents to get
2 ready for a preparation session on Friday in
3 anticipation of testimony on Monday, so that was the
4 context in which the first set of discussions about his
5 testimony took place. Friday morning these documents,
6 and I believe one other, were produced to us. And that
7 created a situation where we gave him the letter
8 advising him to consult with a lawyer which led to his
9 retaining Terry Kindlon which then led to the
10 discussions about whether he would testify.

11 BY MR. TEITELBAUM:

12 Q Just for the record, when you say "these
13 documents" --

14 A Forty-seven, forty-eight, forty-five.

15 Q Thank you.

16 A It's what I believe to be a fragment that's not
17 before me now.

18 (Commission Exhibit 165 was marked for
19 identification.)

20 Q Mr. Pope, I'm providing you a copy of what has
21 been marked as Commission's 165. Can you identify this
22 document?

23 A Hold on a second. Let me just --

24 Q You bet.

25 A Yes, I've read it.

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Q And can you identify this document?

2 A It is a copy of a memorandum that we gave to
3 Darren Dopp on Friday, the 20th.

4 Q And is this the memorandum you were speaking of
5 earlier wherein he was advised to obtain his own
6 counsel?

7 A He was advised not to obtain his own counsel.
8 He was advised to consult with a lawyer to advise him
9 as to whether or not he should have separate counsel in
10 connection with the investigations.

11 Q And are you aware that Mr. Dopp received this
12 memo?

13 A Yes.

14 Q Did you personally provide it to him?

15 A I was in the room. I don't remember whether I
16 handed it to him or someone else handed it to him, but
17 I was there when it was delivered to him.

18 Q And when was it delivered to him?

19 A Sometime Friday, and I don't remember --

20 Q Friday, being July 20?

21 A Correct.

22 Q The date of the document Mr. Dopp received it?

23 A Yes. I think the afternoon or early evening,
24 I'm not sure.

25 Q I'm going to show you what has been marked as

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Commission's 114, and this is an e-mail from you to
2 David Nocenti and Sean Maloney.

3 A Yes.

4 Q And it appears from the e-mail, to my reading,
5 that the determination was made that Darren would not
6 testify at the time this e-mail was written; is that
7 correct?

8 A That's certainly the way I read it; although,
9 when I looked at this before coming here, I didn't
10 remember sending it. Our view as to this changed an
11 awful lot very quickly. We were asked about the
12 interview sometime late Friday after they had received
13 Commission 47, 48 and 45 and one more. And sometime
14 later in the day they said we wanted to interview him.
15 That led to a series of discussions. And clearly from
16 this, at 10:23, we had decided that the Chamber would
17 not make him available. We revisited this question
18 many times.

19 Q Many times in the course of the next two days?

20 A Yes.

21 Q And with whom did you revisit it?

22 A Among ourselves, Maloney, Nocenti and I. It was
23 a significant decision. We continued to ask ourselves
24 if it was the right one.

25 Q Did you --

1 A I don't think that we ever got to a place where
2 we thought it made sense that he should testify, but it
3 was certainly the main topic of discussion, a main
4 topic of discussion.

5 Q And in those discussions did you consult
6 Mr. Dopp's attorney?

7 A Yes, Friday night and Saturday.

8 Q Did you consult with him concerning Darren not
9 testifying before the AG?

10 A Yes.

11 Q And what was his substantive contribution to
12 that?

13 A His substantive contribution was that he didn't
14 believe that it made sense for Darren to testify.

15 Q And what did he base that on? Did he tell you?

16 A There were two different times that I remember;
17 one is I believe that it was Saturday when he came in
18 and talked with me, and I described for him, I believe,
19 that at that point, I'm not positive, but I think that
20 I gave him the significant e-mails with Darren's name
21 on them. I believe I described to him what it is that
22 we knew. I believe I described to him the nature of
23 the Attorney General's investigation. I believe I
24 described to him how the word "perjury" had come up
25 with Bill Howard. He had already met Darren, so he had

1 seen the emotional state that Darren was in. And he
2 said that the issue was going to be -- I mean we
3 discussed a number of things, one of them was whether
4 it would make sense for Darren to testify, and he --
5 and I said that I thought that it did not -- oh, we
6 also discussed that the report appears to be in a very
7 advanced stage of drafting, that they -- at that stage
8 there was no criminal finding, no civil finding. There
9 would be personnel issues. And it was my opinion that
10 it did not make sense for him to testify, setting aside
11 the Chamber prerogatives and all of the executive
12 privilege-type issues which were -- they were important
13 to me. They were even more important to others
14 involved internally in our discussions. And he said
15 that he agreed. I did not find that a surprising
16 reaction for a very experienced criminal defense
17 lawyer.

18 Q Did he say to you at that time on Saturday that
19 he was not up to speed and didn't feel comfortable
20 making a determination at that point?

21 A He certainly said that he was not up to speed
22 and needed to get up to speed and was getting up to
23 speed. That is consistent with a decision not to allow
24 a client to testify. In fact, that would be one of the
25 main reasons to not allow a client to testify. And

1 this was a situation where 24 hours earlier some of the
2 most important documents in the case had shown up, and
3 I know that I was not confident that we had the
4 universe of documents. And, in fact, as we discussed
5 earlier, only later did the May 17th document with the
6 statement, based on press inquiries, show up, and so it
7 was self-apparent that we didn't have the universe of
8 documents, and I would presume that would be a -- I
9 know that it was an important reason for me, and I have
10 to believe that an outstanding lawyer like Terry would
11 make the same judgment.

12 Q And did Terry discuss with you Darren's
13 relationship with the Attorney General himself and his
14 desire to speak with the Attorney General?

15 A No.

16 Q Did Darren discuss with you his -- Darren's
17 relationship with the Attorney General?

18 A I was well aware of Darren's relationship with
19 the Attorney General. Nobody told me that Darren
20 wanted to speak directly to the Attorney General.

21 Q Darren did not tell you that he wanted to speak
22 directly to the Attorney General?

23 A No.

24 Q And Mr. Kindlon did not advise you that he
25 wanted to speak directly?

1 A No.

2 Q Do you know how Darren Dopp got Mr. Kindlon's
3 name?

4 A Yes. With this memo, earlier in the day we had
5 given a similar memo to Bill Howard. Attached to that
6 memo were four names. And we told Bill, you know,
7 Look, here are four names. We're not going to give you
8 one. You're welcome to use any of them. You're
9 welcome to call somebody that you know. Bill looked at
10 the list, picked one. We also offered to have Steve
11 Krantz, who's in counsel's office, call the lawyer and
12 say this is the situation; would you talk to him? The
13 person that Bill called first -- I don't remember his
14 name. If you guys have a list, I can look and see if I
15 can pick it out -- said the moment that Steve called
16 him, Sorry, I'm conflicted; I'm representing Bruno in
17 the federal case. Bill decided instead to call someone
18 else, and he called Fred Newman. When, later in the
19 day these had shown up, we had made the determination,
20 we took that same list over to Darren and said, Look,
21 we know this guy is conflicted; here are three. I
22 don't remember who tried to call, but I remember
23 learning that -- and this is late Friday -- it was
24 impossible to reach anybody. Sean and I tried to
25 figure out who in the Chamber would know a good lawyer

1 in Albany. We walked down the hall to our friend and
2 colleague Judith Enck, who is a deputy secretary who
3 does environmental work, and said, Do you know a good
4 criminal lawyer in Albany? And she said, Oh, I have a
5 great friend and his wife who are really good lawyers.
6 Let me try and call them. She called the office, spoke
7 to him. He had just gotten off the plane from England.
8 And he called me and said, You know, this is great
9 timing. My family is away. I can do this.

10 Q And at a certain point -- strike that. You
11 indicated earlier that the AG report was predominantly
12 done on Friday; is that correct?

13 A Yes.

14 Q And that was prior to your providing them the
15 four e-mails that you located on Friday?

16 A Yes.

17 Q Was there an indication from the Attorney
18 General's Office at that time as to a change in
19 direction for the report?

20 A I believe that after they got these -- they had
21 previously told us no civil, no criminal, it's
22 personnel. After they received these, we had a similar
23 discussion, and it was still clear no criminal, no
24 civil violations of law, personnel actions.

25 Q So why were you looking for a criminal attorney

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 for Mr. Dopp?

2 A Because the question of testimony implicates,
3 particularly after they had used the word "perjury"
4 with respect to Bill Howard, we wanted to make sure
5 that there was somebody who knew the -- was fully aware
6 of the issues.

7 Q And --

8 A We really did not take it lightly when, after
9 the circumstances that I described about getting him to
10 the interview were then followed very quickly by a
11 telephone call in which the word "perjury" was used.
12 That struck us as an extraordinarily serious matter.

13 Q And --

14 A Struck me as an extraordinarily serious matter.

15 Q And from Friday to Saturday you're bringing
16 Mr. Kindlon up to speed, and the Attorney General's
17 Office is still indicating this is done; this is in the
18 can; this is --

19 A They had -- Biben had told me, and I don't
20 remember whether it was the prior weekend or earlier in
21 the week, that the report at that stage was already
22 virtually done. At some stage, and I'm sorry I can't
23 tell you when, it was very clear to us that they wanted
24 to issue on Monday, and I don't remember when. Now,
25 having been told before then that it was virtually

1 written and then they wanted to issue Monday, it was
2 very clear that they had a product, and they were
3 telling us what their conclusions were -- that is no
4 criminal, no civil.

5 Q Did they ever indicate to you why it was so
6 imperative that they issue the report on Monday?

7 A No. At one stage she used language like as
8 little as possible, as fast as possible.

9 Q And what did you take that to reflect?

10 A That they wanted to get done and get out.

11 Q And at a certain --

12 MR. TEITELBAUM: -- as little as
13 possible?

14 THE WITNESS: I'm repeating. I
15 don't know.

16 MR. TEITELBAUM: Is doing as little
17 as possible --

18 THE COURT REPORTER: Speak up
19 please.

20 MR. TEITELBAUM: Is doing as little
21 as possible, is that what you understood it to
22 mean? I'm going to do as little as possible as
23 quickly as possible?

24 THE WITNESS: That's what the plain
25 words seem to say.

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Q And did you ever put anyone at the Attorney
2 General's Office in touch with Mr. Kindlon?

3 A No. I think that at that stage it was Kindlon's
4 view or Darren's view, as expressed through Kindlon,
5 that they did not want the world to know that he had
6 retained counsel. There was -- as part of the
7 discussions about retaining counsel, there's an issue
8 with you get a lawyer you are guilty of something.

9 Q So the Attorney General's Office was never
10 advised that Darren Dopp had retained Mr. Kindlon?

11 A I believe that that's right.

12 Q And that was at Mr. Kindlon's request?

13 A I think that's right, because I think that we
14 were indifferent to that, the Chamber.

15 Q You were indifferent meaning --

16 A Whether it was known that Darren had a lawyer or
17 not.

18 Q And at a certain point in time it was agreed
19 that Darren Dopp would provide a written statement to
20 the Attorney General's Office; is that correct?

21 A Yes.

22 Q And how did that determination come about?

23 A You know, again, we were revisiting issues
24 constantly, and there was a lot of discussion as to
25 whether or not we could provide them the answer to the

1 basic questions that we believe they had, that is --
2 remember at the time this was an investigation as to
3 whether we conducted surveillance, so that there was
4 a -- there was discussion of whether there was
5 something shy of oral live testimony that might help
6 the Attorney General, the Chamber, and Rich and Darren.

7 Q And who was negotiating with the Attorney
8 General's Office at that juncture concerning Mr. Dopp's
9 statement?

10 A Oh, we didn't negotiate with them about the
11 substance of the statement. There was a question as to
12 whether or not they would take it, and I raised it -- I
13 raised it at least in one telephone conversation, and I
14 believe that David Nocenti had a series of
15 conversations with Benjamin Lawskey about it.

16 Q And when is this?

17 A Well, we didn't know they were going to take the
18 statements until Sunday afternoon, and I think that we
19 began raising it with them -- I think that we began
20 raising it with them Sunday afternoon. They were
21 asking us, up from Friday night up through Sunday
22 morning, were Dopp and Baum going to testify. And I
23 believe that it was in a conversation with their office
24 around 2:00 on Sunday where we said, They're not going
25 to testify; would you accept written statements?

1 Q And who was that discussion with?

2 A The big conference call had me, and Sean, and
3 David on our end, and there was Lawsky, Nachtigall
4 Biben, and Lacewell, and one other lawyer on their
5 side.

6 Q So this was done on a conference call?

7 A This was done on a conference call.

8 Q And sometime on or about Sunday afternoon they
9 agreed they would except a statement?

10 A They agreed that they would accept statements.

11 Q And who prepared those statements?

12 A I think that there were different drafts. I
13 don't remember who did the first draft. I know that --
14 I know from looking at the e-mails that at one stage a
15 draft is sent off to Kindlon, and then he sends it back
16 with changes, and that's the one that gets submitted.

17 Q I'm going to show you what has been previously
18 marked as Commission 74. Can you identify this
19 document?

20 A This looks like a copy of Darren's statement,
21 but the versions that I've seen haven't had the
22 underlining or the circling on it.

23 Q And absent the underlining and the circle, is
24 this the statement that was provided to the Attorney
25 General's Office?

1 A I believe so.

2 Q And were you present?

3 A But then I did not send the final version over.

4 Q Who did that?

5 A David Nocenti, I believe.

6 Q Were you present when Mr. Dopp executed this
7 statement?

8 A Yes.

9 Q And did he indicate to you at that time that he
10 had issues with signing the statement?

11 A The conversation that took place were not so
12 much about the statement which had been changed in
13 material ways by Terry Kindlon, but about whether or
14 not Darren should testify, whether it was smart for him
15 to testify. And so the question of signing the
16 statement was not the main event at the meeting where
17 he came to sign it. The issue was more that was
18 clear -- and I don't remember whether it was being
19 voiced through Terry or through Darren, but I know it
20 was clear that night that Darren wanted to testify.
21 And we talked to him about the many reasons that I've
22 discussed with you guys why that was a poor idea. And
23 Terry said -- turned it down in front of us and said, I
24 agree. And I think that we left the room. They had
25 stayed behind in the room. We came back, and Darren

1 signed it.

2 Q Did you have any discussions on July 22, 2007
3 directly with Darren Dopp concerning his signature on
4 the statement?

5 A I was at a meeting with Darren, Terry, David,
6 Sean in David's office in which we were discussing --
7 he came to sign. I mean the purpose of the meeting was
8 for him to come to sign this. And it became a
9 discussion as to whether or not he should testify
10 instead. I don't remember a lot of discussion about
11 whether he should sign something or not.

12 Q Did you ever relay to Mr. Dopp, in sum or
13 substance, that he faced criminal prosecution from the
14 Attorney General's Office if he didn't sign this
15 statement?

16 A No.

17 Q Did you ever relay to him that the Attorney
18 General was contemplating criminal prosecution of him
19 at the time he came to discuss the statement with you?

20 A No. The discussion of criminal prosecution at
21 that meeting was the danger of testifying under these
22 circumstances, given that somebody else who he knew had
23 testified unprepared and was now being accused of
24 perjury. So there was a discussion about the down-side
25 risk of his testifying and how that could put him at

1 risk. There was no conversation at all about if you
2 don't sign this you will face criminal charges, zero.

3 Q And did you discuss anything else with Mr. Dopp
4 at that meeting concerning his future with the Chamber?

5 A I don't remember whether we discussed it with
6 him at that meeting, but there had been discussions
7 with Terry about the fact that there was going to be
8 some kind of suspension. I remember Terry asking how
9 long. And I remember responding, I think it's in the
10 neighborhood of a month, something. I don't know
11 whether I said a month or 30 days, but that it wasn't
12 decided yet. And Terry seemed to allow as how that
13 seemed reasonable.

14 BY MR. TEITELBAUM:

15 Q During the meetings on that weekend of the --
16 you know, when the Commission Exhibit 74 was signed,
17 were you having conversations with Dopp outside the
18 earshot of Kindlon?

19 A No, no. Once, once Kindlon was in the case, we
20 were communicating through counsel.

21 Q So testimony to that effect, that you were
22 having conversations outside of the earshot of Kindlon,
23 would be inaccurate?

24 A That's correct. Counsel was in the case, and
25 the only -- he sent me an e-mail in which he said,

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 Kindlon will be calling you in 30 minutes. And I sent
2 him an e-mail back saying he already called me.

3 Q This is Dopp?

4 A This is Dopp.

5 BY MS. TOOHER:

6 Q Did you have any telephone conversations with
7 Darren Dopp during that timeframe?

8 A No. The whole point was to get him counsel to
9 represent him; that was the whole point.

10 BY MR. TEITELBAUM:

11 Q Have you heard Kindlon in the last several
12 months --

13 A I have not heard from Kindlon for a very long
14 time.

15 Q How about his wife?

16 A No.

17 BY MS. TOOHER:

18 Q Following the execution of the statement and the
19 provision of that to the Attorney General's Office, did
20 you have further communications with Mr. Kindlon?

21 A Yes.

22 Q And what were those communications concerning?

23 A Terry called a couple of times and wanted to
24 know when it would be possible to begin discussions
25 about how long Darren's suspension would run and

1 whether he would be coming back and in what capacity.

2 Q And what was the product of those discussions?

3 A At one stage I said we're not ready to talk
4 about it yet. At another stage he had a very concrete
5 proposal in which he recommended that Darren be treated
6 something like a civil service employee, where after a
7 certain period of time he goes back on the payroll even
8 if he doesn't come back, to which I sent a letter. And
9 most of the negotiations, I believe, were going on
10 with -- not with me, I think it was David and Olivia
11 Golden, who was then the director of operations. They
12 were trying to figure out how and when to bring Darren
13 back.

14 Q After the issuance of the Attorney General
15 report, were there discussions within the Chamber
16 concerning the contents of the report and the
17 discipline of Darren Dopp?

18 A Well, the contents of the report we -- yes,
19 there were but not that much, because we knew the
20 contents of the report. They had briefed us. Another
21 thing that happened during that Sunday meeting was they
22 briefed us on the contents of the report. We read it
23 that morning. It was what we expected it to say.

24 Q Were there discussions with the District
25 Attorney's Office concerning the contents of the

1 report?

2 A Yes, there were, and I don't remember when they
3 began, because during the OAG investigation the DA said
4 that they weren't doing an investigation, and then
5 afterwards they started up, and I don't remember
6 exactly when.

7 Q You don't remember if they started before the
8 Attorney General's --

9 A No, they -- I know that they did not start
10 before because they told me that they weren't. And I
11 think that's reflected in the "chron" that you guys
12 showed me, is the position that the DA had taken at
13 that time.

14 Q And at this point we're talking about the Albany
15 County District Attorney's --

16 A Correct.

17 Q -- Office?

18 A Yes, David Soares' office.

19 Q And who were you communicating with in that
20 office?

21 A The district attorney.

22 Q Mr. Soares himself?

23 A Yes.

24 (Commission Exhibit 166 was marked for
25 identification.)

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 A I've read it.

2 Q Mr. Pope, you've been handed Commission's 166.
3 Can you identify this document?

4 A You know, I don't remember this at all, but it
5 appears to be a draft press release that was sent to
6 our office and then sent to me.

7 Q And the press release or the draft press release
8 e-mail dated 7/23 2007, this appears to be in the wake
9 of the Attorney General's report.

10 A The same day.

11 Q Is it standard for the District Attorney to vet
12 press releases through the Governor's Office?

13 A You know, I don't think that there was anything
14 standard about this at all, but it's not inappropriate
15 if you're commenting on something to run it by others.

16 Q Did that happen on other occasions where the
17 District Attorney would put press statements through
18 the Governor's Office prior to release?

19 A I don't remember whether there were other
20 occasions, but again this is kind of a one-off.

21 Q And your response to this, would they add
22 regarding Governor's Office, but the report shows no
23 evidence of a crime, appears to be a substantive
24 comment --

25 A Yes, it does.

1 Q -- on the content of their press release.

2 A It clearly is.

3 Q And have you ever provided other substantive
4 input to the District Attorney's Office on issues
5 addressing the Executive Chamber?

6 A Yes.

7 Q And what were the circumstances of those?

8 A When they opened an investigation they asked for
9 our view on the Penal Law, and we submitted a letter to
10 them, much along the lines of the letter that we
11 submitted to you guys.

12 Q And had you been in contact with the District
13 Attorney's Office prior to the issuance of this press
14 release?

15 A Yes. As I said, I had called during the
16 Attorney General's investigation to see whether they
17 were doing an investigation. They said they were not,
18 and I believe that I memorialized that in the
19 chronology that you showed me earlier.

20 Q And is this press release in accord with your
21 conversations with the District Attorney's Office?

22 A Let me look. I can tell you the conversation;
23 that may be the easier way. I asked if they were doing
24 an investigation also, and he said, No; we're letting
25 Andrew do that part, and we're looking at -- I think he

1 said we're looking at whether or not there was any
2 criminality with respect to the use of the plants. So
3 he was not investigating -- he said, In the division of
4 the world, they were doing the Executive Chamber; he
5 was doing the airplanes. And I think that if we look
6 at 164 on page 2, that's recited. Commission 164 at
7 the bottom of page 2, the paragraph entitled, The DA
8 Investigation, the paragraph, DA Soares told us that at
9 this stage he will not be investigating the matter of
10 alleged surveillance. He and the Attorney General
11 determined together that Soares would investigate
12 allegations surrounding Senator Bruno's use of the
13 airplane, and Cuomo would investigate allegations of
14 the Executive Chamber, conducting surveillance of
15 Senator Bruno; that's a -- I'm repeating a conversation
16 that I had with the District Attorney.

17 Q But if your understanding was that they were
18 looking into Senator Bruno, why were you suggesting
19 they reach a conclusion concerning the Governor's
20 Office?

21 A I didn't. I was asking that they reach a
22 conclusion about the report. And the report did say in
23 the report itself, there is no evidence of a crime.
24 So, so I suggested that they add, but the report shows
25 no evidence of a crime, just underscoring what was in

1 the report.

2 (Commission Exhibit 167 was marked for
3 identification.)

4 Q Mr. Pope, you've been provided a copy of what
5 has been marked as Commission's 167. Can you identify
6 this document?

7 A This is a letter that I drafted and sent to
8 District Attorney Soares.

9 Q And what was the context of this letter being
10 sent to District Attorney Soares?

11 A Much the same context as the letter that we sent
12 to the Commission; that is, the charging decisions or
13 the enforcement decisions that the regulatory bodies
14 here make will have a very deep impact on the way
15 whatever Governor is in power, does his or her business
16 going forward, and we wanted to state our views as to
17 that.

18 Q And what was your understanding on August 8,
19 2007 as to what the District Attorney was
20 investigating?

21 A I think that the District Attorney was
22 investigating the matter set forth in the Attorney
23 General's report at that stage. I would not have
24 remembered the date otherwise, but it can only be.

25 Q And the first line of the letter, this letter

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 responds to your request that we provide our views.

2 A Yes.

3 Q Who did you get that request from?

4 A From the District Attorney.

5 Q From the District Attorney himself?

6 A Correct.

7 Q And was that a written request?

8 A No, it was oral.

9 Q And when did that conversation occur?

10 A I don't know, sometime shortly before August 8.

11 They were also -- he made me understand that they were

12 getting a submission from the Senate as well.

13 Q Aas submission as to --

14 A Why he should prefer criminal charges.

15 Q And what did he ask you for specifically?

16 A We had a discussion very similar to the
17 discussion that we had with you and Mr. Teitelbaum
18 about how the enforcement actions -- how the
19 enforcement actions would affect the way the government
20 was conducted, and discussed the appropriate way for us
21 to make our views known, and he made a request then
22 that we provide a submission, and we did.

23 Q And who initiated this conversation?

24 A I did.

25 Q You reached out to the District Attorney?

1 A I reached out to the District Attorney in much
2 the same way we reached out to you guys to have the
3 discussion.

4 BY MR. TEITELBAUM:

5 Q There's a difference, Mr. Pope, because we
6 didn't ask you for a submission. You provided a
7 submission.

8 A Yes.

9 Q You're saying that the District Attorney asked
10 you for a submission.

11 A Yes. There was a discussion about the
12 appropriate way to do it, and he asked. We certainly
13 desire very much to make a submission to him. And had
14 he not, I expect that we would have made it anyway.

15 BY MS. TOOHER:

16 Q And what was that desire based upon?

17 A A desire to not get a constructure (sic) of the
18 criminal laws that would outlaw some of his conduct. I
19 mean it is the matters that we set forth in here, I
20 think if they were decided in a different direction,
21 from the point of the Criminal Law, it would have very
22 bad public policy results, as the same reason as we
23 made the submission to the Commission. One of the --
24 one of the main things is set forth on the final page
25 of the letter. The paragraph; Finally, the

1 consequences of making any other criminal charging
2 decision in this case -- if finding reporting
3 questionable conduct by a government employee becomes a
4 criminal offense, then this country will have traveled
5 to a dangerous place, one where official's repeated
6 abuses of government privileges can be kept secret
7 through the threat of criminal prosecutions. Our view
8 was that that would be a misapplication of the statute
9 and terribly, terribly damaging to the notion of
10 transparency which many of us feel extremely strongly
11 about. And Ms. Tooher, I would also add that we were
12 very clear in this letter about our view of our
13 employees' conduct and why it is that we discipline
14 them. And we say at both -- at the very top of the
15 letter in the second paragraph and talk about the
16 serious disciplinary action that we have taken, as well
17 as on page 6 where we talk about how the conduct of the
18 Chamber employees was inappropriate.

19 BY MR. TEITELBAUM:

20 Q Mr. Pope, in your conversation with the District
21 Attorney did he explain to you why in the aftermath of
22 the Attorney General finding no criminal conduct who
23 was investigating this?

24 A He said that in light of this it was very
25 important to take a full look at it and that he didn't

1 believe that the matter would be put to rest until
2 there was a full airing of the facts, almost ironically
3 the same thing that you said to me and to Lloyd and to
4 Richard when we met with you, that is the need for a
5 full vetting of the facts.

6 Q The comment on the Attorney General's report,
7 that was not a full airing of the facts?

8 A Yes.

9 Q What did he say?

10 A He did not regard it as a full airing of the
11 facts. He regarded it as a sloppy product. I don't
12 remember if it was at this stage or later.

13 Q Did he say why it was a sloppy product?

14 A Speedy and not thorough.

15 Q Did he say in what respects it wasn't thorough?

16 A Not to me.

17 Q But he did say it was speedy and not thorough to
18 you?

19 A Yes.

20 Q And what did you say to him?

21 A I said it certainly, in sum or substance -- I
22 don't remember what my response was. I mean it
23 certainly was speedy. And as I have been talking to
24 you about most of the day, things were happening at an
25 extraordinary pace. And, you know, for example, the

1 May 17th press release that in the first line says
2 there was an inquiry from the press in a document that
3 we hadn't found.

4 THE COURT REPORTER: They you
5 hadn't what?

6 THE WITNESS: Hadn't found.

7 A With an appropriate amount of time, obviously
8 that document would have come to light.

9 Q Between the time that the Attorney General's --
10 withdrawn. You may have made testimony on this,
11 Mr. Pope, and if you did, forgive me. With regard to
12 166, which is the string of e-mails initiated by
13 somebody out of the District Attorney's Office
14 concerning the press release, did you have a telephone
15 conversation with the District Attorney at or around
16 this time?

17 A I don't think so. I don't remember 166 at all,
18 and this day --

19 Q I'm -- go ahead.

20 A This day was hectic, distressing. This was the
21 morning that the Cuomo report came out, the afternoon
22 of the morning that the Cuomo report came out. Ten
23 days of very intense trying to respond responsibly to
24 an investigative agency.

25 Q And the e-mail from Richard Arthur, which sets

1 out the proposed statement, it says, We were not asked
2 to, nor did we participate in, any investigation of a
3 conduct of members of the Governor's Office. Now, what
4 is your understanding as to when the District Attorney
5 commenced such an investigation?

6 A Sometime after the issuance of the Attorney
7 General, but I couldn't tell you when.

8 Q It would have to be before August 8, obviously.

9 A Yes.

10 Q So it was --

11 A July 23, August 8, that's the bracket.

12 Q Right, there is a 15-day window period. And did
13 you do the research yourself with regard to 167?

14 A I did.

15 Q And do you remember how long that took you?

16 A I don't.

17 Q A couple days?

18 A Days, maybe as long as a week, I'm not certain.

19 Q And you prepared this --

20 A I don't -- I don't know.

21 Q And you prepared this --

22 A I really -- I don't know, I'm sorry.

23 Q And you prepared this in what capacity?

24 A Special Counsel to David Nocenti.

25 Q And did you show it to Mr. Nocenti before it

1 went out?

2 A Yes.

3 Q Did you show it to anybody else?

4 A Yes, Sean Maloney, Richard Rifkin, Lloyd
5 Constantine.

6 Q And that took a couple days, I would take it; is
7 that right?

8 A No. The comments came in very quickly.

9 Q And during this period, from the 23rd to August
10 8th, how many conversations did you have with the
11 District Attorney?

12 A I don't know.

13 Q Well, you had one, at least?

14 A Yes.

15 Q Correct? Because it was a conversation that
16 generated 167.

17 A Mr. Teitelbaum, I don't know. I have to believe
18 that it was more than one. I don't know how many.

19 Q Why do you have to believe it was more than one?

20 A Because somehow I had to learn that they were
21 doing an investigation.

22 Q Is it your best recollection that the District
23 Attorney called you to inform you of that?

24 A I don't -- I don't know.

25 Q And after the August 8, 2007 letter, 167, did

1 you have conversations with the District Attorney?

2 A Yes.

3 Q Did you have any conversations with him
4 concerning his report?

5 A Yes.

6 Q Did you have conversations concerning his report
7 before the report was issued?

8 A Yes.

9 Q Did he share with you the contents of the report
10 before it was issued?

11 A His staff at one point summarized the contents
12 of the report for me, much as the Attorney General had.

13 Q What was your understanding of why that was
14 done?

15 A I had asked for, to the extent that it was
16 appropriate, him to share the information so that we
17 could be prepared to address whatever issues were
18 raised with the public.

19 Q And in sharing the report's contents before it
20 was issued, was that verbally, in writing, or both?

21 A Verbally. I think that we got a written copy 40
22 minutes before it was put out to the world.

23 Q To the best of your knowledge, were portions of
24 the report in draft form being read to you?

25 A No.

1 Q You were just being told what the report was
2 going to say in summary fashion; was that the idea?

3 A Correct.

4 Q And how much before the report's issuance were
5 you getting this information?

6 A Two days.

7 Q And you had called the District Attorney asking
8 if you could get this information, or you were just
9 called with the information without prompting?

10 A No, I asked, as I have been asked many times by
11 adversaries when I was in the Attorney General's
12 Office.

13 Q Did you comment?

14 A No.

15 Q You just heard.

16 A I heard.

17 Q Didn't say anything about, about what was being
18 told?

19 A No. I think I asked a question or two.

20 (Commission's Exhibit 168 was marked for
21 identification.)

22 BY MS. TOOHER:

23 Q Mr. Pope, over the course of the last few months
24 we've been provided a number of documents by the
25 Executive Chamber, some of which were identified as

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 notes of yours.

2 A Yes.

3 Q And with all due regard to your penmanship, some
4 of which we were not completely decide --

5 A Happy to do my best.

6 Q I'll provide you what has been marked as
7 Commission 168, and ask you if you could just read this
8 into the record?

9 A Commission 168. The crossed-out line: "By the
10 end, the state police were directly contacting
11 Senator." And then the second line, not crossed out:
12 "Senator Bruno's movements were repeatedly being secret
13 conveyed to my office."

14 Q What is the context of this statement, these
15 notes? What does this mean?

16 A You probably saw a number of my notes in which I
17 was trying to figure out what was or was not wrong
18 here. As you know from our earlier discussion, I think
19 that there are a number of things that would be
20 completely appropriate in just slightly different
21 management decisions. I don't remember what this one
22 was, but it looks to me as if either I'm trying to put
23 the case in its worst, or I'm trying to try out a
24 sentence for a statement by the former Governor.

25 Q And do you recall which this was?

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 A I don't recall this at all.

2 Q And what would have been the underlying
3 information to make you put this into writing?

4 A Oh, the e-mails.

5 Q So that the e-mails were being -- that the
6 Senator's movements were being conveyed to your office
7 was a consequence of the e-mails, the four e-mails that
8 you had forwarded to the AG's Office?

9 A No. It's the -- I think that there are two days
10 on which the state police convey to the Executive
11 Chamber Bruno's movements for the next day, and that's
12 what I found, as I told to you earlier, most
13 problematic.

14 (Commission Exhibit 169 was marked for
15 identification.)

16 A Thank you. I've looked at it.

17 Q Okay, you've been provided again two pages of
18 your notes.

19 A I have four pages.

20 MS. TOOHER: What did you give him?

21 MR. TEITELBAUM: Me, too.

22 MS. TOOHER: Fortunately, I don't.

23 MR. SHEA: Okay, it should be just
24 the two pages.

25

1 BY MS. TOOHER:

2 Q Okay, I apologize, it should be just the first
3 two pages -- need a stapler -- which are Bate stamped
4 PD-00419 and PD-00420. And I'm going to draw your
5 attention to the bottom of the page. First I would
6 like to know what are these notes reflective of?

7 A This is one of the examples; although, I think
8 you have a number of my attempts to take the different
9 strings out and to try to figure out what is wrong and
10 what is not wrong, and so you see me listing the
11 possible things that could be wrong, along with
12 marshaling the information underneath it.

13 Q And I just would like to draw your attention to
14 the bottom paragraph which appears to start, "State
15 Police?"

16 A Yes.

17 Q Could you read that section to us?

18 A "State police should not be providing realtime
19 update re Bruno's whereabouts." And there's a new
20 paragraph with a dash in front of it. "Agree,
21 unseemly, appearance of impropriety. Press office
22 should never have put SP in that position." New
23 paragraph. Slash, "one day," and then two vertical
24 lines with Felton and Howard next to them.

25 Q And what does that refer to, the one day, double

1 slash, Felton, Howard?

2 A Early in the week of the 16th we were aware of
3 one day when this information was provided in advance.
4 If I remember correctly, it was Thursday or Friday that
5 continued searches show that there was a second day
6 like this.

7 Q And then on the second -- the next page, if you
8 could just read the first paragraph or outline?

9 A "What should Gov's Office have done?" Bullet,
10 IG? Arrow, "no juror over legislators," two slashes.
11 "May be called in to do management-type audit."
12 Bullet, "Call Gov's Office?" Bullet, "Let it go???"
13 Poor government stewardship." Bullet, "Put in audit
14 trail records?" Bullet, "Call in comptroller?"
15 Bullet, "Prob should have done more than just to
16 respond to press inquiries."

17 Q And according to what you've read, this is your
18 list of potential responses to what the Governor's
19 Office should have done in this circumstance?

20 A I think responses is not accurate. This was my
21 work product to try to figure out what was in fact a
22 problem, what was not in fact a problem, what the
23 proper responses should have been.

24 Q Okay, responses to what?

25 A At this stage, which has to be early the week on

1 the 16th, there were a series of different accusations
2 and a series of different claims being made, and I
3 tried to catalog them and then, for myself, figure out
4 what was a legitimate criticism and what was an
5 illegitimate criticism, because what we wanted to do
6 was take responsibility for what legitimately had gone
7 wrong.

8 Q And did you discuss these notes, this outline
9 with others in the Chamber?

10 A I certainly didn't give this out -- I don't
11 remember giving this outline to anyone. I can't
12 imagine that I would have given this outline to anyone,
13 but we definitely had discussions of what's wrong here,
14 what's not wrong here, which piece is wrong, which
15 piece is right. It is -- this continues to seem to me
16 to be not an easy issue, because when you go to the
17 first one of course the people of the State of New York
18 should know how their property is being used. And
19 it -- had we failed to disclose that kind of
20 information, it would have been inappropriate, and we
21 would have been severely criticized for it. On the
22 other hand, when you get down to the bottom bullet
23 about the updates in advance, I think if you were using
24 that for a management purpose, it probably would be
25 okay. If it's a press office, it is, as I write here,

1 unseemly. And as I wrote in the letter to the DA that
2 you showed me earlier and I think as I wrote -- as we
3 wrote in the letter to you guys.

4 BY MR. TEITELBAUM:

5 Q Mr. Pope, do you know of anybody else in the
6 Executive Chamber discuss the issue of the state police
7 conveying on a realtime basis Bruno's whereabouts to
8 the press people?

9 A Yes, to the press people.

10 MS. NECHELESS: When do you mean?

11 When? When?

12 MR. TEITELBAUM: When did he
13 discuss it?

14 MS. NECHELESS: Yes.

15 MR. TEITELBAUM: At any time.

16 MS. NECHELES: At any time.

17 A I think that, as needless to say, the Attorney
18 General's Office was focused on that and wrote about it
19 in the report, and I'm confident that we must have
20 discussed it Sunday after the report with the entire
21 group because it was in the report.

22 Q Was it an item that was discussed before the
23 report was --

24 A The Sunday before the report.

25 Q I see.

1 A That is the Attorney General's Office on Sunday
2 afternoon gave us a detailed outline of what was going
3 to be in the report, and this was one of the items. No
4 surprise. I mean we saw it in the e-mails.

5 Q The four e-mails that we've been discussing.

6 A No, no, no, no.

7 Q The prior e-mails.

8 A Yes.

9 Q And you had those e-mails at what point?

10 A We had some of them that Sunday, the 15th? And
11 so this -- we had one day of it early the week of the
12 16th.

13 Q Once members of the Executive Chamber found out
14 that the state police were providing on a realtime
15 basis information to the press people, was there a
16 discussion of that among the Executive Chamber staff?

17 A There was a discussion with it. It's important
18 to know that there were huge negotiations going on at
19 this stage with the Senate. And other than Sean and
20 David and me, there was very limited discussion with
21 the rest of the Executive Chamber staff until Thursday,
22 the -- 17th, 18th -- 19th, that that late afternoon in
23 which we went over the chronology.

24 MS. NECHELES: When you say
25 "negotiations" you mean about legislative
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 matters.

2 THE WITNESS: Yes.

3 Q Unrelated.

4 A Completely unrelated and, you know, going all
5 night long, late into the night, lots of news coverage.

6 Q So when was the first time that the item of the
7 state police conveying information on a realtime basis,
8 when did that come up, as best you can remember?

9 A To me? When I read the state police e-mails the
10 14th or the 15th.

11 Q And at that point did you discuss that with
12 anybody?

13 A Well, David and Sean for sure.

14 Q And what was that discussion? What was said?

15 A The first discussion was with Sean, and it was,
16 Look at this. This is bad. And there was a follow-up
17 discussion with David which is -- was the same.

18 Q Among the three of you, did somebody say why it
19 was bad?

20 A No. It was a more visceral reaction. And
21 indeed why it was bad was precisely the reason that I
22 went through the exercise in 169, because parts of it
23 are perfectly reasonable, and parts of it are not, and
24 I wanted to parse it very carefully to understand
25 exactly that feeling.

1 Q Parts of conveying information on a realtime
2 basis, you're saying?

3 A Mr. Teitelbaum, remember the set of facts on the
4 ground at the time, which were primarily known to me at
5 least and I think to most of us through newspaper
6 articles, to the extent that they were facts, they were
7 mostly allegations. So what the "it" was, was not
8 entirely clear. At one point the "it" was
9 surveillance. And this document exists precisely in
10 order to try and figure out what the "it" was and what
11 the "it" wasn't.

12 Q Did you conclude that conveying information in a
13 manner that we're talking about, on a realtime basis,
14 was not an act of surveillance?

15 A Yes.

16 Q Can you explain why?

17 A Yes, and it's actually the third bullet on this
18 document. Surveillance is pretty well known in law
19 enforcement what it is, what it isn't, how you do it.
20 You get daily reports. You get a case number. You get
21 photographs. There is a team that does it. It's a
22 protocol. It's very difficult. It's very involved,
23 and there is lots of indicia of it. That's very
24 different from reporting, this is the itinerary
25 tomorrow. So it was very clear to me that we did not

1 have surveillance but that we did have something else
2 that troubled me.

3 Q So when you use the term "surveillance" you were
4 using it as a term of art, in a sense, of what
5 surveillance means to a prosecutor, is that correct,
6 and not surveillance as it might be defined in a
7 dictionary?

8 A I haven't looked at the -- I haven't looked at
9 the dictionary meaning of it.

10 Q Right.

11 A But, but, to me, surveillance means a very clear
12 set of actions known throughout law enforcement and
13 throughout private investigations and to the press, and
14 this wasn't it.

15 MS. NECHELESS: Can we just take
16 one minute?

17 (A brief recess was taken.)

18 BY MS. TOOHER:

19 Q Is there something you wanted to add?

20 A There's a -- are we ready? There was a
21 conversation that I had with Darren sometime the week
22 of the 16th --

23 Q July 16?

24 A Yes -- in which he said something along the
25 lines of, What did I do wrong here? And I said, Roll

1 back to our old office, at the AG's office. If
2 Michelle knew that you had been gathering records, what
3 would she have done? Michelle was Michelle Hirshman,
4 who was the first deputy in the Attorney General's
5 Office, who I reported to, who everyone reported to.
6 And Darren made a motion with his hand as if he reached
7 out and plucked the matter and took it. And I said,
8 Exactly. This goes -- it is not exactly a question of
9 a discussion of surveillance, but it is certainly a
10 discussion of the information that was going to the
11 press office. And I think that I used the term "role
12 confusion," you know. This isn't your shop. And he
13 said something along the lines of, that the only person
14 who made any suggestion like that to him, and then he
15 pointed to me, which I think is a reference to the IG
16 conversation that I was talking to you guys about
17 earlier.

18 BY MR. TEITELBAUM:

19 Q In other words, you were the only person within
20 the Executive --

21 A Chamber.

22 Q -- Chamber that had made a suggestion to him it
23 that wasn't his role --

24 A Correct.

25 Q -- doing these things.

1 A Correct.

2 Q Did he tell you that other people knew that he
3 was doing these things?

4 A No.

5 Q Did you refer -- I'm sorry.

6 A Remember, Mr. Teitelbaum --

7 Q Sure.

8 A -- the prep was to take place the Friday, and it
9 never took place.

10 Q Right. But did you infer from that statement
11 that he -- at least from his point of view, other
12 people knew what he was doing in the Executive Chamber?

13 A Knew something.

14 Q Do you know who?

15 A No, other than the documents that --

16 Q Right.

17 A You know, what we discussed so far today.

18 (Commission's Exhibit 170 was marked for
19 identification.)

20 BY MS. TOOHER:

21 Q Mr. Pope, you've been provided a document
22 identified as Commission's 170. And just as an
23 overview, are these your notes?

24 A Yes, they are.

25 Q And are these your notes? They're dated July

1 22, 2007, and it says on top "Ellen Biben."

2 A Yes.

3 Q Do you know what the content of these notes are?

4 A Made sure it is -- these are notes that I took
5 during the conversation that I told you guys about that
6 took place on Sunday when the Attorney General's Office
7 was briefing us as to the contents of the report.

8 Q And --

9 A I believe that there are -- this is not the full
10 set, I don't believe.

11 Q You believe that there is more than the six
12 pages here?

13 A Yeah. The meeting was in two pieces. I think
14 this is the second piece.

15 Q When you say the meeting was in two pieces,
16 there were two separate meetings or phone calls?

17 A There was a phone call, a break and a phone
18 call.

19 Q And so this is only reflective of one portion of
20 it?

21 A Yes.

22 BY MR. TEITELBAUM:

23 Q This is the second -- the second portion.

24 A You know, I'm trying to remember whether they
25 briefed us first or they briefed us second, and it may

1 be that there were two hang-ups during the phone call,
2 but this is the portion where they were -- to the
3 contents of their report.

4 BY MS. TOOHER:

5 Q So these notes are fairly reflective of what
6 they relayed to you concerning the contents of the
7 report?

8 A To the extent that I'm a good note-taker.

9 Q With that caveat. I'm going to show you what
10 has been marked as Commission's 142. I apologize for
11 backtracking a little bit. Subject matter, again these
12 are your notes?

13 A Yes.

14 Q And the caption is --

15 A Kindlon.

16 Q July 22, 2007?

17 A Correct.

18 Q Could you please read the contents of this?

19 A At this point he can't say for sure. Quote, If
20 he has to take the hit, he will, period, end quote.
21 Things taken out of context, spun out of context. He
22 has not engaged in other conduct. Quote, Don't you
23 think I'm sophisticated enough to get out in front of
24 it? Closed quote.

25 Q And what are these notes reflective of?

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 A This is a conversation that Sean Maloney and I
2 had with Terry Kindlon by telephone. I wouldn't have
3 remembered July 22, but it makes perfect sense.

4 Q And who are you quoting in these notes?

5 A Terry.

6 Q So Terry said to you --

7 A At this point he can't say for sure. Although,
8 it's not in quotes. That's the substance of what he
9 said. He said that if he has to take the hit, he will,
10 unquote.

11 Q Who are we quoting here?

12 A This is --

13 Q The "If he has to take the hit, he will."

14 A This is -- the first sentence is Terry saying to
15 me that Darren can't say for sure when he received the
16 inquiry from the press. The second sentence is Terry
17 saying to us that if Darren has to take the hit he
18 will. This is, remember, the day after I had discussed
19 with him a suspension in the nature of 30 days. And
20 this is then Terry advocating to me that things were
21 taken out of context, spun out of context. The he,
22 Darren, has not engaged in other conduct. I don't know
23 what that other conduct means. The final quote is what
24 Terry reported to us that Darren said to him; don't you
25 think I'm sophisticated enough to get out in front of

1 it?

2 Q And what did you take that to mean?

3 A The question put to Terry Friday and again on
4 Saturday is "When did -- "When did you receive this
5 request?" So in this conversation he gave us two
6 pieces of information. The first is at this point he
7 can't say for sure. And the second is, "Don't you
8 think I'm sophisticated enough to get out in front of
9 it?"

10 Q Get out in front of what?

11 A I understood that to mean the issue of use of
12 the airplane. And as I understood it then the -- as
13 questions are being raised in the press in general
14 about the use of airplanes, it seemed I understand
15 Terry to be saying, quoting Darren, saying that he is
16 sophisticated enough to get ahead of a problem, to get
17 out in front of it.

18 Q So prior to receiving a press request?

19 A I don't know that that's what it means for sure,
20 but I thought it significant enough that I wrote it
21 down and put quotes around it.

22 Q And in terms of the hit, the hit, you understand
23 that to mean is the period of time away from the
24 Chamber?

25 A Yeah, because that's what we had discussed the
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 day before.

2 Q That he would be taking --

3 A -- that hit.

4 Q When you say we had discussed that, who had you
5 discussed that with?

6 A I had discussed it with Terry Kindlon when he
7 came to the office and asked how long are we talking
8 about, and I said, I think about a month.

9 Q Did you have any other meetings with Terry
10 Kindlon concerning Darren Dopp?

11 A Yeah. I think that we've discussed all of them.

12 Q After --

13 A Most of them.

14 Q -- the Attorney General's Office --

15 A Yup.

16 Q -- report?

17 A Yup. There was -- most of the conversations
18 that we had were by phone, and the one in which he
19 asked about the -- to be treated like a civil service
20 was in person.

21 Q And where did that meeting take place?

22 A That took place in my apartment.

23 Q And when did that meeting occur?

24 A There are notes that have a date, but I don't
25 remember independently.

1 Q There are notes of meeting at your apartment?

2 A Yeah.

3 Q And who was present at that meeting?

4 A Me, David Nocenti and Terry Kindlon.

5 Q And why did the meeting take place at your
6 apartment?

7 A Because I don't remember whether it was his
8 desire that we not do it where the press would see us,
9 or our desire, or a mutual desire, but there was
10 constant, constant coverage by the press. His office
11 is pretty big and in the middle of things. And to get
12 to my office he would have to walk into our office
13 where, among other things, the Saturday he came, one of
14 the state police troopers recognized him because he's
15 such a well-known defense lawyer. So we wanted to do
16 it elsewhere, and my apartment is a couple of blocks
17 away, and it seemed better than doing it in a
18 restaurant where people could see us.

19 Q And what did you --

20 MR. TEITELBAUM: I'm sorry.

21 Q What did you discuss at that meeting?

22 A There was small talk about how Darren was doing.
23 He then said he had an idea. He wanted Darren treated
24 like a civil servant; that is, after 30 days, even if
25 he didn't come back, he would start being paid.

1 THE COURT REPORTER: He would start
2 what?

3 THE WITNESS: Being paid.

4 A He said that he had consulted a labor lawyer who
5 had come up with this idea and wanted to know our
6 reactions. We said, you know, put it in a letter and
7 send it to us. And he said, Okay, I'll do it. You'll
8 get it shortly, and that was it.

9 Q Did you have any other conversations with Mr.
10 Kindlon at that time?

11 A In the apartment?

12 Q Yes.

13 A We asked about Darren and how he was doing. He
14 said that he was not doing well; his wife was not doing
15 well.

16 Q And how long did this meeting last?

17 A Oh, short, 10, 15 minutes.

18 Q And is it unusual for you to have a meeting of
19 that nature in your apartment?

20 A Yes.

21 Q How many other times have you had meetings?

22 A In my apartment?

23 Q Yes.

24 A Three. I also don't have many matters where the
25 press is following my every movement. It's not

1 unusual -- it has not been unusual for me in my career
2 to have off-site meetings. In the DA's office I had
3 many off-site meetings. We would often use hotel rooms
4 for meetings with people. The Executive Chamber,
5 unlike law enforcement, doesn't have a budget.

6 Q And you indicated you had three other meetings
7 in your apartment?

8 A Two other meetings.

9 Q And were they concerning Trooper Gate?

10 A Yes.

11 Q And who were those meetings with?

12 A One was with ADA Greggs and DA Soares, and the
13 other one was with DA Soares.

14 Q And when did those meetings occur?

15 A Oh, I don't -- I don't have dates.

16 Q In relationship to the issuance of the Attorney
17 General's report.

18 A After.

19 Q After the report?

20 A Yeah.

21 Q And what was the subject matter of those
22 meetings?

23 A In one the subject matter was providing
24 additional documents, and in the other the subject
25 matter was the discussion of the same e-mail that we

1 presented to you guys. Lloyd handed it to you at a
2 meeting that we had in your offices. The one that our
3 understanding was it was not -- our understanding from
4 witnesses was it did not concern this topic, but if you
5 looked at it you could easily draw the other inference,
6 so we disclosed it to you.

7 BY MR. TEITELBAUM:

8 Q Why did you meet in your apartment with Mr.
9 Greggs and Mr. Soares?

10 A So as not to be seen by the press, the same
11 reason as Kindlon. Every time I walked into his office
12 or every time -- he never came to our chamber offices.
13 It was an opportunity for another newspaper story and
14 photographs. I was worried when we came here today
15 that there would be photographers outside when I
16 represented a witness in front of Mr. Soares --

17 THE COURT REPORTER: I can't hear
18 you.

19 THE WITNESS: When I represented a
20 witness in front of Mr. Soares, we were afraid
21 there would be photographers outside.

22 MS. NECHELESS: -- the witness to
23 hotel room for the DA's office.

24 MR. TEITELBAUM: Off the record.

25 (Mr. Teitelbaum is leaving the
ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 proceeding.)

2 (Commission Exhibit 172 was marked for
3 identification.)

4 BY MS. TOOHER:

5 Q Mr. Pope, you've been provided notes identified
6 as Commission's 171. Are these your notes?

7 A Yes, they -- 172.

8 MS. TOOHER: 172.

9 Q Can you identify these notes?

10 A I'll just read it.

11 Q Sure.

12 MS. TOOHER: For one second for the
13 record, what was 171?

14 (Discussion was held off the record.)

15 MS. TOOHER: Just make a note for
16 the record that there is no Exhibit 171.

17 A These are my notes.

18 Q What are these notes reflective of?

19 A These are notes in preparation for the telephone
20 conference with the Attorney General's office on July
21 222.

22 Q And if I could ask you if you could read these
23 notes into the record, please.

24 A One, Statement. Two, Detailed Review. There is
25 an underline, and then there are goals double

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 underlined. Bullet point, US cooperation, dash, quote,
2 A, period, unquote. Understand issues with statements.
3 Finality is on the next line. Bullet, you, results and
4 factual accuracy. Proposal, would like affirmative
5 that we could negotiate language. One, silence in
6 report re cooperation or not, underlined, except that
7 you asked for Baum and Dopp and got affidavits. Ask
8 that you summarize or set out not tee off. Number two,
9 asked, you say we cooperate except that Baum and Dopp
10 speak for themselves. Three, do everything we can to
11 assure factual accuracy. Joint interests. Immune from
12 criticism.

13 Q Thank you. And the first section of this note,
14 the goals, U.S. and --

15 A Us, actually. It's not U.S. It's us, I'm
16 sorry.

17 Q And you. Us would be --

18 A The Chamber.

19 Q And what were your goals in that regard?

20 A To get an A for cooperation and to get finality
21 in the investigations.

22 Q And for cooperation you mean with the Attorney
23 General's Office --

24 A Correct.

25 Q -- in this investigation? And you is referring

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

1 to the Attorney General's Office?

2 A Correct.

3 Q And their goals?

4 A As we understood them, results, and to have
5 their report be factually accurate.

6 Q And when you say "results" what do you mean
7 there?

8 A They were looking for discipline.

9 Q And the second section proposed --

10 A Proposal.

11 Q Proposal?

12 A Yes.

13 Q That's your proposal?

14 A That's our proposal.

15 Q And who was the proposal made to?

16 A This was the telephone call with -- that we
17 talked about a couple of times -- Biben, Lawsky,
18 Lacewell and one other person on their side.

19 Q And your statement that you would like
20 affirmative.

21 A Affirmative statement that we cooperated.

22 Q And the one, two and three, what does that
23 reflect?

24 A That while we bet that we would like
25 affirmative, and I bet we could negotiate language,

1 they could be silent in the report on cooperation
2 except for Baum and Dopp where obviously they were
3 getting affidavits instead of live testimony.

4 Q So you were willing to accept silence as long as
5 they acknowledged -- I mean that was your proposal.

6 A We had to -- you know, it wasn't a matter of
7 what we were willing to accept. They had the pen.

8 Q Your proposal --

9 A Right.

10 Q -- was?

11 A Was be, first, do it in the affirmative.
12 Second, if you can't do it in the affirmative, be
13 silent except for, obviously, Baum and Dopp and the
14 question of the affidavits. And then if they're asked
15 to say that we cooperated except that the Baum and Dopp
16 statements speak for themselves. And then, three, we
17 would do everything we could, based on the summary they
18 were about to give us, to assure that they got
19 everything right as far as we understood it, because,
20 you know, if it's accurate and it's accepted, it's
21 good.

22 Q I think that that's all the questions we have at
23 this time. Is there anything further you would like to
24 put on the record?

25 A No, thank you.

1 Q Then that's it.

2 (Whereupon, the proceedings, in the
3 above-tentitled action, conclude at 4:00
4 p.m.)

5 EXHIBIT INDEX

6	COMMISSION	DESCRIPTION	FOR I.D.
7	161	7/1/07 memo, Nocenti to Dopp	Pg. 40
8	162	7/2/07 memo, Pope to Dopp E-00927 - E-01302	Pg. 49
9	163	Confidential Info PD-00297 - PD-00298 From Dopp to Pope, Maloney	Pg. 53
10	164	Confidential Atty Work Prod. From Pope and Maloney to Nocenti PD-00914 - PD-00215	Pg. 72
11	165	7/20/07 Memo, from Pope, Maloney to Dopp, PD-00227	Pg. 86
12	166	Notes regarding draft statement 7/23/07, from Pope to Anderson PD-01530 - PD-01531	Pg. 104
13	167	Letter, 8/8/07, from Pope to Soares	Pg. 108
14	168	HW Note, PD-00430	Pg. 117
15	169	Privileged and Conf HW Note PD-00419 - PD-00422	Pg. 119
16	170	7/22/07, HW Notes Privileged and Conf PD-00443 - PD-00448	Pg. 129
17	171	-----	
18	172	Privileged and Conf HW Note PD-00442	Pg. 139

25

C E R T I F I C A T E

I, Kyle Alexy, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me is a true and accurate transcript of the same, to the best of my ability and belief.

Kyle Alexy

DATE: March 20, 2008

ALEXY ASSOCIATES
COURT REPORTING SERVICES, LLC
(518) 798-6109

