



ALSO PRESENT: (Continued)

Latham and Watkins  
 By: MICHAEL CHERTOFF, ESQ.  
 SCOTT LOUIS WEBER, ESQ.

Office of Legislative Services  
 By: JOHN TUMULTY, OLS Aide

Examination - Fahy

3

1 SENATOR GORMLEY: We reconvene the hearing.  
 2 The first two witnesses for today are John  
 3 Fahy and George Rover. Would you please stand and  
 4 raise your right hand.  
 5 J O H N F A H Y, SWORN  
 6 G E O R G E R O V E R, SWORN  
 7 SENATOR GORMLEY: Be seated.  
 8 Mr. Chertoff.  
 9 MR. CHERTOFF: Thank you, Mr. Chairman.  
 10 Just for the record, Mr. Fahy and Mr. Rover,  
 11 could you tell us if you're represented here by the  
 12 Attorney General's Office?  
 13 MR. FAHY: Yes, sir, counsel has been  
 14 provided for us.  
 15 MR. CHERTOFF: You got the red light on that.  
 16 MR. FAHY: Yes, sir, counsel has been  
 17 provided for us.  
 18 MR. ROVER: Yes, by the Division of Law.  
 19 MR. CHERTOFF: Okay. Now, Mr. Fahy, what's  
 20 your current position?  
 21 MR. FAHY: I'm an Assistant Attorney General.  
 22 MR. CHERTOFF: And how long have you been at  
 23 the Department of Law and Public Safety?  
 24 MR. FAHY: I've been there since 1978 as a  
 25 law clerk and it's been about 22 years, I guess.

1 MR. CHERTOFF: And your current assignment is  
2 what?

3 MR. FAHY: I'm the Assistant Attorney General  
4 in charge of supervising the State Grand Jury.

5 MR. CHERTOFF: Now, Mr. Rover, what's your  
6 current position?

7 MR. ROVER: I'm as Assistant Attorney General  
8 in the Division of Gaming Enforcement.

9 MR. CHERTOFF: And how long have you been  
10 with the Department of Law and Public Safety?

11 MR. ROVER: Since July of 1992.

12 MR. CHERTOFF: Okay, Mr. Fahy, I'd like to  
13 begin with you.

14 I'd like to go back to the period of time  
15 1994, 1995. What was your assignment at that time?

16 MR. FAHY: Well, I had many assignments, sir.  
17 Are you talking about a specific case that I worked on?

18 MR. CHERTOFF: No. What was your position?

19 MR. FAHY: Oh, I was a staff attorney in  
20 Legal Affairs. It was a section started in the  
21 Attorney General's Office under -- I think it was Cary  
22 Edwards, but then under Peter Perretti and also Bob Del  
23 Tufo, in which an effort was made to get a handle on  
24 employment litigation issues for the Department and  
25 also with one of our major clients, the State Police,

1 and to professionalize the office. So they needed to  
2 have an attorney who had some litigation experience and  
3 I was asked to join the staff.

4 MR. CHERTOFF: Actually, it was just a very  
5 simple question and in the interest of moving along, I  
6 want to kind of just see if we can get a focused  
7 answer.

8 So you were with the Office of the Attorney  
9 General basically?

10 MR. FAHY: Yes, sir.

11 MR. CHERTOFF: Now, did there come a point in  
12 time that you were assigned to work representing the  
13 State in litigation in Gloucester County before Judge  
14 Francis?

15 MR. FAHY: I did handle it. I volunteered  
16 for it, sir. From my prior deposition you know how the  
17 circumstances of that came about.

18 MR. CHERTOFF: Again, is the short answer  
19 yes, you actually had the assignment of representing  
20 the State?

21 MR. FAHY: I handled the case, sir, yes.

22 MR. CHERTOFF: Okay. And you went to court,  
23 right?

24 MR. FAHY: Yes, sir.

25 MR. CHERTOFF: All right. And how long did

1 that case last approximately?

2 MR. FAHY: Six months.

3 MR. CHERTOFF: And when did the actual active  
4 presentation of the case come to a close approximately?

5 MR. FAHY: Well, it began the day after  
6 Thanksgiving and closed, as far as most of the hearing,  
7 in May of '95. There were one or two other days when I  
8 had to appear and it was primarily legal issues. No  
9 additional testimony was taken, sir.

10 MR. CHERTOFF: Now, was this case a  
11 significant case within the Department of Law and  
12 Public Safety?

13 MR. FAHY: I would think so.

14 MR. CHERTOFF: And had you previously been  
15 involved in other cases in the past which involved  
16 similar challenges by public defenders to trooper  
17 activity based on allegations of selective enforcement?

18 MR. FAHY: Yes.

19 MR. CHERTOFF: And just identify the other  
20 cases you had been involved in.

21 MR. FAHY: Well, one case in which I  
22 represented the State as a trial attorney is State vs.  
23 Charles Ellis Jones a/k/a Michael Durand. And I was  
24 the attorney. Those hearings lasted three days. I  
25 also --

1 MR. CHERTOFF: That was in Middlesex County?

2 MR. FAHY: Middlesex County.

3 I also provided some legal assistance to a  
4 Warren County case but then it was reassigned because  
5 of personal issues that I don't need to go into here.

6 There were also motions made, sir, as I  
7 explained at my last deposition, in other counties.  
8 And under an office policy started under Peter Perretti  
9 and Bob Del Tufo, the counties were to handle these  
10 motions, but if they needed any type of assistance as  
11 far as briefs or consultation, they could call our  
12 office and I would often be the person to speak to them  
13 and to send them out the briefs that our office had  
14 developed.

15 Primarily though, sir, I'm the discovery  
16 issuer.

17 MR. CHERTOFF: Now, is it fair to say that in  
18 the Middlesex County case there came a point in time  
19 that judging the case identified approximately 20  
20 troopers whose activities, in terms of stops, were  
21 going to be subject to further discovery and  
22 litigation?

23 MR. FAHY: Well, to be exact, sir, you have a  
24 copy of the order. The Judge ruled there was no  
25 pattern or practice for the State Police as a whole

1 that he could see. But with regard to those 20  
2 troopers, he thought there was a colorable basis, and  
3 that was a discovery standard announced by Judge Baime,  
4 in the Kennedy decision, from Warren County and that  
5 further additional proceedings could take place if  
6 pursued by defense counsel. They could make  
7 applications for additional discovery. Yes.

8 MR. CHERTOFF: Now, did that litigation  
9 continue or did it essentially peter out?

10 MR. FAHY: Well, I don't know what the word  
11 "peter out" means. It did not lead to further  
12 substantive hearings. There were no further  
13 substantive hearings on those cases.

14 MR. CHERTOFF: So as of the time you were  
15 involved in the Gloucester County case, you were at  
16 least aware of the fact that this kind of claim with  
17 respect to selective enforcement was not a new claim,  
18 right?

19 MR. FAHY: No. From my prior testimony, the  
20 first time we ever heard of this type of claim in New  
21 Jersey was back in 1989 and that's when Judge Grall,  
22 Jane Grall, and I researched the issue and looked at  
23 the selective enforcement law and provided advice to  
24 Fred DeVesa and Peter Gray.

25 MR. CHERTOFF: Now, in March of 1996 Judge

1 Francis rendered a decision, right?

2 MR. FAHY: Yes. He rendered a decision I  
3 guess in March.

4 MR. CHERTOFF: And did you subsequently have  
5 a conversation with then Attorney General Poritz about  
6 the decision?

7 MR. FAHY: Absolutely, sir.

8 MR. CHERTOFF: And what was the general  
9 nature of the conversation?

10 MR. FAHY: Well, the general nature of the  
11 conversation was to assess the Judge's decision. I had  
12 previously written a memo that was circulated around  
13 the Department in which I indicated -- and the  
14 conversations would follow that, sir, that's what  
15 refreshes my recollection. But we felt that the Judge  
16 had erroneously decided the decision. In my memo I  
17 said it was highly unlikely that we would get an  
18 Appellate Court to reverse the Judge's decision because  
19 it was a fact-sensitive issue in a race case which any  
20 lawyer knows has heightened scrutiny under the court  
21 standards. But we chose -- we also recognized that  
22 there were several issues that we had to deal with.  
23 One was that a violator survey, which the Judge used to  
24 base his decision on in part, had been conducted by the  
25 Public Defender and that entailed one Public Defender

1 driving up the highway for 28 hours trying to determine  
2 the number of people speeding. To us that didn't seem  
3 like a very scientific study.

4 Judge Poritz -- Justice Poritz, then Attorney  
5 General Poritz, felt somewhat strongly that that was  
6 not a valid study.

7 The second area where we had a problem, sir  
8 was since well in the 1800s selective prosecution law  
9 hasn't changed that much. Under the present law, to  
10 this day, there's a heavy burden, and that's the word  
11 the courts used, put on the defendant to prove  
12 selective enforcement. And the burden does not shift  
13 even under the recent cases in New Jersey, including  
14 Curtis Kennedy out of Warren County. The court has  
15 made clear the burden does not shift. And we felt that  
16 the Judge did not deal with the selective enforcement  
17 cases. The Judge rather shifted into a civil standard  
18 in Wards Cove Packing, and we felt that that could have  
19 an impact on selective enforcement law, not just for  
20 this particular case, but for all cases.

21 MR. CHERTOFF: Now, was a decision made to  
22 file a motion for relief to appeal?

23 MR. FAHY: Yes, sir.

24 MR. CHERTOFF: And that's necessary in order  
25 to allow an appeal at that stage of the proceedings,

1 correct?

2 MR. FAHY: Yes, sir.

3 MR. CHERTOFF: Now, directing your attention  
4 to the same period, March and April of 1996. Did you  
5 come to be part of a committee that was formed in the  
6 State Police to deal with the issue of racial profiling  
7 in the wake of Soto?

8 MR. FAHY: Yes. I recommended to Attorney  
9 General Poritz that something be done and the next  
10 thing I know a committee was formed. I don't know if  
11 she spoke to the Colonel or how it came about.

12 MR. CHERTOFF: And that was chaired by  
13 Lieutenant Colonel Littles?

14 MR. FAHY: Val Littles, yes, sir.

15 MR. CHERTOFF: And it included Captains  
16 Brennan and Touw, Detectives Reilly and Gilbert,  
17 Trooper DiPatri and yourself and Mr. Susswein, right?

18 MR. FAHY: Yes, sir.

19 MR. CHERTOFF: And did you attend several  
20 meetings with that committee?

21 MR. FAHY: I think I attended three meetings  
22 in April, March and May of 1996, sir.

23 MR. CHERTOFF: March, April and May or April,  
24 May and October?

25 MR. FAHY: I did not -- we went through this

1 the last time. I did not attend the October meeting.

2 MR. CHERTOFF: Okay. Let me focus you now on  
3 the meeting of April 12th, 1996. And we've previously  
4 had testimony about this, but I want to get your  
5 recollection on it.

6 Do you recall there being discussion in that  
7 meeting about the Gloucester County appeal?

8 MR. FAHY: Yes, sir. Actually, I would have  
9 been the one to when it came my turn to speak, that  
10 would have been the topic that they would have asked me  
11 to address and explain to them the parameters of the  
12 Gloucester County appeal, the lawyer in the room, one  
13 of the lawyers in the room.

14 MR. CHERTOFF: Now, as we heard yesterday,  
15 and I want to ask you if you agree with this, we heard  
16 yesterday that you pointed out to the people of the  
17 committee in April that even if the State was going to  
18 win on the appeal in terms of getting rid of it as a  
19 class motion, there would be subsequent individual  
20 litigation about the specific troopers involved in each  
21 of the individual cases. Did you explain that to the  
22 people of the committee?

23 MR. FAHY: Yes, sir. I explained to them  
24 that if someday the court ever reversed the Judge's  
25 decision, down the road there may be some type of

1 further litigation in which the troopers' activities  
2 can be looked at. We had asked -- the State's position  
3 in the Pedro Soto case was that we should be able to  
4 call the actual troopers whose case it was, and the  
5 Judge ruled that he would not allow any evidence in  
6 regarding particular troopers, he was going to only  
7 allow the case to proceed on the issue of pattern and  
8 practice. So that was a possibility in the future,  
9 sir.

10 MR. CHERTOFF: Was there then discussion at  
11 the committee about the fact that there would be a  
12 review of the individual Moorestown State Police cases  
13 -- let me finish, in order to ascertain whether there  
14 were potential negative facts or circumstances that  
15 would have to be addressed in connection with the  
16 litigation?

17 MR. FAHY: Yes. I want to take one minute to  
18 explain that, sir. We were at a meeting, for the first  
19 time I'm meeting -- some of these people I met before,  
20 some I don't know, we're at a meeting and I'm  
21 explaining to them what the results of the litigation  
22 was and as an aside, not as any direct assignment to  
23 anyone, I said, you know, it would be a good idea for  
24 you to look at the information about the individual  
25 troopers if we ever get to the point someday where we

1 have to deal with that issue.

2 MR. CHERTOFF: Well, did somebody agree at  
3 the meeting -- specifically did Detective Gilbert agree  
4 at the meeting that he was going to undertake an  
5 analysis with respect to the 19 cases?

6 MR. FAHY: No, sir. I did not assign anyone  
7 and no one said that it's my job.

8 MR. CHERTOFF: I want to be real careful  
9 here. I didn't ask you if you assigned anyone. I want  
10 you to listen to my question. You have to listen,  
11 otherwise you can't really answer.

12 My question is this: Did Detective Gilbert  
13 indicate in some way that he was going to undertake an  
14 analysis of the underlying Moorestown cases that formed  
15 the basis of the Gloucester County litigation?

16 MR. FAHY: No, sir. I answered it that way  
17 for the context. I threw it up as an idea. Detective  
18 Gilbert -- I don't even know if I -- I may have met him  
19 before, but he didn't say to me at that meeting -- he  
20 seemed like the lowest level person, but I'll do this.

21 MR. CHERTOFF: Mr. Fahy, I'm not interested  
22 in whether you thought he was low level or high level.  
23 It's very simple. We had testimony yesterday, you  
24 either agree with it or you disagree with it, the  
25 testimony yesterday was that there was specific

1 discussion that there was going to be an analysis  
2 undertaken of the underlying 19 cases in the Gloucester  
3 County litigation. Now, you either agree that that was  
4 discussed, or you disagree.

5 MR. FAHY: I agree that I raised the issue.  
6 I don't remember anyone saying that's a good idea,  
7 that's a bad idea, I, Sergeant Gilbert, will do it. I  
8 raised it, sir, as a possibility. I don't give  
9 assignments out to state troopers.

10 MR. CHERTOFF: I'm not asking you whether you  
11 gave the assignment out, I'm asking you did Detective  
12 Gilbert volunteer --

13 MR. FAHY: No.

14 MR. CHERTOFF: -- or indicate --

15 MR. FAHY: No.

16 MR. CHERTOFF: You disagree with his  
17 testimony on that point.

18 MR. FAHY: If that's what he said. I don't  
19 recall it that way.

20 MR. CHERTOFF: Was there a discussion in the  
21 meeting about the fact that if substantial problems  
22 were uncovered, there would be some thought given to  
23 whether the appeal ought to be continued?

24 MR. FAHY: No, sir.

25 MR. CHERTOFF: That was not discussed at the



1 meeting?

2 MR. FAHY: No, sir.

3 MR. CHERTOFF: All right. Now --

4 MR. FAHY: It wasn't discussed in the issue  
5 with Attorney General Poritz either. It wasn't  
6 really --

7 MR. CHERTOFF: Again, I have to stop you, Mr.  
8 Fahy. You have to answer my questions and I want to --

9 MR. FAHY: No, it was not discussed, sir.

10 MR. CHERTOFF: Because as we learned  
11 yesterday, time is short and we want to finish while  
12 it's still today, not tomorrow.

13 MR. FAHY: I know, but I want to explain in  
14 context as why my memory is a certain way.

15 MR. CHERTOFF: All right. Let me --

16 MR. FAHY: Well, proceed.

17 MR. CHERTOFF: Let's proceed further.

18 Was there other discussion at the meeting  
19 about other legal challenges that were then pending  
20 with respect to racial profiling in other parts of the  
21 State?

22 MR. FAHY: Yes, sir. I explained that there  
23 were similar motions that had been made in Hunterdon  
24 County and I believe at the time in Mercer County and  
25 may have, and I'm not sure, been one in Bergen County.

1 And that the Prosecutors in those counties were  
2 handling those and we were going to provide them with  
3 some assistance on the issue -- at that time they were  
4 at the discovery stage. So we'd give them our briefs.

5 MR. CHERTOFF: I'm actually -- well, I'm  
6 actually -- just to go back on this issue of  
7 Moorestown. I'm going to read to you from Detective  
8 Gilbert's report with respect to this meeting and I'd  
9 ask if you agree or disagree with his statement. Very  
10 simple.

11 "Fahy noted, if the appeal is successful, the  
12 next phase will most likely involve a remand where each  
13 individual case is heard."

14 Did you say that?

15 MR. FAHY: I probably did say that.

16 MR. CHERTOFF: "Fahy noted, that should this  
17 happen, the individual troopers may be subjected to  
18 intense scrutiny in respect to training, discipline and  
19 a statistical review of their enforcement patterns,  
20 including race."

21 Did you say that?

22 MR. FAHY: Yes, I probably did say that.

23 MR. CHERTOFF: "Should such a public review  
24 prove unfavorable, the Division could be further  
25 damaged and the individual troopers suffer significant

1 harm to their credibility and standing before the  
2 court."

3 Did you say that?

4 MR. FAHY: Sure. That was probably my legal  
5 opinion.

6 MR. CHERTOFF: "As a result, it was agreed  
7 that a review would be initiated of the 19 Moorestown  
8 NJSP cases to ascertain which troopers were involved."

9 Was that discussed?

10 MR. FAHY: I don't recall anyone saying that  
11 they were going to do it, certainly not Detective  
12 Gilbert.

13 MR. CHERTOFF: "Once identified, an analysis  
14 of their activity will be conducted to identify any  
15 potential negative issues should they be called upon to  
16 testify."

17 Was that discussed?

18 MR. FAHY: I don't recall those specific  
19 words, sir.

20 MR. CHERTOFF: How about in general?

21 MR. FAHY: In general, that's what I said. I  
22 brought up the issue the way I'm bringing it up here.  
23 I said, if we ever get to the point where there's a  
24 remand hearing, it would be good to know about the  
25 activities of the individual troopers. That's just a

1 heads-up to State Police that this issue might come  
2 back someday. I didn't know. I may take years before  
3 the Appellate Division ever ruled on the case. And who  
4 would handle the hearings? I don't know.

5 MR. CHERTOFF: Here's the last sentence.

6 "If this review uncovers substantial  
7 problems, it would be recommended that additional  
8 thought be given to proceeding with the appeal."

9 Was that discussed?

10 MR. FAHY: I don't recall that. If he put it  
11 in the report, maybe. I did say that if information  
12 comes back that's very negative about the troopers,  
13 that I'd have to bring that to the attention of some  
14 supervisor.

15 MR. CHERTOFF: And that's true, right? If  
16 you discovered that the underlying information showed  
17 that there was a real problem, you'd have to address  
18 that problem, right?

19 MR. FAHY: Yes. But, you know, I don't know  
20 if it would affect the appeal because the appeal deal  
21 with the whole troop down in Moorestown and if it  
22 showed a problem with two troopers, three troopers,  
23 would that make us withdraw the appeal? I can't  
24 speculate, sir. But, yes, there's a potential that if  
25 there's really damaging information, you would

1 reconsider your legal position, yes.

2 MR. CHERTOFF: Was there a discussion at the  
3 meeting as well about the fact that the State Police  
4 were going to start using inspection audits as a way of  
5 gathering information with respect to selective  
6 enforcement?

7 MR. FAHY: Yes. Actually Captain Touw was, I  
8 think, fairly new to Internal Affairs and he was  
9 excited about that and I went on record saying that  
10 that's a good idea. There's one criticism I definitely  
11 agreed with with the Judge having worked in Internal  
12 Affairs was, they did a good job on reviewing the  
13 activities of a trooper with regard to something very  
14 case-specific. But when it came to detecting patterns  
15 and practices, it was not unusual for there to only be  
16 the trooper's word versus the motorist's word and that  
17 naturally led to claims being unsubstantiated. I fully  
18 agree with that. I thought it was a good idea to start  
19 undertaking a better audit procedure and Captain Touw,  
20 who I didn't know well, but he seemed very enthusiastic  
21 and professional, the type of man who wanted to do it.  
22 He even talked that he was going to be going to some  
23 training courses around the country on Internal Affairs  
24 to learn how to better do this. And I --

25 MR. CHERTOFF: Here's the question, Mr. Fahy.

1 Was there discussion of the fact that there were going  
2 to be inspection audits going forward?

3 MR. FAHY: I think my answer just told you  
4 yes.

5 MR. CHERTOFF: All right. And did you  
6 understand that therefore there would be generated in  
7 the future statistical information relating to stops?

8 MR. FAHY: Not particularly, sir. What I  
9 thought was being focused on at the time was that if it  
10 was a complaint about a particular trooper, that  
11 Captain Touw would be looking into that. And that did  
12 happen on two occasions thereafter where I did work  
13 with Captain Touw in getting information about a  
14 particular trooper. But I didn't think the State  
15 Police at that point was in a position to do broad-  
16 range statistical reviews. Remember, we had just come  
17 out of Pedro Soto. Two-thirds of the stop data wasn't  
18 even there. Then Colonel Williams, in March of 1996,  
19 issued a directive for all State Police to start making  
20 sure you call in the race of the people on the stop.  
21 And at that point in time, I have to say no. I didn't  
22 think they had the capabilities yet to do that, because  
23 how could they get the data overnight? You're talking  
24 about the first three months --

25 MR. CHERTOFF: Well, I'm not talking about

1 overnight. But in May, at a May meeting of the  
2 committee, did you attend a May meeting of the  
3 committee on May 16th?

4 MR. FAHY: Yes.

5 MR. CHERTOFF: 1996.

6 MR. FAHY: Yes.

7 MR. CHERTOFF: And in that meeting was it  
8 made clear to you that there was an analysis of arrest  
9 statistics for the troopers who were the subject of the  
10 Gloucester County appeal? Was that discussed?

11 MR. FAHY: Not that I recall, sir.

12 MR. CHERTOFF: So then again, just to be, you  
13 know, fair and complete. There was testimony yesterday  
14 from other participants in the meeting that this, the  
15 fact of this analysis of the statistics for the  
16 troopers in the Gloucester County case, that that was  
17 discussed with the committee. You don't remember that  
18 being discussed?

19 MR. FAHY: No. Maybe in a general sense, but  
20 I had no idea that there was some completed report. I  
21 even asked for the report. I'm a lawyer who deals with  
22 facts in cases all the time. I'm not afraid of the  
23 facts. If there were bad facts about a particular  
24 trooper, that affects that trooper. And I or some  
25 other lawyer someday may have to deal with it, but I'm

1 not afraid of information, sir.

2 MR. CHERTOFF: Were you also made aware of  
3 the fact in the May meeting that a preliminary analysis  
4 of enforcement activity for I-78 Perryville station,  
5 which is in Hunterdon County, for the period 10-94 to  
6 10-95 had been completed? Were you told about that?

7 MR. FAHY: Not completed, sir. There was  
8 talk about doing some -- at that time my recollection  
9 is they were doing some analysis of compliance with the  
10 Colonel's order from just three months ago, two months  
11 ago, that you should call in stops. And the  
12 information that I was getting back was the percentages  
13 of troopers calling in the stops and explaining the  
14 race was going up. And I do recall something about the  
15 Perryville station very specifically, that was there  
16 was a complaint about two particular officers. There  
17 was a case going on in Hunterdon County. Harvey Lester  
18 was the Assistant Prosecutor.

19 MR. CHERTOFF: Mr. Fahy, let me stop you  
20 because there really is a time issue here. I'm trying  
21 to be very specific in the questions. We'll get to the  
22 issue of Prosecutor Lester, but I think this works best  
23 if you answer the questions I ask rather than ruminate  
24 generally about your thoughts, okay?

25 MR. FAHY: Sir, I'm trying to explain them in

1 the context that yes and no doesn't always work for me.

2 MR. CHERTOFF: Right. But we can also answer  
3 in sentences rather than paragraphs. So let me focus  
4 you specifically on the question. Very simply. Were  
5 you told in the May meeting that there was an analysis  
6 that had been completed regarding the arrest statistics  
7 at Hunterdon County, Perryville station? Were you told  
8 about that?

9 MR. FAHY: Arrest statistics?

10 MR. CHERTOFF: Yes.

11 MR. FAHY: No. I was told about -- I was  
12 told by Captain Touw about the -- about arrest and  
13 Internal Affairs statistics on two troopers.

14 MR. CHERTOFF: You were not told about a  
15 general study that had been done of statistics from  
16 October '94 to October '95?

17 MR. FAHY: No. I probably would have asked  
18 for it and I gave all my files over and to this day  
19 didn't have a copy of that in my files.

20 MR. CHERTOFF: Did you -- was Sergeant  
21 Gilbert the person who you were typically or  
22 principally dealing with in terms of gathering  
23 information or other issues with respect to the racial  
24 profiling matter in the State Police? Was he your  
25 point of contact?

1 MR. FAHY: No, sir. Not at -- if you're  
2 talking about -- remember, I went to meetings in -- I  
3 went to meetings in April, May, and my contact at that  
4 point on this issue was Captain Touw, the head of  
5 Internal Affairs. Later on, when we came closer to the  
6 end of the year, I certainly -- and I was also told  
7 that if I had a problem with something, I could contact  
8 Tommy Gilbert as a staff person. But later in the year  
9 I did have contact with Tommy Gilbert and I -- I'll let  
10 you ask the questions, but not at that point, sir. The  
11 first three meetings, no.

12 MR. CHERTOFF: All right. What about -- let  
13 me ask you this question. I'm going to show you G-5,  
14 which is GC1399, which is an April 24th, '96 memo from  
15 Detective Gilbert to Lieutenant Colonel Littles that  
16 talks about preliminary statistical data, I-78,  
17 Hunterdon County, Perryville station. And attached to  
18 it is a tabulation of Perryville station arrests for  
19 that one-year period approximately, listing 171 total  
20 arrests and breaking down the race of the people  
21 arrested and the sex of the people arrested. Do you  
22 have that before you?

23 MR. FAHY: I have it before me now, sir.

24 MR. CHERTOFF: Was the content of this  
25 disclosed to you by Detective Gilbert or anybody else

1 from the State Police in 1996?

2 MR. FAHY: No, sir. This is very detailed  
3 and, no. In a general way I knew they were looking to  
4 see if the State Police were complying with SOP F3 that  
5 the Colonel had reminding people we had a problem in  
6 the Soto case, start calling these stops in.

7 MR. CHERTOFF: This document isn't about  
8 whether stops were being called in. This document sets  
9 forth the percentage of minorities and non-minorities  
10 being arrested over a period of a year.

11 MR. FAHY: And I'm telling you I never saw  
12 this to this day, to just now.

13 MR. CHERTOFF: Did you hear about the content  
14 of this either during the meetings you attended with  
15 the committee at the State Police or from the State  
16 Police in some other way in 1996?

17 MR. FAHY: No, sir. And certainly not from  
18 Detective Gilbert. He did not give briefings at those  
19 meetings.

20 MR. CHERTOFF: I don't care whether it was  
21 from Detective Gilbert or one of the Captains, was --

22 MR. FAHY: No.

23 MR. CHERTOFF: -- this discussed at any of  
24 the meetings in '96?

25 MR. FAHY: Details of arrests of Perryville?

1 No.

2 MR. CHERTOFF: Again, I don't want to -- I  
3 didn't ask you details.

4 Was the substance of this memo, the fact that  
5 there was a review and analysis of the racial breakdown  
6 of arrests in Hunterdon County for one year, was that  
7 discussed generally either at the committee meetings or  
8 with the State between someone in the State Police and  
9 you in 1996?

10 MR. FAHY: Not that I recall. And it would  
11 have surprised me. I would have said how can you do  
12 that with two-thirds of missing data?

13 MR. CHERTOFF: Were you familiar with the  
14 fact -- were you familiar with the fact that in 1996  
15 there was also -- there were also allegations by  
16 minority troopers at the Moorestown station that there  
17 was racial profiling?

18 MR. FAHY: At that time? No.

19 MR. CHERTOFF: Now, let me, just so we're  
20 completely clear. The Gloucester County case involved  
21 Moorestown, right?

22 MR. FAHY: Yes.

23 MR. CHERTOFF: And it was on appeal, correct?

24 MR. FAHY: Yes.

25 MR. CHERTOFF: But there's a continuing

1 obligation when you're a lawyer for a court to advise  
2 the court of material information that changes the  
3 circumstances, right?

4 MR. FAHY: Absolutely, sir.

5 MR. CHERTOFF: So would you agree with me  
6 that would be a matter of importance for you if  
7 information were to come to light that related to  
8 Moorestown for you to evaluate whether that should have  
9 some effect on the litigation, right?

10 MR. FAHY: Yes, sir.

11 MR. CHERTOFF: Is it your testimony that  
12 through your attendance at meetings with the State  
13 Police in 1996 or through your discussions with the  
14 State Police, you were unaware in 1996 that there was  
15 -- that there had been complaints from the Moorestown  
16 troopers about profiling? That there had been an  
17 analysis of various statistics as it related to  
18 Moorestown?

19 MR. FAHY: The specifics of it, sir? Yes.

20 MR. CHERTOFF: In general, were you aware of  
21 the complaints and aware of the analysis?

22 MR. FAHY: I can't say, sir, that I didn't  
23 hear somewhere that some trooper may have made a  
24 complaint, but I know -- I know of my history dealing  
25 with the issue was, and I told you in my prior

1 deposition, when two troopers testified, they were  
2 former troopers, in Pedro Soto, that they were taught  
3 to racially profile. The first thing I did was come  
4 back and tell Attorney General Poritz, this is the  
5 first time we have on record the fact that any former  
6 trooper says he was taught to profile. And during the  
7 course of that hearing, you know the circumstances, I  
8 explained it, I had to conduct more of a deposition and  
9 find out who taught you. They seemed to say that it  
10 was during their trainer/coach period and then I called  
11 every witness, sir, that they had mentioned at the  
12 Pedro Soto hearing. I'm giving you that as an  
13 explanation to say if I had a report or information  
14 that a particular trooper made a complaint that there  
15 was racial profiling in that station, then I would have  
16 wanted to look at it, yes.

17 MR. CHERTOFF: So, Mr. Fahy, is it your  
18 testimony here that you were never advised in 1996 that  
19 there had been complaints about racial profiling from  
20 Troopers in Moorestown or that there was a study done  
21 of the arrest and search and stop statistics in  
22 Moorestown in 1995? You were unaware of that in 1996?

23 MR. FAHY: Yes. I may have heard there was a  
24 complaint. I was unaware that they went in and did an  
25 Internal Affairs analysis of it and they didn't provide

1 it to me.

2 MR. CHERTOFF: Were you aware that in 1995 or  
3 1996 there were reports from the State Police that the  
4 number of stops involving black motorists on the  
5 southern portion of the Turnpike at Moorestown were  
6 made near the level reported in the Soto case?

7 MR. FAHY: Yes, that's exactly what I  
8 testified to the last time.

9 MR. CHERTOFF: And where did you learn that?

10 MR. FAHY: Later in 1996, and to this day  
11 I've been hearing that the numbers down in Moorestown  
12 remain about the same -- as a matter of fact, I may  
13 have gotten a little more information. In the letter  
14 that I drafted for the Attorney General to send to  
15 Justice, I put in there that the Moorestown station  
16 appeared somewhat higher than the other stations on the  
17 Turnpike. That probably would have been an oral report  
18 from Tommy Gilbert.

19 MR. CHERTOFF: Okay.

20 MR. FAHY: Later in '96.

21 MR. CHERTOFF: Okay. So at some point in  
22 '96, and all my questions have been addressed to '96.  
23 I had it limited to the earlier later part. You agree  
24 now that there's a point in '96 you have a conversation  
25 with Tommy Gilbert about the numbers of stops in the

1 Moorestown area, right?

2 MR. FAHY: Yes, sir.

3 MR. CHERTOFF: And tell us about that  
4 conversation.

5 MR. FAHY: I don't recall the specifics.  
6 What I do recall is it appeared that he was on the  
7 Colonel's staff because after the meetings, after the  
8 meetings in the spring of '96, I didn't have much to do  
9 with this issue over the summer. I didn't go to the  
10 October meeting. Whether there had been a phone call  
11 or two from Tommy Gilbert, I can't say for sure, sir.  
12 But the next triggering event for me in getting  
13 involved with this was in December of '96, when for the  
14 first time I got to meet Peter Verniero, because  
15 evidently something came in from the Justice Department  
16 and at that time there was a meeting later on that  
17 Tommy Gilbert came to and I had known then that he was  
18 working on this for the Colonel. And when I drafted  
19 the letter for Attorney General Verniero to send to  
20 Justice, there were some facts in there and one fact  
21 was that the stops on the Turnpike remained the same  
22 about for the lower end and are somewhat higher than  
23 other stations on the Turnpike. I did ask -- I sent  
24 that over to Mr. Gilbert, but at the same time I want  
25 you to understand the context, because this is an issue



1 of racial profiling for this committee. You know,  
2 these were preliminary statistics that they were going  
3 through.

4 MR. CHERTOFF: Let me stop you, Mr. Fahy.  
5 You're way outside of what the question was, and we'll  
6 get plenty of time to get the context. But I want an  
7 answer to the question. Did you have a conversation  
8 with Sergeant Gilbert about the issue of the  
9 percentages of minorities being stopped in Moorestown  
10 in 1995 and 1996? You had a conversation with him  
11 about it?

12 MR. FAHY: It may have been very late in '95  
13 or early '96.

14 MR. CHERTOFF: Okay. Did you have a  
15 conversation with him about it?

16 MR. FAHY: Yes.

17 MR. CHERTOFF: And now you told us a few  
18 minutes ago that because of your interest in the  
19 Gloucester County case, if you heard something about  
20 that, you'd want to ask for a report or some kind of  
21 documentation, right?

22 MR. FAHY: Always, sir. I'm not afraid of  
23 statistics or information. I'm a trial lawyer.

24 MR. CHERTOFF: So did you ask Sergeant  
25 Gilbert when he told you about this, let me see some

1 paper?

2 MR. FAHY: No. And can I explain why? You  
3 probably don't want to hear why, but --

4 MR. CHERTOFF: Go ahead.

5 MR. FAHY: -- I didn't think at that point  
6 that they were in a position yet -- it hadn't come to  
7 my attention they were in a position yet to be doing  
8 studies internally of activity on the Turnpike. If  
9 they had gotten to that point, I would have recommended  
10 they get an expert. Every time I had a case -- I'm not  
11 a statistician. The first thing I did was say get an  
12 expert. You need to -- when you're doing a study, you  
13 need to make sure that it's scientifically correct.  
14 They're not experts in statistics and neither am I. So  
15 I would have probably -- if I thought it got to that  
16 point, I would have told them to do that.

17 MR. CHERTOFF: I don't understand, Mr. Fahy.  
18 I thought you told us a couple of minutes ago -- first  
19 of all, I have to ask, Mr. Fahy, is there some reason  
20 that in answering my questions you feel the need to  
21 look over to the press rather than looking at the  
22 Committee?

23 MR. FAHY: No, sir.

24 MR. CHERTOFF: All right. Now, I want your  
25 attention on this if I can get it.

1                   When you're told by Sergeant Gilbert at some  
2 point late in '96 that there are statistics relating to  
3 Moorestown, which is the same territory covered by the  
4 Gloucester County case, you've told us you didn't ask  
5 for any documentation, right? Correct?

6                   MR. FAHY: No.

7                   MR. CHERTOFF: You've also told us that in  
8 the normal course you'd want to make sure that if  
9 anybody does a study, that it's done properly with an  
10 expert. That it's properly organized, right?

11                   MR. FAHY: Absolutely.

12                   MR. CHERTOFF: Did you say to Sergeant  
13 Gilbert, hey, look, if you guys are doing studies  
14 relating to the very barracks that's the subject of the  
15 litigation we have in front of the Appellate Division,  
16 where we're taking a position about the numbers, I want  
17 to be involved in this as the trial lawyer so I  
18 understand whether you're doing the studies properly,  
19 whether this is something we're going to have to deal  
20 with in the litigation? Did you have any conversation  
21 with Detective Gilbert along those lines?

22                   MR. FAHY: No.

23                   MR. CHERTOFF: By the way, in 1996 did you  
24 also go to Captain Touw to a meeting in Hunterdon  
25 County?

1                   MR. FAHY: Yes, sir.

2                   MR. CHERTOFF: And that was a meeting with  
3 the Prosecutor?

4                   MR. FAHY: Prosecutor Ransavage, sir, yes.

5                   MR. CHERTOFF: And the purpose of the meeting  
6 was to discuss the fact that there were a couple of  
7 Hunterdon County cases which were the subject of  
8 litigation, again for selective enforcement based on  
9 the theory of racial profiling, right?

10                   MR. FAHY: I don't know if it was one or two  
11 cases, but there was a case there, yes.

12                   MR. CHERTOFF: And --

13                   MR. FAHY: And two troopers that were --  
14 allegations were made to that.

15                   MR. CHERTOFF: And those were cases in which  
16 the defendants were charged with first-degree narcotics  
17 crimes, right?

18                   MR. FAHY: Yes, sir.

19                   MR. CHERTOFF: Which is the most serious type  
20 of felon, right?

21                   MR. FAHY: Yes, sir.

22                   MR. CHERTOFF: And the purpose of that  
23 meeting was to discuss whether those cases ought to be  
24 pled out to lesser charges, correct?

25                   MR. FAHY: Not absolutely, sir. Can I

1 explain what the purpose of the meeting was?

2 MR. CHERTOFF: Yes.

3 MR. FAHY: There had been a policy worked out  
4 by Debbie Poritz and Jim Ciancia that if we received  
5 information concerning a particular trooper, that we  
6 would work with the Public Defender's Office. And  
7 there was actually a meeting in May of '96 to try to  
8 work with them and to cooperate with them if they  
9 needed information. That ties in to what I thought  
10 Captain Touw was doing. If there was information  
11 provided to him about a particular trooper, I would get  
12 him the names of the trooper from the county and he  
13 would look into their records. He did look into the  
14 records of these two troopers and we went to see the  
15 Prosecutor. At that meeting no reports were brought.  
16 I received again an oral from Captain Touw, who I  
17 trusted, who said with regard to one trooper, there  
18 doesn't appear to be a problem. With regard to the  
19 other trooper -- and the word I used in my deposition  
20 last time was he was an "outliner." That's not Captain  
21 Touw's word, I just can't think of another word right  
22 now. But that there would be some issue involving him.  
23 We explained this to the Prosecutor. She said that --  
24 she said that wow, I'm going to have a tough time and  
25 take a lot of heat for dismissing a first-degree case.

1 At the same time, we were operating under a policy of  
2 Debbie Poritz that the counties were going to have to  
3 bear some of the expense and cost of this. She  
4 assigned Director Farley to the matter of bearing the  
5 cost of hiring experts. We had spent \$100,000 in  
6 Gloucester County. Prosecutor Ransavage -- it's a long  
7 time, I don't want to put words in her mouth, but the  
8 consensus seemed to be wow, if we're going to have  
9 trouble maybe defending this one particular trooper's  
10 case and we have to spend a fortune on it, I may be  
11 left with no position but to plead the case out. And  
12 that's unfortunate, sir. But that's part of what went  
13 into the analysis and --

14 MR. CHERTOFF: Was the Hunterdon County  
15 Prosecutor, was she uncomfortable with the idea of  
16 pleading these cases out?

17 MR. FAHY: Sure, she was.

18 MR. CHERTOFF: And you're telling us that the  
19 discussion was they would have to be pled out because  
20 the statistics as they related to at least one trooper  
21 were such that it would be difficult and time-consuming  
22 to defend that trooper's enforcement practices, right?

23 MR. FAHY: Yes. And that was an approved  
24 policy in the office. In the May -- under Debbie  
25 Poritz and Jim Ciancia in May of 1996 there was a

1 meeting in which the head of the Public Defender's  
2 Office came to our office and we discussed that if they  
3 had any information on any particular trooper, they  
4 were to bring it to our attention. Here were two State  
5 agencies spending a ton of money on litigation and  
6 statistics and if we could work together, we would work  
7 together. And we signed a consent decree in other  
8 cases too, to do that.

9 MR. CHERTOFF: We're wandering a little here.

10 So the net result is that because of the  
11 statistical profile, so to speak, of the troopers'  
12 arrests, it was considered better or more prudent to  
13 dismiss or downgrade first-degree felony offenses than  
14 to try to litigate the underlying case, correct? That  
15 was the final result?

16 MR. FAHY: Yes. There was one other -- one  
17 other issue that came up there and that was Captain  
18 Touw said that he would ensure that the trooper  
19 received counseling regarding his numbers. Because no  
20 one -- at that point no one knew what number was a  
21 sufficient number to bring disciplinary charges against  
22 the trooper. And he said he would counsel that  
23 trooper.

24 MR. CHERTOFF: Would you agree that is a  
25 serious matter when the statistics that apply to a

1 trooper's enforcement are such that it requires -- that  
2 discretion requires dismissing or downgrading serious  
3 cases rather than litigating the cases?

4 MR. FAHY: Absolutely. And we had dismissed  
5 hundreds in the past when Troopers Hennig and -- was  
6 charged with indictments years earlier. It's not a  
7 nice thing.

8 MR. CHERTOFF: Now --

9 MR. FAHY: It's a difficult thing.

10 MR. CHERTOFF: -- just to sum up. In the  
11 year 1996, it's your position that at no time did you  
12 hear from the State Police about an audit of arrest  
13 statistics at Perryville, correct?

14 MR. FAHY: To the best of my recollection,  
15 yes, sir.

16 MR. CHERTOFF: You don't remember ever being  
17 told about the results of an analysis of the 19 trooper  
18 cases that were part of the Gloucester County case?

19 MR. FAHY: Absolutely. That would still have  
20 been in my file to this day, sir. No, I did not get  
21 that.

22 MR. CHERTOFF: So you disagree with any  
23 testimony that you were told about that either at  
24 committee meetings or by Detective Gilbert directly,  
25 you'd disagree with that?

1 MR. FAHY: Yes, to the best of my  
2 recollection.

3 MR. CHERTOFF: And finally, with respect to  
4 the general issue of -- and you also tell us you knew  
5 nothing and you were never told about complaints of  
6 racial profiling from individual troopers in the  
7 Moorestown station, right?

8 MR. FAHY: No, that I didn't say. I think I  
9 explained it and my statement speaks for itself. I may  
10 have heard that there was this issue, but the Internal  
11 Affairs Division was going to look at it and I never  
12 got the report. I also want to --

13 MR. CHERTOFF: Did you ask for the report?

14 MR. FAHY: No, sir, I didn't ask for the  
15 report. But I want something else understood. I left  
16 the Office of the Attorney General in 1996. I was  
17 assigned to the Division of Criminal Justice  
18 supervising the State Grand Jury. That's not an  
19 excuse, sir, but I was not working on this very much.  
20 I would get an occasional call from the State Police  
21 and I told that to Attorney General Verniero in  
22 December when he found me. He called me up there then  
23 and I'm like, oh, you finally found me. I had asked to  
24 get off this issue after seven years of working on it  
25 from 1989 to 1996.

1 MR. CHERTOFF: And finally, you've indicated  
2 to us that you believe you learned that there was some  
3 kind of an analysis of stops involving minority  
4 motorists at the Moorestown area but you never actually  
5 asked for the documentation, correct?

6 MR. FAHY: I could have heard about it. I  
7 never received it and I don't believe I asked for it.  
8 I think I would have asked for that.

9 MR. CHERTOFF: You think you would have asked  
10 for it?

11 MR. FAHY: Sure.

12 MR. CHERTOFF: You certainly heard of it.

13 MR. FAHY: What's to be afraid of asking for  
14 a report?

15 MR. CHERTOFF: Well, you certainly heard  
16 about it though, right? You heard about the fact that  
17 there was --

18 MR. FAHY: I heard there may have been a  
19 complaint made by a trooper. Sir, I worked with  
20 Internal Affairs for years. They do very significant  
21 reports. If there was a report someday, I figured they  
22 would send it over.

23 MR. CHERTOFF: Here's my question to you.  
24 You were aware as of the end of '96 that there was some  
25 report by the State Police. Some analysis by the State

1 Police that the number of stops involving minority  
2 motorists in the Moorestown station area were at or  
3 near the level reported in Soto, right? You knew that?

4 MR. FAHY: Absolutely. I hear that to this  
5 day.

6 MR. CHERTOFF: And you didn't ask --

7 MR. FAHY: Orally, often.

8 MR. CHERTOFF: And, you know, Mr. Fahy, just  
9 really stick to -- the question is late '96, are you  
10 with me here?

11 MR. FAHY: I'm following you, sir.

12 MR. CHERTOFF: And in late '96 -- I'm not  
13 interested in '99 or 2001, in late '96 you knew that  
14 there was a statistical analysis having been done  
15 recently by the State Police of the Moorestown stop  
16 statistics, correct?

17 MR. FAHY: That is too broad, too specific a  
18 definition. A statistical study. I knew they were  
19 monitoring, sir, the stop rates in that area. Whether  
20 that entailed a report that would be scientifically  
21 reliable to statisticians or not, I don't know. I  
22 heard that the numbers were running about the same.

23 MR. CHERTOFF: And having heard it, you never  
24 asked for a piece of paper or any report on it,  
25 correct?

1 MR. FAHY: I didn't know that they had done a  
2 report yet.

3 MR. CHERTOFF: You didn't ask for any piece  
4 of paper or any information about it, right?

5 MR. FAHY: I asked orally and I trusted the  
6 good faith of the people working at the State Police to  
7 give me the truth. And the context I asked for it in  
8 was over -- I had to ask quickly to draft a letter to  
9 the Justice Department, sir, and I didn't want to put  
10 something in that letter that wasn't true. So I did  
11 ask.

12 MR. CHERTOFF: Now, you learned in December  
13 of 1996 that the Department of Justice, the Civil  
14 Rights Division had initiated some kind of examination  
15 of racial profiling?

16 MR. FAHY: Yes.

17 MR. CHERTOFF: And how did you learn that?

18 MR. FAHY: I don't know if Judge Waugh, then  
19 Assistant Attorney General Waugh, asked me to do a  
20 briefing memo for Attorney General Verniero prior to a  
21 meeting, but eventually in December -- you have the  
22 date, I don't know, sir, 9-12, it doesn't matter --

23 MR. CHERTOFF: December 9th.

24 MR. FAHY: -- I went to a meeting and I think  
25 there had been a briefing memo like many of the memos

1 you have that I did over the years, briefing people as  
2 to the status of the issue.

3 MR. CHERTOFF: Now, before that meeting, had  
4 you had occasion to meet with representatives of the  
5 Maryland State Police along with Detective Sergeant  
6 Gilbert at Moorestown station to talk about a case that  
7 had been pending involving the Maryland State Police?

8 MR. FAHY: Yes.

9 MR. CHERTOFF: And in that meeting did they  
10 discuss with you the fact that they had entered a  
11 consent decree or had been forced to enter into a  
12 consent decree with the private plaintiffs?

13 MR. FAHY: Generally. I'll tell you what  
14 happened, sir. I got a call from a -- I guess an  
15 Assistant Prosecutor, whatever their title is in  
16 Maryland, who said, "I see that you're litigating this  
17 issue in New Jersey and you're the trial attorney. I  
18 have the misfortune of being the trial attorney in  
19 Maryland. Would you mind if I met with you and piqued  
20 your brain a little bit about what you're doing in New  
21 Jersey?" And I said sure. So I set up a meeting to go  
22 down to -- we didn't go to Maryland. I said I wouldn't  
23 mind if you came here instead of me driving to  
24 Maryland, but I'll meet with you, sure.

25 MR. CHERTOFF: So you met at Moorestown,

1 right?

2 MR. FAHY: Yes.

3 MR. CHERTOFF: Was Detective Sergeant Gilbert  
4 there?

5 MR. FAHY: Yes.

6 MR. CHERTOFF: And in that meeting did he  
7 explain to you that they had been -- that they had to  
8 enter into a consent decree?

9 MR. FAHY: Yes, with the HDLU, yes.

10 MR. CHERTOFF: And did he discuss the fact  
11 that that was based on consent-to-search statistics?

12 MR. FAHY: Yes, sir.

13 MR. CHERTOFF: And you understood that the  
14 consent-to-search statistics were different than stop  
15 statistics, correct?

16 MR. FAHY: Absolutely, sir.

17 MR. CHERTOFF: At that point in time, did you  
18 do anything to follow up or ask any questions  
19 concerning the consent-to-search statistics in New  
20 Jersey?

21 MR. FAHY: No.

22 MR. CHERTOFF: You had no interest in that?

23 MR. FAHY: Oh, I had an interest, but for  
24 several yeas I've been asking since 1993, you have my  
25 memos, can we please do a study in New Jersey about the

1 traffic violators.

2 MR. CHERTOFF: I'm not talking about that.

3 MR. FAHY: I know, but, sir, you have to  
4 understand the framework. If I couldn't get the first  
5 study done, I didn't ask about getting the second study  
6 done.

7 MR. CHERTOFF: So you didn't ask --

8 MR. FAHY: Which is harder.

9 MR. CHERTOFF: You didn't have any discussion  
10 with Sergeant Gilbert concerning is there some way to  
11 look at consent-to-search statistics and see how those  
12 break down?

13 MR. FAHY: No, I don't recall that we ever  
14 got to that point.

15 MR. CHERTOFF: And you didn't have any --

16 MR. FAHY: I was happy we were getting them  
17 to start marking race on the radio logs and patrol  
18 charts. That to me was a big step forward. It was a  
19 lot better than I had in the prior litigation.

20 MR. CHERTOFF: So again, just to be clear.  
21 You never talked to Sergeant Gilbert at the meeting or  
22 afterwards concerning any kind of analysis he was going  
23 to do about the consent-to-search statistics in New  
24 Jersey at a comparison to the ones you had heard about  
25 in Maryland?

1 MR. FAHY: No. I know now that later in the  
2 fall that a different Detective, Joe Brennan, gave him  
3 some information about this. But, no, I didn't -- that  
4 was surprising to me that he went off and did that on  
5 his own. If he did, more power to him.

6 MR. CHERTOFF: But he didn't tell you about  
7 it?

8 MR. FAHY: He didn't tell me he was doing the  
9 consent-to-search study, no.

10 MR. CHERTOFF: Now, you then met with the  
11 Attorney General to prepare him for this meeting with  
12 the Department of Justice, right?

13 MR. FAHY: Yes.

14 MR. CHERTOFF: And who was at the meeting?

15 MR. FAHY: Justice, then head of the Division  
16 of Law, LaVecchia. Justice, then Attorney General,  
17 Verniero. Judge, then Assistant Attorney General, Alex  
18 Waugh. You have the paper. You may help to remind me.

19 MR. CHERTOFF: Was Colonel Williams there?

20 MR. FAHY: Oh, yeah, Colonel -- I don't know  
21 if he was at that one or the one later in the month,  
22 but probably.

23 MR. CHERTOFF: All right. And what was the  
24 discussion at this meeting?

25 MR. FAHY: The discussion of the meeting was



1 that we had an inquiry from the Justice Department and  
2 that the Attorney General would be going down to  
3 Washington. That he was concerned that Justice not  
4 start an investigation on New Jersey. He thought that  
5 that word had a very negative connotation. And he did  
6 say this, he was afraid it would reflect adversely on  
7 our state and on the administration. And basically he  
8 advised everyone we were going to go down and he was  
9 going to put his best foot forward to try to work this  
10 out in the most amicable way.

11 MR. CHERTOFF: Well, I mean --

12 MR. FAHY: That's general. I don't recall  
13 what everyone said.

14 MR. CHERTOFF: Was there discussion about  
15 what the nature of these issues that were being looked  
16 at were?

17 MR. FAHY: Well, sir, I think he probably had  
18 me do a bit of the talking there because it was the  
19 first time I ever met him and anytime a new Attorney  
20 General came in, I would usually do a briefing memo and  
21 at some point I would give them the litigation history.  
22 Now, it's in my deposition. I won't bore everyone here  
23 with it, but he wanted to know what the issue of racial  
24 profiling entailed and what the history of the  
25 litigation was. It struck me this was new to him that

1 day so I briefed him.

2 MR. CHERTOFF: So you told him about the  
3 Middlesex County case?

4 MR. FAHY: I'm sure I mentioned it. There  
5 was definitely a memo that I sent that was the basis  
6 for the meeting.

7 MR. CHERTOFF: Did you tell him about the  
8 Middlesex County case in the meeting?

9 MR. FAHY: I think so. It's a long time ago,  
10 sir.

11 MR. CHERTOFF: Did you talk about the  
12 Hunterdon County case?

13 MR. FAHY: If I did it was probably only in  
14 the context that a motion had been raised and the case  
15 had been dismissed.

16 MR. CHERTOFF: Did you talk about the Soto  
17 case?

18 MR. FAHY: I'm sure if there was any case we  
19 talked about, it was Soto, sir.

20 MR. CHERTOFF: And was it clear from you in  
21 the conversation or did you make it clear this was a  
22 significant -- this whole issue of racial profiling and  
23 these allegations were becoming a significant problem  
24 for Prosecutors in the State of New Jersey?

25 MR. FAHY: I don't know how you couldn't

1 think that at that point, sir. It certainly was to me.

2 MR. CHERTOFF: So you'd agree with me that  
3 you made it clear in the meeting, and it was clear in  
4 the meeting, that this issue of allegations of racial  
5 profiling was a very big problem for Prosecutors in the  
6 State of New Jersey, right?

7 MR. FAHY: I had to deal after seven years,  
8 yes. I don't know how you couldn't think otherwise.

9 MR. CHERTOFF: You're going to have to answer  
10 my question is --

11 MR. FAHY: But, sir, I can't say --

12 MR. CHERTOFF: -- very directly is was it  
13 made, yes or no, was it made clear at the meeting that  
14 this issue of racial profiling was a big problem for  
15 Prosecutors in New Jersey?

16 MR. FAHY: Sir, understand my difficulty. I  
17 can't remember specific words. Did I say to Peter  
18 Verniero, this is a very big problem in the State of  
19 New Jersey? No. But I gave a briefing and anyone with  
20 an ounce of common sense could see that we had a  
21 history and if they're going down to Washington to talk  
22 about it, it's an important issue.

23 MR. CHERTOFF: And the Washington thing was a  
24 relatively new development, correct?

25 MR. FAHY: That came out of the blue.

1 MR. CHERTOFF: Now, what did the Attorney  
2 General say about what his objectives were in terms of  
3 going down?

4 MR. FAHY: He wanted it to be amicable. He  
5 did not want it to be a formal investigation. That we  
6 would go down, see what they wanted. He also  
7 expressed, I recall, some view why New Jersey? Is this  
8 a problem just in New Jersey? Isn't this a problem in  
9 other states? Could New Jersey -- he wanted to be very  
10 careful about saying this, but he said is New Jersey  
11 the worst state with regard to this? It seemed --

12 MR. CHERTOFF: Did you tell him about  
13 Maryland?

14 MR. FAHY: I don't recall that I told him  
15 about Maryland. I may have said well, I know there are  
16 cases in Maryland, and Illinois was another state I  
17 knew there were cases in at that time.

18 MR. CHERTOFF: Did you talk to him about  
19 consent-to-search issues that you had learned about in  
20 your meeting with the people from Maryland?

21 MR. FAHY: No, I don't think it got that  
22 detailed, sir. This is the first time I ever spoke to  
23 him on the issue.

24 MR. CHERTOFF: Did you say anything at all  
25 about or did he ask or did anybody discuss whether --

1 well, let me step back.

2 The statistics in Soto were comparatively  
3 old. That case was based on statistics going back in  
4 the late eighties and early nineties, right?

5 MR. FAHY: The data base was from I think '87  
6 to '89, sir.

7 MR. CHERTOFF: So naturally the question  
8 would arise whether the problems identified in the late  
9 eighties or still in existence in the mid-nineties,  
10 right?

11 MR. FAHY: Well, sure. I mean he probably  
12 asked me what the position of our office had been and  
13 I'll say here, as I often said, despite the Zoubek  
14 report, I never went into court and ever said that no  
15 trooper engaged in a pattern and practice of racial  
16 profiling. And it's always been the position of the  
17 office that this issue was raised and that steps should  
18 be taken. Now, each Attorney General have their own  
19 way of taking steps, but we took --

20 MR. CHERTOFF: Again, Mr. Fahy --

21 MR. FAHY: -- sure, that was a problem.

22 MR. CHERTOFF: -- I just want to set the  
23 stage. You have the Soto case based on figures in the  
24 late eighties, correct?

25 MR. FAHY: Yes.

1 MR. CHERTOFF: Now you have the Department of  
2 Justice coming in, they say they want to look at the  
3 issue, right?

4 MR. FAHY: Yes.

5 MR. CHERTOFF: You'd agree with me, a natural  
6 question to be asked is are the statistics that we were  
7 dealing with in Soto back in the late eighties still  
8 true or are we in a better position now so that we  
9 really feel we're more comfortable in how this issue is  
10 being handled? Did anybody ask that question?

11 MR. FAHY: We might have, sir. I might have  
12 briefed him also on the history of what had been done  
13 under Colonel Dintino when the SOP's were revised. On  
14 the training issues. Deborah Poritz' attempts to  
15 negotiate this. The fact that after Curtis Kennedy  
16 came out we were not going to fight discovery issues.  
17 We gave records over freely to Mercer County for study.

18 MR. CHERTOFF: Mr. Fahy, I only had a very  
19 simple question.

20 MR. FAHY: And I'm telling you -- you're  
21 asking me about other --

22 MR. CHERTOFF: Listen to me. Listen to me.  
23 I don't ask you for everything that was said. Here's  
24 my specific question. Was there a discussion about '95  
25 and '96 statistics in this meeting, yes or no?

1 MR. FAHY: I don't recall that there was  
2 specific discussion about what the statistics in '95  
3 and '96 were, no.

4 MR. CHERTOFF: Did anybody ask in  
5 anticipation of this meeting with the Department of  
6 Justice, what is the current situation or the current  
7 statistics showing about the issue of disproportionate  
8 impact?

9 MR. FAHY: They could have. I may have said  
10 I've heard oral reports that they're running about the  
11 same down there.

12 MR. CHERTOFF: And did anybody say well,  
13 let's follow up on that? Let's find out before we go  
14 down to meet with Washington what our real exposure is?

15 MR. FAHY: Not to find out before the meeting  
16 in Washington, no. Not that I recall.

17 MR. CHERTOFF: What about after the meeting  
18 in Washington?

19 MR. FAHY: Well, definitely after the meeting  
20 in Washington. Like I said, I definitely had to have a  
21 conversation with Tommy Gilbert and ask him, you know,  
22 have your -- what are the State Police numbers running  
23 like now? And he told me that those numbers were  
24 running about the same and that the lower end of the  
25 Turnpike was higher than the other parts of the

1 Turnpike on stop statistics.

2 MR. CHERTOFF: And that's the conversation  
3 you never followed up with by asking for any paperwork  
4 or anything, right?

5 MR. FAHY: Yeah, but I can't -- I don't want  
6 to leave a misimpression so that on the day that I  
7 first met Attorney General Verniero on this issue that  
8 we went that detailed into the whole issue. It was a  
9 new issue for him. I gave him a briefing summary, the  
10 best that I could, sir.

11 MR. CHERTOFF: Now, then you went down to --  
12 well, did you go down to Washington with the Attorney  
13 General?

14 MR. FAHY: I didn't personally accompany him.  
15 He was at the meeting with me. I went down with Judge  
16 Waugh.

17 MR. CHERTOFF: And did you go into the  
18 meeting with the people from the Department of Justice?

19 MR. FAHY: Yes.

20 MR. CHERTOFF: And what was said at the  
21 meeting?

22 MR. FAHY: It was a very cordial, pleasant  
23 meeting. Attorney General Verniero spoke primarily to  
24 the head of the Civil Division, I forget her name  
25 today, I gave it to you the last time, and said --

1 MR. CHERTOFF: Was it Loretta King?

2 MR. FAHY: Yes, Loretta King.

3 -- and said some of the same things he said  
4 at that meeting. We want to cooperate with you. We  
5 prefer that it not be called an investigation because  
6 that has such a negative connotation. Can it be a  
7 review? He spoke about how he viewed it as an  
8 important issue. He certainly didn't go down -- he  
9 certainly didn't go down there and tell her we don't  
10 want to have an investigation and you're crazy to be  
11 looking at New Jersey. It was -- and I don't --

12 MR. CHERTOFF: So he said it was an important  
13 issue.

14 MR. FAHY: Well, I don't want to put that  
15 word in his mouth. You're going to have to understand,  
16 sir, years later it's very hard to remember an exact  
17 wording, meaning. I remember some things about it  
18 because I did memos of them. I did not do a memo about  
19 what Loretta Kind said, what Mr. Verniero said. So  
20 it's hard for me in this day and age. I can give you  
21 impressions.

22 MR. CHERTOFF: But you'd agree with me that  
23 this reading was one in which, you know, the Attorney  
24 General himself appeared. The Executive Assistant  
25 appeared. You appeared. And a high-ranking member of

1 the Civil Rights Division and other lawyers were also  
2 in this meeting, right?

3 MR. FAHY: Yes, sir.

4 MR. CHERTOFF: And there was a clear  
5 discussion about the Justice Department's interest in  
6 doing some kind of review with respect to racial  
7 profiling, right?

8 MR. FAHY: Yes. And we had -- we had quite a  
9 -- I know we had some discussion about how do you do  
10 these reviews. It didn't seem to me that they were  
11 particularly up on how you do these reviews either.

12 MR. CHERTOFF: Was Soto discussed in the  
13 meeting?

14 MR. FAHY: Oh, absolutely. The Attorney  
15 General expressed the fact that Soto was on appeal and  
16 that we hoped it would be reversed. And we thought it  
17 would be reversed. You know, if you list other things,  
18 it may spark my recollection. But that was discussed,  
19 Soto.

20 MR. CHERTOFF: And was there a discussion  
21 about, for example, information and documentation that  
22 the Civil Rights Division would want from New Jersey?

23 MR. FAHY: I don't recall specifically, sir.  
24 There was -- they brought out a piece of paper and it  
25 seemed to apply more to civil cases than the criminal

1 cases. And they said this is like a type of sample  
2 document request that we would do in a review. I don't  
3 know if they used the word "civil," but it was not --  
4 nothing was written in stone at that. It was an honest  
5 discussion about how do you go about doing these  
6 reviews. And I know we talked somewhat about the  
7 difficulty in conducting a violator survey which our  
8 office still felt had -- if a proper violator survey  
9 hadn't been done down in the lower end of the state and  
10 they didn't really have an idea of how you did one  
11 either. I recall that. I mean it was like academics,  
12 talking a bit about how you would go about addressing  
13 his problem. It was a very pleasant meeting.

14 MR. CHERTOFF: Now, by the way, I just want  
15 to go back to something. You would agree with me that  
16 by this point in time you had been hearing that the  
17 numbers with respect to stops of minority drivers in  
18 Moorestown were running about the same as Soto, right?

19 MR. FAHY: Yes.

20 MR. CHERTOFF: And again, you hadn't asked  
21 for any follow up with respect to that, right?

22 MR. FAHY: Right.

23 MR. CHERTOFF: But did you know at this point  
24 going into this negotiation with the Department of  
25 Justice and from what they said, that they were going

1 to be asking for this kind of information that would be  
2 more current than the information period that was  
3 covered in Soto?

4 MR. FAHY: Oh, absolutely. I thought if they  
5 were going to come in and do a review -- I welcomed the  
6 resistance, who wouldn't?

7 MR. CHERTOFF: And did you actually come away  
8 or at some point receive a form that listed the  
9 information and request with respect to the Department  
10 of Justice inquiry?

11 MR. FAHY: That's the form I just told you  
12 about.

13 MR. CHERTOFF: All right. And --

14 MR. FAHY: It was a sample form. It wasn't  
15 -- it wasn't addressed to the State of New Jersey. It  
16 was a sample form.

17 MR. CHERTOFF: I'm going to show you what has  
18 been previously marked as W-14 for identification,  
19 OAG577. It's a letter, a memo to you from Alexander  
20 Waugh, December 20th, 1996, relating to State Police  
21 profiling. Did you get this?

22 MR. FAHY: Yes, sir.

23 MR. CHERTOFF: And --

24 MR. FAHY: I don't know if we took a copy  
25 with us that day, I assume we did. We certainly had it

1 in the office.

2 MR. CHERTOFF: Is this the information  
3 request sample you got?

4 MR. FAHY: Yes.

5 MR. CHERTOFF: It covers the period '94  
6 through '96?

7 MR. FAHY: It wasn't filled in. There was no  
8 dates put on there.

9 MR. CHERTOFF: Does it say at the bottom of  
10 Page 578, "For the entire period of 1994 through 1996"?  
11 It's on the second page of the document. First page of  
12 information request.

13 MR. FAHY: Yes.

14 MR. CHERTOFF: All right. And it covers not  
15 only the issue of stops, but it also covers searches,  
16 seizures and/or arrests, right?

17 MR. FAHY: Yes.

18 MR. CHERTOFF: Did you have any discussion  
19 with anybody about what would be entailed in dealing  
20 with this sample request?

21 MR. FAHY: Well, yeah. We thought --

22 MR. CHERTOFF: Who did you discuss it with?

23 MR. FAHY: Probably Alex. Maybe Peter  
24 Verniero. I don't recall a specific meeting. I know  
25 that I was assigned to look this over and give my

1 commentary to Alex Waugh about it and I know that I had  
2 to forward it over -- I didn't forward it, I think  
3 December 24th the Colonel and Tommy Gilbert came over  
4 and the purpose of that was to brief them on what  
5 happened in Washington and they may have been given a  
6 copy of this there. But I can say clearly, December  
7 24th, 1996. I wasn't so sure at the last time I gave  
8 my deposition, but it makes sense now that me and Tommy  
9 were the ones who were going to do the initial review  
10 of this document for each office. And then I was  
11 assigned to check and see -- and make a comment about  
12 how hard and how quickly we could get each of the items  
13 listed on here.

14 MR. CHERTOFF: Now, in this December 24th  
15 meeting, you were present?

16 MR. FAHY: Yes.

17 MR. CHERTOFF: With Colonel Williams?

18 MR. FAHY: Yes.

19 MR. CHERTOFF: Attorney General Verniero?

20 MR. FAHY: Yes.

21 MR. CHERTOFF: Executive Assistant Attorney  
22 General Waugh?

23 MR. FAHY: Yes.

24 MR. CHERTOFF: And was Sergeant Gilbert  
25 present?

1 MR. FAHY: I think so, yes.

2 MR. CHERTOFF: Was there any discussion about  
3 the consent-to-search issue that you learned about in  
4 Maryland at this meeting?

5 MR. FAHY: Not that I recall.

6 MR. CHERTOFF: Was there a discussion about  
7 the way the numbers were running in '95 and '96 in  
8 Moorestown?

9 MR. FAHY: There could have been.

10 MR. CHERTOFF: And what was the discussion?

11 MR. FAHY: I can't remember. I'm just  
12 saying, the discussion at that meeting, Christmas Eve,  
13 that meeting was here's this document request, the  
14 Attorney General would have told the Colonel what was  
15 said at the meeting in Washington and the fact that we  
16 have to review the document requests. That nothing had  
17 been made final. I think he was very happy to explain  
18 to the Colonel that it was not going to be called an  
19 "investigation," it was going to be a "review." That  
20 we were going to cooperate and to see what we could  
21 gather. And that there would be some negotiations  
22 about what parts of the State of New Jersey they would  
23 look at.

24 MR. CHERTOFF: Now, in this meeting or at  
25 anytime between the time you met on December 9th in the

1 Attorney General's Office through the end of 1996, was  
2 there any discussion you had with anybody else in the  
3 Office of the Attorney General where somebody said,  
4 since we're getting into this, what are the underlying  
5 facts? What do the underlying numbers look like?  
6 What's our exposure here? Anybody have a conversation  
7 like that with you from the Office of the Attorney  
8 General?

9 MR. FAHY: There may have been discussions  
10 about a violator survey and we explained, well, even if  
11 you have the stop numbers, and they were, granted,  
12 maybe higher in South Jersey on the Turnpike versus in  
13 other parts of the State, what do you compare them to?  
14 And there may have been some discussion about well, you  
15 need a traffic survey. Even the Public Defender -- but  
16 we criticized it, but I'll agree, we didn't do our  
17 own --

18 MR. CHERTOFF: So did anybody --

19 MR. FAHY: -- and we met right after that.  
20 The reason I'm saying there may have been discussions  
21 is right after that I received the assignment to go and  
22 talk to different experts about doing a traffic survey.  
23 So it could have come up. It could have come up, I  
24 don't know, sir.

25 MR. CHERTOFF: Was there any discussion about



1 or did you talk about what you had heard with respect  
2 to the ongoing Moorestown numbers being compiled by the  
3 State Police?

4 MR. FAHY: I can't recall specifically.

5 MR. CHERTOFF: So you don't know whether you  
6 did or you didn't?

7 MR. FAHY: It wasn't a secret that the  
8 numbers were running about the same.

9 MR. CHERTOFF: It wasn't a secret.

10 MR. FAHY: Not to me. I said -- and I have  
11 received oral reports from that day and to this day  
12 when I'm not working on the issue, you get oral reports  
13 you hear around the office, you hear from State Police,  
14 the numbers are running about the same. To recall the  
15 specifics, sir, I don't recall.

16 MR. CHERTOFF: Now, there came a point in  
17 time you were actually asked to put together a draft  
18 letter to Loretta Kind from the Civil Rights Division  
19 who was the person you had met with in Washington,  
20 correct?

21 MR. FAHY: Yes, sir.

22 MR. CHERTOFF: And what were you told the  
23 purpose of the letter was?

24 MR. FAHY: I don't know if I was told. I  
25 mean I had been a practicing attorney for 15 years, I

1 was told to respond to the letter and if you give me a  
2 copy of the letter it may refresh my recollection.

3 MR. CHERTOFF: All right. Well, we're going  
4 to show you a draft of the letter, F-26. It's OAG625.  
5 It's a typed version. It says January 3rd, 1997. And  
6 the 3 is struck out and it looks like either a 7 or 17  
7 is inserted above it and there's some handwriting.

8 MR. FAHY: Right.

9 MR. CHERTOFF: It's OAG625.

10 MR. FAHY: The draft is probably my copy and  
11 then there's writing on it so it's -- this document is  
12 not my copy, someone had it afterwards.

13 MR. CHERTOFF: The typed portion is what you  
14 prepared?

15 MR. FAHY: I would say that's a good guess.  
16 You know, this looks like, without reading each and  
17 every word, this looks like a copy that I had drafted,  
18 yes.

19 MR. CHERTOFF: You remember you did a draft,  
20 right?

21 MR. FAHY: I did a draft, absolutely.

22 MR. CHERTOFF: On Page 8 of the draft there's  
23 a paragraph that says, "I believe the time has come to  
24 spend sufficient resources to develop and conduct a  
25 trustworthy violator survey. The State Police report

1 to me that the number of stops involving black  
2 motorists on the southern portion of the Turnpike,  
3 patrolled by troopers assigned to the Moorestown  
4 station, remains near the level reported in the Soto  
5 case. This figure is also higher than that reported in  
6 other State Police stations in this state, including  
7 those along the Turnpike."

8 Did you write that?

9 MR. FAHY: Absolutely, sir.

10 MR. CHERTOFF: And you got that information  
11 from whom?

12 MR. FAHY: Well, I probably got the  
13 information on the violator survey part from my own  
14 head. Since my first memo in -- was '93 that I said we  
15 need a violator survey.

16 MR. CHERTOFF: I'll be even more specific so  
17 there's -- the sentence, "The State Police report to me  
18 that the number of stops involving black motorists on  
19 the southern portion of the Turnpike, patrolled by  
20 troopers assigned to the Moorestown station, remains  
21 near the level reported in the Soto case." Where did  
22 you get that from?

23 MR. FAHY: From the State Police and it  
24 wouldn't surprise me if I called Tommy Gilbert on the  
25 phone and asked him if those were the numbers.

1 MR. CHERTOFF: And the phrase, "This figure  
2 is also higher than that reported in other State Police  
3 stations in this state, including those along the  
4 Turnpike." Where did you get that from?

5 MR. FAHY: Probably Tommy Gilbert.

6 MR. CHERTOFF: The same conversation?

7 MR. FAHY: Probably.

8 MR. CHERTOFF: So what was the conversation?  
9 Did you call him up and say, hey, Tommy, in substance,  
10 hey, Tommy, do you happen to know offhand what the  
11 numbers are running like now in '95 and '96?

12 MR. FAHY: Well, I was familiar with the fact  
13 that Internal Affairs and someone in State Police was  
14 monitoring the compliance rate involving SOP F3. And  
15 as they monitored that compliance rate -- because  
16 remember, in Pedro Soto we only had one-third of the  
17 data. I was getting information it's going up now to  
18 75, 80, 90 percent and that the numbers are running  
19 about the same. I can be criticized, sir, for not  
20 asking for a report in writing. I didn't think there  
21 was -- they hadn't gone through a year's cycle. I  
22 didn't think they had some final report.

23 MR. CHERTOFF: So can we now agree actually  
24 that, in fact, in 1996 you were being kept informed by  
25 the State Police about the way the numbers were running

1 in terms of stops down in Moorestown?

2 MR. FAHY: Generally the numbers.

3 MR. CHERTOFF: So you were being told about  
4 that?

5 MR. FAHY: You asked me very specific  
6 questions earlier about complaints by a trooper. I  
7 didn't have that in detail. Generally, sir, as I go  
8 would go over to State Police from time to time,  
9 remember I worked on a lot of other cases, they would  
10 say the compliance numbers are up and the numbers are  
11 running about the same.

12 MR. CHERTOFF: And again, in your meetings  
13 with the Attorney General's Office in ninety -- I'm  
14 sorry, on December 9th and December 24th of '96 or in  
15 any conversations with Mr. Waugh or anybody from the  
16 Office of the Attorney General, did you discuss this  
17 fact about how the numbers were running with them in  
18 connection with the fact that there's now going to be a  
19 Department of Justice investigation?

20 MR. FAHY: It wouldn't surprise me if it came  
21 up. I don't recall it specific, but it --

22 MR. CHERTOFF: Generally. Generally.

23 MR. FAHY: Probably the same way generally I  
24 heard it at the State Police without a report. I  
25 probably generally related it at a meeting. Probably

1 in December, the first meeting. Maybe in the second  
2 meeting. It's not secret about it.

3 MR. CHERTOFF: What did they say? Because  
4 let me step back. These are the numbers which you had  
5 -- whether you agreed or disagreed, there was a  
6 Superior Court Judge who found those numbers sufficient  
7 to render an adverse ruling, right?

8 MR. FAHY: Yes, and we disagreed with that.  
9 Yes.

10 MR. CHERTOFF: But whether you disagreed or  
11 not, you had a Judge make a finding with respect to  
12 that, right?

13 MR. FAHY: Yes.

14 MR. CHERTOFF: But when the Judge made the  
15 finding, you had to do it with old statistics, right?

16 MR. FAHY: Yes.

17 MR. CHERTOFF: So obviously, if you're going  
18 into a new investigation or a new review, isn't kind of  
19 the first thing you'd want to know, are we still as bad  
20 off as we were back then or can we go into Washington  
21 and say, hey, you know what? that Soto case that you're  
22 relying upon, that's ancient history. It's much better  
23 now.

24 MR. FAHY: No -- you've had your chance to do  
25 a simple hypothetical, let me answer as an attorney

1 who's dealing with the issue for those years. Those  
2 years. The stop rate on the southern end of the  
3 Turnpike was around 35 percent. The defense was  
4 positive that the number should be 15 percent. I  
5 wanted to have a violator survey done. I don't know  
6 what the right number is down there and I don't know --  
7 the numbers are still running that way now that I hear  
8 through the office even with the U.S. Department of  
9 Justice looking at it. What is the right number for  
10 that part of the Turnpike? I haven't a clue, sir.

11 MR. CHERTOFF: So you thought it was  
12 important to do a violator survey right away, right?

13 MR. FAHY: Absolutely. I've been  
14 recommending it for years.

15 MR. CHERTOFF: When was the violator survey  
16 first instituted by the Department of Law and Public  
17 Safety?

18 MR. FAHY: I don't think they've done one to  
19 this day.

20 MR. CHERTOFF: So between 1996 when you have  
21 a Civil Rights Division investigation and the numbers  
22 are a big issue and your response is hey, these numbers  
23 may not mean much because we need a violator survey, so  
24 let's do one and then --

25 MR. FAHY: No, I --

1 MR. CHERTOFF: Wait a second. And then five  
2 years go by and there still hasn't been one, right?

3 MR. FAHY: Just so the Committee understands,  
4 sir. It's not me that says we need a violator survey.  
5 I get that from talking to experts. But more  
6 importantly, I get that from the court decisions. The  
7 Curtis Kennedy decision says, "Criticize the Public  
8 Defender for not having a violator survey." You have  
9 to measure -- statistics are only valid when you  
10 measure them involving persons that are similarly  
11 situated. And that's what the court said. And in  
12 regards to a violator survey, the New Jersey Appellate  
13 Division said you need one to make an --

14 SENATOR LYNCH: Mr. Chairman, may I  
15 interrupt? I mean this gentleman professes to be a  
16 trial lawyer and he knows that his answers are totally  
17 unresponsive and they wander off repeatedly. It's  
18 getting very difficult to stay with the line of  
19 questioning for Mr. Chertoff and for us to understand.

20 SENATOR GORMLEY: Not only Senator Lynch, but  
21 by the reaction of the entire Committee. You're going  
22 to have to master yes and no. And these are not -- no,  
23 don't interrupt me. Don't do that. You're going to  
24 master it. This is very important. Mr. Chertoff is  
25 not trying to put words in your mouth. We're trying

1 just to get the facts on the table. There obviously  
2 are occasions when you have to go beyond yes and no,  
3 but we don't need the long dialogues that are unrelated  
4 to that sentence or sentences that might be related to  
5 that yes or no answer. No one's trying to put words in  
6 your mouth. We're trying to get the facts on the  
7 table. No one's being disrespectful of your position  
8 or the fact that there has been a lapse in time since  
9 you've gone to these meetings or done these  
10 memorandums. Please be more focused in your answers.  
11 You have an enormous history in this issue and you can  
12 talk a lot about it and no one's trying to be  
13 disrespectful to that knowledge that you have. But  
14 please focus if you can. You've got to focus on yes  
15 and no and you've got to be more direct here. And no  
16 one is trying to tell you to put words in. If you  
17 don't remember, "I don't remember." If you don't know,  
18 you don't know or it didn't happen. But we don't need  
19 the history of the Western World for every question.

20 Mr. Chertoff.

21 MR. CHERTOFF: All right. So my question for  
22 you is this now. Did you discuss the need for a  
23 violator survey in your meetings with the Attorney  
24 General and the others in that office in December or in  
25 any oral conversation with anybody from the Office of

1 the Attorney General in December?

2 MR. FAHY: I don't know if it was December,  
3 sir. But I certainly did it in January and I have  
4 memos in the file that say that.

5 MR. CHERTOFF: But no violator survey has  
6 been inaugurated to the present date as far as you  
7 know.

8 MR. FAHY: I answered that no.

9 MR. CHERTOFF: Now, with respect to these  
10 passages that you wrote on Page 8 of your draft of the  
11 January 3rd letter, did there come a time you saw a  
12 later draft or the version that actually went out?

13 MR. FAHY: Did I see a final draft? I don't  
14 know if I saw it back in '97, I've seen it since then.

15 MR. CHERTOFF: Well, they didn't run the  
16 final draft by you?

17 MR. FAHY: No.

18 MR. CHERTOFF: In what you've seen since  
19 then, do you see that this language was stricken out?

20 MR. FAHY: Yes.

21 MR. CHERTOFF: Did anyone ever discuss with  
22 you why that was done?

23 MR. FAHY: No.

24 MR. CHERTOFF: Did you ever make a specific  
25 recommendation to the Attorney General about the need

1 to do a violator survey?

2 MR. FAHY: Yes.

3 MR. CHERTOFF: And when was that?

4 MR. FAHY: It would have been in January of  
5 '97.

6 MR. CHERTOFF: And was there any response to  
7 that?

8 MR. FAHY: Yes and I...

9 MR. CHERTOFF: What was the response?

10 MR. FAHY: Well, the response comes in a  
11 context. I explained to the Attorney General, the way  
12 I was trying to explain a few minutes ago, of the  
13 complexities that we encountered with regard to  
14 violator surveys. We went to the New Jersey Institute  
15 of Technology. We went to the Center for Forensic  
16 Economic Studies. They told us about the difficulties  
17 in doing a violator survey. The factors that you would  
18 have to become involved with and he -- I don't know  
19 that he said that much. He understood that it wasn't  
20 going to be such a simple task and -- but those  
21 conversations had happened throughout several  
22 administrations.

23 MR. CHERTOFF: But I'm not sure I understand.  
24 Is it that you said we ought to do one or you said it's  
25 too complicated to do and threw your hands up? Which

1 was it?

2 MR. FAHY: Sir, I personally wanted to do  
3 one. I wanted to do one and made that recommendation  
4 to several Attorney Generals. For whatever reasons  
5 they chose to, maybe part of the --

6 SENATOR LYNCH: Mr. Chairman, the question  
7 was asked --

8 SENATOR GORMLEY: Excuse me. Let me, if I  
9 might. Try answering me.

10 MR. FAHY: Repeat the question and I'll  
11 answer it.

12 SENATOR GORMLEY: Answer this yes or no. Did  
13 you recommend Peter Verniero to do a violator survey,  
14 yes or no?

15 MR. FAHY: Yes.

16 SENATOR GORMLEY: Thank you.

17 MR. CHERTOFF: What was his response?

18 MR. FAHY: I tried to explain. I don't know  
19 that there was a response. He may have understood the  
20 issues that I explained about the violator survey. He  
21 may have understood --

22 SENATOR GORMLEY: Excuse me. Do you  
23 recall --

24 MR. FAHY: I said I don't recall.

25 SENATOR GORMLEY: Excuse me. Do me a favor.

1 Do you recall anything that Peter Verniero said after  
2 you said to him to do a violator survey? Just what he  
3 said. If you don't remember anything, then you don't  
4 remember anything.

5 MR. FAHY: Not specific words.

6 SENATOR GORMLEY: But you do remember it and  
7 you said because of the problems that there was a need,  
8 you recommended a violator survey to deal with the  
9 problems that were coming up, correct?

10 MR. FAHY: Yes, sir.

11 SENATOR GORMLEY: Thank you.

12 MR. CHERTOFF: And you don't remember what he  
13 said, right? Or if he said anything.

14 MR. FAHY: I'm sure he said something, but I  
15 don't remember.

16 MR. CHERTOFF: Well, did he tell you to go  
17 ahead and start one up?

18 MR. FAHY: No, not to me.

19 MR. CHERTOFF: To anybody else?

20 MR. FAHY: Yes, and that's the answer. There  
21 were other people involved. He talked to the business  
22 administrator, Thomas O'Reilly. He came to us with --  
23 he sent his people to meetings. So he may have had  
24 conversations with other people in the Department about  
25 the costs and things like that.

1 MR. CHERTOFF: As of a year later, over a  
2 year later in 1998, had there been a decision made to  
3 start a violator survey?

4 MR. FAHY: I told you, sir, earlier, there  
5 has been no decision made to this day to do a violator  
6 survey that I know of.

7 MR. CHERTOFF: A year and a half later in May  
8 1998, did you recommend again to the Attorney General  
9 to do a violator survey?

10 MR. FAHY: I wasn't really that involved in  
11 the issue that --

12 MR. CHERTOFF: Well, didn't you send him a  
13 memo on May 26th, 1998 saying "violator survey"?

14 MR. FAHY: Yeah, but I wasn't -- I think that  
15 I got a call down that said what about these violator  
16 surveys you talked about before? Could you tell me  
17 what they involve again? And I wrote a short memo to  
18 him telling him what they involved again.

19 MR. CHERTOFF: Did you indicate that there  
20 was -- that your position was that a traffic survey is  
21 too simplistic and that you wanted to have a violator  
22 survey in addition to or instead of a traffic survey?

23 MR. FAHY: My memo speaks for itself,  
24 probably. What I was thinking of is maybe a speed  
25 survey.

1 MR. CHERTOFF: Do you know why you revived  
2 this issue or this issue became revived to you in May  
3 of 1998 after a year and a half?

4 MR. FAHY: I probably got a call from either  
5 -- was Alex still there? either Alex or Peter Verniero  
6 saying can you give us information on the violator  
7 survey again?

8 MR. CHERTOFF: Do you know whether this had  
9 to do with the fact that the Hogan and Kenna shooting  
10 had occurred about a month before?

11 MR. FAHY: I have no idea, sir.

12 MR. CHERTOFF: Was there any information you  
13 had about violator surveys in May of 1998 that you  
14 didn't have in January of 1997 when the Civil Rights  
15 Division investigation first surfaced?

16 MR. FAHY: Can you repeat? I'm sorry, I  
17 didn't --

18 MR. CHERTOFF: In May of 1998, did you have  
19 more information about a violator survey than you had  
20 in January of 1997 when you talked about it back then  
21 with the Attorney General?

22 MR. FAHY: Me personally? I don't think so.

23 MR. CHERTOFF: Sir, do you know why there was  
24 a revived interest in this in May of 1998?

25 MR. FAHY: I think in my deposition I said

1 that maybe a meeting with the Black Ministers, maybe.  
2 I don't remember.

3 MR. CHERTOFF: Let me ask you this. Was it  
4 -- I mean I guess it's fair to say that in the Soto  
5 litigation, even up to the Appellate Division, the  
6 consistent position that you took was that the  
7 statistics weren't really worth much because you didn't  
8 have a baseline violator survey, right?

9 MR. FAHY: That's what our expert advised,  
10 yes.

11 MR. CHERTOFF: And you'd agree with me that  
12 in a way one way to avoid ever coming to grips with the  
13 problem is if you never have the violator survey, then  
14 I guess the statistics are never really worth very  
15 much, right? Is that a fair statement?

16 MR. FAHY: I'm not going to conclude that; if  
17 you want to.

18 MR. CHERTOFF: Would you agree with me that  
19 if you had a violator survey, that would finally  
20 provide a baseline that would allow you to analyze the  
21 proportion of stops in a way that you would find to be  
22 meaningful?

23 MR. FAHY: It might help. And at the risk of  
24 being reprimanded, the experts explained to us that a  
25 violator survey is not an easy thing to do. Right now



1 they're talking about doing a simple speed survey. But  
2 every expert we talked to, all the experts at New  
3 Jersey Institute of Technology and at the Center for  
4 Forensic Economic Studies, that this isn't something  
5 that's been done that we can go to some -- pull out of  
6 a book and here's how you do a violator survey.

7 MR. CHERTOFF: So did you say to the Attorney  
8 General either in January of '97 or at any other point  
9 in time, you know, this is just too hard to do, we  
10 can't do it?

11 MR. FAHY: No, I would have preferred to do  
12 one.

13 MR. CHERTOFF: And you understood that by  
14 doing one, you finally then provide a basis to measure  
15 the stop data in order to reach some conclusions,  
16 right?

17 MR. FAHY: It would have been a lot better  
18 than the Public Defender study, I would think, that the  
19 experts came up with, yes.

20 MR. CHERTOFF: Now, did the experts say, by  
21 the way, you can't do it and it's impossible to do?

22 MR. FAHY: No, I'm sure if we hired them and  
23 paid the money, they'd come up with something.

24 MR. CHERTOFF: And did you understand, by the  
25 way, that with respect to consent-to-search data, you

1 wouldn't have to use a violator survey because your  
2 baseline there would be the number of people of each  
3 race that were stopped?

4 MR. FAHY: Consent to search and stop are two  
5 different issues, sir.

6 MR. CHERTOFF: Right. Did you ever consider  
7 a consent-to-search -- an analysis of consent-to-search  
8 information?

9 MR. FAHY: Oh, over the years many times.  
10 Sir, over the years there was consideration of arrest  
11 information, but the studies -- the study to do  
12 regarding consent to searches or arrests was discussed  
13 as being much more difficult because a violator survey  
14 would be easier, you could determine the number of  
15 people speeding. That would be a starting point. But  
16 if you have to try to determine the number of people  
17 traveling down the highways with weapons or guns and --  
18 that was discussed as a much more difficult study.

19 MR. CHERTOFF: Well, I don't know, Mr. Fahy,  
20 could you do this? If you knew the ethnic background  
21 of everybody who was stopped -- well, let me step back.  
22 You'd agree with me that the people who were asked to  
23 consent to search are drawn from the pool of people who  
24 were stopped, right? Is that fair to say?

25 MR. FAHY: Yeah, you have to be stopped

1 before you're asked to consent to search.

2 MR. CHERTOFF: Okay. So if you know the  
3 composition of the people who were stopped and you know  
4 the composition of the subset of those people who were  
5 asked to consent to search, you can actually compare  
6 those two numbers, right?

7 MR. FAHY: Sure.

8 MR. CHERTOFF: Was that ever suggested?

9 MR. FAHY: No.

10 MR. CHERTOFF: Did you ever have a  
11 conversation with Tommy Gilbert about doing that?

12 MR. FAHY: No.

13 MR. CHERTOFF: Did it ever occur to you to do  
14 that?

15 MR. FAHY: No.

16 MR. CHERTOFF: Do you know -- you're aware  
17 now, I take it, that Sergeant Gilbert did exactly that  
18 analysis. He made a comparison -- he made a comparison  
19 with respect to the consent-to-search figures.

20 MR. FAHY: I know now that he did.

21 MR. CHERTOFF: And you knew the Maryland  
22 State Police, that was part of that case, right?

23 MR. FAHY: No, I don't know what went into  
24 that case.

25 MR. CHERTOFF: Well, you knew that the

1 consent-to-search issue was the fundamental issue in  
2 that case --

3 MR. FAHY: Yes, but I don't know what study  
4 they did. I never read any study that they did.

5 MR. CHERTOFF: So when you were talking to  
6 the Attorney General about maybe doing a violator  
7 survey and the difficulties, did you raise any other --  
8 any other ways that one might kind of come to grips  
9 with the problem to try to figure out if there's a  
10 problem or not?

11 MR. FAHY: Well, sure, there was -- I mean  
12 one thing the Attorney General was excited about was  
13 the fact that he was going to put cameras in the cars  
14 and he thought that would be a means of deterring any  
15 improper police action. And I actually said to him, I  
16 wasn't working on the issue then, but I said I wish I  
17 had thought of that. No one has ever thought about  
18 putting cameras in police cars.

19 MR. CHERTOFF: When was that?

20 MR. FAHY: I can't remember exactly when,  
21 sir.

22 MR. CHERTOFF: What year?

23 MR. FAHY: I didn't work on the issue. There  
24 was plenty of paperwork at the Criminal Justice -- not  
25 Criminal Justice, OAG, about the Attorney General

1 deciding to put cameras in the police cars and he  
2 thought that would be a way of documenting proper or  
3 improper police action. He was excited about it.

4 MR. CHERTOFF: I want to, before I move on to  
5 Mr. Rover, I want to leave you with this question. If  
6 you -- was your general approach in dealing with this  
7 issue of profiling an approach of figuring out how to  
8 defend in the litigation context in the sense of, you  
9 know, how do we poke holes in the various types of way  
10 planners can put statistical cases together? Or was  
11 there ever a point in time you sat down with anybody  
12 from the Office of the Attorney General and had a  
13 discussion along the lines of here's how we can go  
14 about actually finding out if there is a statistical  
15 anomaly that requires further examination? Which was  
16 it?

17 MR. FAHY: Both. Me personally, sir,  
18 primarily I'm the trial lawyer assigned based upon the  
19 Office's position to go in and defend it. At the same  
20 time, I also am a proponent of saying we need better  
21 records and that I would like a violator survey. And I  
22 won't bore the Committee with the details, but it's in  
23 the record from my papers over the years, there were  
24 times when I would list different things that could be  
25 done maybe to address the issue. But, yeah, there were

1 times when obviously I approached it as a litigator.

2 MR. CHERTOFF: And in December of '96, early  
3 '97, were these various things you listed about ways to  
4 approach the issue of profiling, did you have  
5 discussions about putting any of those into effect with  
6 anybody from the Office of the Attorney General?

7 MR. FAHY: Are you dealing only with Peter  
8 Verniero in '96?

9 MR. CHERTOFF: I said with the Office of the  
10 Attorney General, anybody in that office.

11 MR. FAHY: Sure, I talked to Debbie Poritz  
12 about some of it in '96 before she left. I talked to  
13 Peter Verniero about the violator survey.

14 MR. CHERTOFF: And again, with respect to the  
15 violator survey, we have established that nothing was  
16 done, a least as far as you know.

17 MR. FAHY: To this day, sir, I don't think a  
18 violator study has been done.

19 MR. CHERTOFF: What about Waugh? Did you  
20 speak to then Executive Assistant Attorney General  
21 Waugh?

22 MR. FAHY: Sure.

23 MR. CHERTOFF: Did he indicate he wanted to  
24 start a violator survey or do some other, come up with  
25 some other statistical method to see if there's a

1 problem?

2 MR. FAHY: I don't think he was opposed to  
3 it.

4 MR. CHERTOFF: That's not what I asked you.  
5 My question was --

6 MR. FAHY: I talked to him but I don't recall  
7 specific words.

8 MR. CHERTOFF: Was there a --

9 MR. FAHY: I'm sure at some point there was a  
10 discussion but --

11 MR. CHERTOFF: Was there ever any action  
12 taken to put into effect any way in 1996 or 1997 of  
13 statistically determining in what you would consider a  
14 reliable way whether there was a disproportionate  
15 enforcement of the traffic laws with respect to the  
16 Turnpike?

17 MR. FAHY: Did it come to fruition? No.

18 MR. CHERTOFF: Were there even steps taken --

19 MR. FAHY: Yes, there were steps taken.

20 MR. CHERTOFF: What?

21 MR. FAHY: They sent me and members of the  
22 administrative staff, Tom O'Reilly, to go to New Jersey  
23 Institute of Technology and discuss what type of --  
24 what a violator survey would entail. There were steps  
25 taken by the State Police to ensure that reporting

1 numbers went up so if we ever did a study we would have  
2 better numbers. They sent me to the Forensic Institute  
3 in Philadelphia to talk about a violator study. So you  
4 understand, sir -- you know there was a comparison of  
5 two numbers and I thought steps were being taken to  
6 increase the actual data of the State Police and then  
7 maybe do a study and we could compare it. And that  
8 would have been -- that would have been better for us  
9 to do than to just rely on criticizing the Gloucester  
10 County study.

11 MR. CHERTOFF: But it didn't happen.

12 MR. FAHY: It never happened, sir.

13 MR. CHERTOFF: Now, Mr. Rover, you got  
14 involved in this in January of '97.

15 MR. ROVER: That's correct.

16 MR. CHERTOFF: You were asked to get involved  
17 by Mr. Waugh?

18 MR. ROVER: That's correct.

19 MR. CHERTOFF: And you were asked to become  
20 involved in terms of dealing with the Civil Rights  
21 Division investigation --

22 MR. ROVER: That's correct.

23 MR. CHERTOFF: -- or review?

24 And your point of contact in the State Police  
25 was Sergeant Gilbert?

1 MR. ROVER: That's correct.

2 MR. CHERTOFF: And did that remain true  
3 during the period of time that you functioned as the  
4 point person with respect to Civil Rights review?

5 MR. ROVER: That's correct.

6 MR. CHERTOFF: Now, you would then report to  
7 who?

8 MR. ROVER: I reported to Alex Waugh.

9 MR. CHERTOFF: That would be Alex Waugh, the  
10 Executive Assistant?

11 MR. ROVER: Yes.

12 MR. CHERTOFF: And to whom did he report?

13 MR. ROVER: I assume the Attorney General.

14 MR. CHERTOFF: Now, I'm going to show you  
15 just a series of documents. I want to see if you  
16 remember these. But while we're pulling them together,  
17 is it fair to say that one of your principal functions  
18 was to deal with the issue of gathering the information  
19 which the Civil Rights Division wanted?

20 MR. ROVER: Yes.

21 MR. CHERTOFF: And in doing that you would  
22 communicate through Sergeant Gilbert, correct?

23 MR. ROVER: Correct.

24 MR. CHERTOFF: And you also had communication  
25 with Sergeant Gilbert about the substance of what was

1 being looked at by the Civil Rights Division, correct?

2 MR. ROVER: I don't know if I understand that  
3 question. What do you mean by that?

4 MR. CHERTOFF: You had communication with  
5 Sergeant Gilbert about the actual substance of what was  
6 going on with racial profiling that was the subject of  
7 this Civil Rights Division review, right?

8 MR. ROVER: I would imagine there were  
9 general discussions, yes.

10 MR. CHERTOFF: And you also gave advice to  
11 Mr. Waugh and to the Attorney General with respect to  
12 the Civil Rights review, correct?

13 MR. ROVER: In one instance I did, yes, sir.

14 MR. CHERTOFF: You prepared memos?

15 MR. ROVER: I prepared a memo.

16 MR. CHERTOFF: You interacted also with the  
17 Civil Rights Division lawyers?

18 MR. ROVER: Yes, I did.

19 MR. CHERTOFF: You were the point of contact  
20 again between the Department of Law and Public Safety  
21 and the U.S. Civil Rights Division?

22 MR. ROVER: That's correct.

23 MR. CHERTOFF: So you were kind of in the  
24 center of traffic, is it fair to say, between the Civil  
25 Rights Division, the Office of the Attorney General and

1 the State Police on this matter?

2 MR. ROVER: That's correct.

3 MR. CHERTOFF: And was there anybody else in  
4 the Office of the Attorney General that you worked with  
5 from January '97 until let's say February '99 besides  
6 the Attorney General and the Executive Assistant  
7 Attorney General?

8 MR. ROVER: I would say no. In one instance  
9 I had to make contact with Dave Hespe. I think Alex  
10 Waugh had left. But barring that, prior to that it was  
11 all Alex Waugh.

12 MR. CHERTOFF: So it would be fair to say  
13 that within the Office of the Attorney General, this  
14 issue of the Civil Rights review was actually dealt  
15 with by very, very small group of people.

16 MR. ROVER: That's correct.

17 MR. CHERTOFF: Now, just to show you some of  
18 the documents that you were involved with. I'm going  
19 to show you -- I think you have before you W-17, which  
20 is OAG805. W-21, which is OAG817. W-22, which is  
21 OAG808. Take a look at those.

22 The first one is February 5th, 1997. It's a  
23 memo to Alex Waugh from George Rover.

24 The next is February 6th, 1997. A letter  
25 from George Rover to Mr. Posner of the Civil Rights

1 Division.

2 The next one is a fax, 2-6-97, to George  
3 Rover from Mark Posner.

4 I think those are the three I've picked.

5 MR. ROVER: Yes.

6 MR. CHERTOFF: Do you have those in front of  
7 you?

8 MR. ROVER: Yes.

9 MR. CHERTOFF: Now, let me just take you  
10 through those. With respect to W-17, this is a memo  
11 you prepared for Alex Waugh to kind of summarize the  
12 major issues that have been raised in a previous  
13 conference call with the Department of Justice, right?

14 MR. ROVER: That's correct.

15 MR. CHERTOFF: Was Mr. Waugh actually on a  
16 conference call?

17 MR. ROVER: Yes.

18 MR. CHERTOFF: Now, as of this point in time,  
19 you were aware of the fact there were other  
20 investigations going on in other jurisdictions  
21 involving the issue of racial profiling, correct?

22 MR. ROVER: I believe Sergeant Gilbert  
23 advised me that there was something going on in  
24 Illinois and something going on in Maryland.

25 MR. CHERTOFF: Let me ask you. Before you

1 got involved with this assignment, did you sit down  
2 with Mr. Fahy and get briefed or prepared from a  
3 transition standpoint so you understood what was going  
4 on?

5 MR. ROVER: I think I might have had one or  
6 two conversations in a meeting with Alex and Jack. But  
7 when I first became involved in this, I was in the  
8 Division of ABC and Alex indicated to me my role would  
9 be limited to producing documents to the Department of  
10 Justice.

11 MR. CHERTOFF: Did you become aware from  
12 talking to Mr. Fahy that there was a Maryland consent  
13 decree involving consent-to-search statistics?

14 MR. ROVER: The best of my recollection is  
15 that came to my knowledge from Sergeant Gilbert.

16 MR. CHERTOFF: When did that come to your  
17 knowledge from Sergeant Gilbert?

18 MR. ROVER: I believe there was an early  
19 mention of it sometime in February and then it became  
20 near the end of February I think I got more substantive  
21 information.

22 MR. CHERTOFF: Okay. Tell us about --

23 MR. ROVER: That's to the best of my  
24 recollection.

25 MR. CHERTOFF: Okay. Tell us about the early

1 mention in February from Sergeant Gilbert about the  
2 Maryland case and then the more substantive information  
3 in late February.

4 MR. ROVER: With respect to the first  
5 conversation, I think he just mentioned to me that  
6 there was a Maryland case. And again, coming into this  
7 I had never done anything related to profiling, on  
8 racial profiling. And I think it was just a mention  
9 that something has gone on in other jurisdictions.

10 MR. CHERTOFF: And then what happened? Then  
11 tell us about the later, more substantive conversation.

12 MR. ROVER: I believe sometime near the end  
13 of February I had a conversation with Thomas Gilbert.  
14 I was responding to requests for documents from Mr.  
15 Posner at the Department of Justice regarding I think  
16 warnings and tickets for a particular -- for 1996 and  
17 1995, the sum amount of those warnings and tickets.  
18 And in that conversation he then went into some detail  
19 about the Maryland case to me.

20 MR. CHERTOFF: And what did he tell you?

21 MR. ROVER: He described generally the  
22 Maryland case and advised me that the consent-to-search  
23 numbers in the State of New Jersey were in the same  
24 ball park as those in Maryland.

25 MR. CHERTOFF: And did he explain to you the

1 significance of the consent-to-search numbers in  
2 Maryland, that is in the basis for a consent decree?

3 MR. ROVER: Yes. I think he indicated to me  
4 that the Maryland case was based upon the consent-to-  
5 search numbers.

6 MR. CHERTOFF: And he told you that the -- in  
7 substance he told you that the consent -- that he had  
8 done an analysis of the consent-to-search numbers with  
9 respect to some of -- of the Cranbury barracks and the  
10 Moorestown barracks on the Pike?

11 MR. ROVER: What I recall from the  
12 conversation is he told me, he described the Maryland  
13 case and then explained to me that the New Jersey  
14 numbers were in the same ball park. I don't recall him  
15 specifying a lot of numbers and exactly where they came  
16 from, but he did say that New Jersey numbers were in  
17 the ball park.

18 MR. CHERTOFF: And did you understand that he  
19 was communicating to you that that was a source of  
20 concern to the State Police because they believed that  
21 that was -- they were going to be vulnerable because of  
22 the comparability of the statistics in New Jersey and  
23 Maryland?

24 MR. ROVER: Yes. I think he mentioned that  
25 there was an appearance issue here and I think it would

1 be fair to say that he used the word, you know, we  
2 would be concerned about that.

3 MR. CHERTOFF: Did he ask you to report this  
4 to Mr. Waugh?

5 MR. ROVER: Yes, he did.

6 MR. CHERTOFF: Did you report it to Mr.  
7 Waugh?

8 MR. ROVER: Yes, I did.

9 MR. CHERTOFF: What did Mr. Waugh say to you?

10 MR. ROVER: I can't recall the conversation.  
11 I went through -- I'm sure I went through with what --  
12 and described what Sergeant Gilbert told me and I  
13 related to Alex Waugh and I can't remember his reaction  
14 or -- I just don't remember exactly what his response  
15 was.

16 MR. CHERTOFF: Did he indicate to you or did  
17 you leave with the belief that he understood what you  
18 were saying?

19 MR. ROVER: Oh, yes.

20 MR. CHERTOFF: Did he ask you to conduct any  
21 follow-up?

22 MR. ROVER: No, he didn't.

23 MR. CHERTOFF: Did you ask Sergeant Gilbert  
24 whether he had actually a written document that  
25 summarized the statistical analysis?



1 MR. ROVER: No, sir, I did not.

2 MR. CHERTOFF: Did Mr. Waugh ask you to get  
3 any document?

4 MR. ROVER: No, sir, he did not.

5 MR. CHERTOFF: Is there some reason you  
6 didn't ask for a document?

7 MR. ROVER: Quite frankly, and obviously I've  
8 been trying to think about this question for a while, I  
9 had just been on a project maybe less than a month and  
10 I was a Deputy Attorney General in the Division of ABC  
11 and when I obtained -- when I was assigned to this  
12 assignment, I was told by Alex, "You're going to  
13 respond to requests from the Justice Department and no  
14 free-lancing, meaning all I want you to do is focus on  
15 that. If they have any substantive questions, get back  
16 to me." And the no free-lancing meant don't do  
17 anything else. Just focus on that.

18 MR. CHERTOFF: So are you telling us that you  
19 understood that your direction from Mr. Waugh was that  
20 you were not to make any decisions except by clearing  
21 it through him?

22 MR. ROVER: That's correct.

23 MR. CHERTOFF: Is that, in fact, the practice  
24 that you followed when you were handling this matter  
25 involving the Civil Rights Division?

1 MR. ROVER: Yes. Anything substantive,  
2 that's exactly correct.

3 MR. CHERTOFF: Is it fair to say that  
4 anything you learned from Sergeant Gilbert you reported  
5 to Mr. Waugh?

6 MR. ROVER: I would say generally, yes.

7 MR. CHERTOFF: Is it fair to say that you  
8 sent Alex everything you had and when you were with  
9 Alex you'd tell him everything?

10 MR. ROVER: I would say yes.

11 MR. CHERTOFF: And is it your position before  
12 the Committee that in terms of decision-making about  
13 what should be pursued or not pursued, you didn't make  
14 decisions, you simply passed the question up to Mr.  
15 Waugh and he made the decision and told you what it  
16 would be?

17 MR. ROVER: Obviously any significant  
18 decision. I was given instructions no free-lancing and  
19 you talk to me. And I followed those directions.

20 MR. CHERTOFF: So that with respect to the  
21 issue of asking for the documents or any documents  
22 underlying Sergeant Gilbert's discussion of the  
23 Maryland statistics, Mr. Waugh didn't tell you to get  
24 it so you felt you didn't need to get it?

25 MR. ROVER: Mr. Waugh did not tell me to get

1 it and it didn't register to me to get it, yes.

2 MR. CHERTOFF: All right. Now, just to go  
3 back over the documents we talked about, which are  
4 still in the period of February. This first memo to  
5 Alex Waugh on February 5th summarizes this January 30th  
6 phone call and talks about the, among other things, the  
7 Illinois State Police case, correct?

8 MR. ROVER: Yes.

9 MR. CHERTOFF: And again, would this have  
10 been around the time you would have talked to -- had  
11 the first conversation with Sergeant Gilbert about  
12 these other state cases?

13 MR. ROVER: It would make sense, yes.

14 MR. CHERTOFF: Now, what was your  
15 understanding of what Mr. Waugh did? Was it your  
16 understanding or did Mr. Waugh ever tell you that he  
17 would pass your memos up the line to the Attorney  
18 General?

19 MR. ROVER: He never told me that, but  
20 normally when someone asks me to summarize a telephone  
21 conversation that they participated in, it normally  
22 signals to me that they're doing that so it can be sent  
23 to somebody else.

24 MR. CHERTOFF: At the top of this document is  
25 a handwritten notation. Is that Mr. Waugh's

1 handwriting?

2 MR. ROVER: I believe it is.

3 MR. CHERTOFF: And it says to "PV, FYI, I  
4 have asked DAG Rover to prepare an options memo for our  
5 review and discussion." Were you asked to prepare  
6 that?

7 MR. ROVER: Yes, I was.

8 MR. CHERTOFF: And when did you actually  
9 prepare and send it up?

10 MR. ROVER: There was a document that I think  
11 it's an April 22nd document.

12 MR. CHERTOFF: Okay. This is dated February  
13 25th, '97. You believe you responded to this in a memo  
14 that you prepared in April of '97?

15 MR. ROVER: Yes. I had a number of  
16 discussions with Alex. He wanted to talk to me before  
17 I wrote anything. He wanted to discuss what the  
18 options memo would incorporate. And yes, it resulted  
19 in the April 22nd.

20 MR. CHERTOFF: Okay. Tell us about those  
21 discussions you had with Alex Waugh regarding the April  
22 22nd memo.

23 MR. ROVER: I don't remember how many  
24 specific discussions there were. As I said, Alex Waugh  
25 wanted to speak to me about what would be in the memo

1 before I started writing it and two issues came to my  
2 attention. I believe I had mentioned these issues to  
3 Alex I think prior to this 2-25 date, and that's what  
4 prompted him to say, you know, maybe we need a memo on  
5 this.

6 MR. CHERTOFF: What were the issues?

7 MR. ROVER: There were two issues. One issue  
8 was the issue of the training material used by the Drug  
9 Enforcement Agency and that impact on the New Jersey  
10 State Police.

11 And the second issue, which we all know, is  
12 the use of consent-to-search documents and how they  
13 would be characterized.

14 MR. CHERTOFF: Now, tell us about that  
15 discussion with -- or those series of discussions with  
16 Mr. Waugh. What was the back and forth? What was the  
17 issue you all discussed?

18 MR. ROVER: I don't remember specifically the  
19 issues that were discussed. The only thing I can refer  
20 to would be the actual memo itself, that we discussed  
21 the various twists and turns of the issues and that we  
22 came to an agreement that these two issues and the way  
23 they were presented in the memo were generally what he  
24 expected to be in the options memo.

25 MR. CHERTOFF: Well, at the time you started

1 to have discussions with Mr. Waugh about the consent-  
2 to-search issue, this would have been sometime after  
3 the end of February 1996, right? Because we can tell  
4 from the --

5 MR. ROVER: Nineteen ninety --

6 MR. CHERTOFF: I'm sorry, 1997.

7 MR. ROVER: Right.

8 MR. CHERTOFF: Because we can tell from the  
9 memo, from the note on the memo that sometime at the  
10 end of February '97 Mr. Waugh asked you to put together  
11 a memo, right?

12 MR. ROVER: Correct.

13 MR. CHERTOFF: So that your discussions with  
14 Mr. Waugh would have taken place after you had your  
15 more substantive discussions with Sergeant Gilbert  
16 concerning the consent-to-search data being, as you put  
17 it, in the same ball park as the consent-to-search data  
18 in Maryland?

19 MR. ROVER: Yes. I don't think I could have  
20 written what I wrote in the April 22nd memo unless it  
21 was based on the second conversation with Sergeant  
22 Gilbert.

23 MR. CHERTOFF: And is it fair to say,  
24 therefore, that in your conversations with Mr. Waugh,  
25 there was discussion or at least an understanding that

1 the consent-to-search figures in New Jersey were  
2 problematic because of the relationship between them  
3 and the consent-to-search figures which led to the  
4 Maryland consent decree?

5 MR. ROVER: I want to say yes. The word  
6 "problematic," I just want to be careful. I think they  
7 were a matter of concern because they were similar to  
8 Maryland.

9 MR. CHERTOFF: And I take it it was also  
10 understood that there was a difference between the stop  
11 data, which had been the subject of the prior, let's  
12 say, Soto case and the consent-to-search data which  
13 really deals with a different stage in the process,  
14 right?

15 MR. ROVER: Yes. I primarily at the time did  
16 not factor too much in with the stop data. It was  
17 mostly focused on here's a consent-to-search issue and  
18 here's the Maryland case. There is the concern.

19 MR. CHERTOFF: Now, when we talk about a  
20 concern and we've heard people say sometimes well, you  
21 know, this is only -- even with consent to search, it's  
22 only statistics, it's an appearance issue. You don't  
23 really have a full picture until you actually look at  
24 the individual cases and understand the individual  
25 circumstances that affected each decision to get a

1 consent to search. Is it fair to say that you heard  
2 that or you heard that discussion in the course of your  
3 conversations with Mr. Waugh?

4 MR. ROVER: Yeah, and I'm sure that that  
5 would have been the position of Sergeant Gilbert also.

6 MR. CHERTOFF: In any of those discussions in  
7 this period of time did anybody suggest well, let's  
8 take it to the next step? Let's go out and look at the  
9 consent-to-search cases and actually look at the  
10 individual files, figure out what the basis was for the  
11 consent to search and see when we go to that next level  
12 whether it supports or refutes this appearance, you  
13 know, prima facie, of racial profiling?

14 MR. ROVER: A very good question. The answer  
15 is no.

16 MR. CHERTOFF: Also, just to make it clear  
17 for the record, because there's some confusion, we'll  
18 talk about an appearance. In fact, in the law that  
19 governs issues of discrimination, is it fair to say  
20 that it is really standard legal practice that in any  
21 case involving allegations of discrimination involving  
22 a broad class of people, first you begin with  
23 statistics and at a certain point those statistics  
24 raise what they call kind of a prima facie case or a  
25 case that is at least presumptively one of

1 discrimination and then you either have to rebut that  
2 or explain it away by looking at the underlying  
3 circumstances?

4 MR. ROVER: I'm not an employment lawyer, but  
5 obviously what you say makes sense in that it gives you  
6 an early picture of what --

7 MR. CHERTOFF: So that --

8 MR. ROVER: -- may be occurring, not that  
9 it's definitely occurring, but what could possibly be  
10 occurring.

11 MR. CHERTOFF: So that although statistics,  
12 although it is correct to say that statistics do not  
13 conclusively prove that there's a problem, it is also  
14 fair to say in the law that it is well recognized when  
15 you have unbalanced statistics it is cause to go to the  
16 next level of analysis and it is enough to trigger a  
17 more intense scrutiny of the underlying practices?

18 MR. ROVER: Again, not -- I'll accept your  
19 representation regarding what the law says, but I would  
20 imagine that the law does say that, I just do not do  
21 employment law. But I would imagine that that's the  
22 case.

23 MR. CHERTOFF: I'm asking Mr. Fahy. Do you  
24 disagree with the way I'm characterizing in general the  
25 way these cases are done?

1 MR. FAHY: No. With employment law cases,  
2 race cases like that, yes, absolutely, sir.

3 MR. CHERTOFF: All right. So you have these  
4 discussions with Mr. Waugh and I think you've indicated  
5 to us there was no direction to you or to Sergeant  
6 Gilbert to go do any underlying analysis, correct?

7 MR. ROVER: That's correct.

8 MR. CHERTOFF: And there was also a  
9 recognition that the numbers on their face with consent  
10 to search were a cause for concern, correct?

11 MR. ROVER: Yes.

12 MR. CHERTOFF: In this period of time did  
13 Sergeant Gilbert also convey to you that he had done an  
14 analysis with respect to the Soto case, the Gloucester  
15 County case, where he had looked at the search  
16 statistics as it related to the troopers who were  
17 involved in that case?

18 MR. ROVER: I don't recall him doing that. I  
19 just do not have a recollection of that. I don't  
20 recall that.

21 MR. CHERTOFF: He may have done it, he may  
22 not have done it?

23 MR. ROVER: He may have done a little bit.  
24 It's possible that I got a bit of that, but as far as a  
25 lot of detail, I think I would remember a lot of

1 detail. But he may have said a little bit more than I  
2 specifically recall.

3 MR. CHERTOFF: Did he indicate to you, again  
4 in general, Sergeant Gilbert in these conversations in  
5 let's say between February and April of '96, that in  
6 his view or the view of the State Police, these  
7 consent-to-search figures put the State Police in  
8 substance in a bad spot?

9 MR. ROVER: Two words -- two phrases stick  
10 out when I recall my discussions with Tom -- Sergeant  
11 Gilbert and that is the appearance issue and concern.  
12 That's what I recall.

13 MR. CHERTOFF: Do you remember talking to  
14 Captain Blaker? I don't know if was a Captain then,  
15 but Captain Blaker at the gas pump back at that period  
16 of time about this issue?

17 MR. ROVER: The gas pump?

18 MR. CHERTOFF: Yeah. You used to gas up your  
19 car at the same place that Captain Blaker did?

20 MR. ROVER: At times. I do not recall.

21 MR. CHERTOFF: Do you remember a conversation  
22 with Captain Blaker anywhere concerning this issue with  
23 respect to consent to searches?

24 MR. ROVER: I don't recall -- Captain Blaker?  
25 No.

1 MR. CHERTOFF: In general, when Sergeant  
2 Gilbert conveyed information to you, was it your  
3 regular practice to convey it up to Mr. Waugh?

4 MR. ROVER: Yes.

5 MR. CHERTOFF: Now, I'm going to come to that  
6 April 22nd memo in a second, but I just want to -- on  
7 these other documents, is it fair to say when you  
8 corresponded with the Civil Rights Division you would  
9 typically pass copies of that onto Mr. Waugh?

10 MR. ROVER: I believe early on I did, yes.

11 MR. CHERTOFF: And to your knowledge did he  
12 pass those up to Attorney General Verniero?

13 MR. ROVER: I didn't know at the time.

14 MR. CHERTOFF: Did you subsequently learn  
15 that?

16 MR. ROVER: Well, looking at the documents  
17 now it appears that he did.

18 MR. CHERTOFF: Now, I want to show you -- I'm  
19 sorry. I want to show you what has been marked as  
20 exhibit W-24. It's OAG825. It is a memo to Alexander  
21 Waugh from you dated March 3rd, 1997 and it's got a big  
22 strike down the center marked "Confidential."

23 MR. ROVER: Just wait one second.

24 MR. CHERTOFF: Okay.

25 (Pause)

1 MR. ROVER: I reviewed it, sir.

2 MR. CHERTOFF: Okay. Did you prepare this  
3 again as a summary of your conversation with someone  
4 from the Civil Rights Division to pass on to Alexander  
5 Waugh?

6 MR. ROVER: Yes.

7 MR. CHERTOFF: And in that letter is there a  
8 discussion about the issue of beginning a traffic  
9 violator survey and did you indicate that while there  
10 had been some general discussions on the issue, no  
11 specific decision had been made as of that point?

12 MR. ROVER: Yes.

13 MR. CHERTOFF: And did the Civil Rights  
14 Division lawyer indicate to you that he'd like to send  
15 a letter detailing the methodology which the Department  
16 of Justice would want to have -- be interested in in  
17 evaluating State Police enforcement data?

18 MR. ROVER: Yes.

19 MR. CHERTOFF: Was this the notion of picking  
20 certain days historically, a sample of certain days and  
21 analyzing those?

22 MR. ROVER: With respect to the dates?

23 MR. CHERTOFF: Yeah.

24 MR. ROVER: Yes.

25 MR. CHERTOFF: So they're two separate

1 issues. One was you indicated at this point you had  
2 told the Department of Justice you still didn't have a  
3 clear sense of what you wanted to do with the violator  
4 survey, correct?

5 MR. ROVER: That's correct.

6 MR. CHERTOFF: And at the same time you  
7 indicated to them that because of the burdensomeness of  
8 doing a complete review of '95 and '96, you wanted to  
9 restrict the review to 30 sample days?

10 MR. ROVER: I didn't -- I didn't say that.

11 MR. CHERTOFF: Who said that?

12 MR. ROVER: I guess Alex told me that -- I  
13 can't remember who made that decision. I think there  
14 were a number of decisions made to cut back on the  
15 scope or the number of dates. And then I think Mr.  
16 Posner came back to me and proposed a particular number  
17 and I went back to Alex and I think he said that that  
18 number would be okay.

19 MR. CHERTOFF: So at any point in time in  
20 1997 do you know whether there was any decision made to  
21 proceed with a violator survey?

22 MR. ROVER: I don't know of any decision that  
23 was made to pursue a violator survey.

24 MR. CHERTOFF: Now, Mr. Fahy, did you  
25 actually -- you didn't totally fade out of the issue of

1 racial profiling in 1997, did you?

2 MR. FAHY: Pretty much I did. Occasionally  
3 if there was a meeting on something George got, they  
4 might call me up and ask my opinion. To give you an  
5 example like on these 30 days, I could have told George  
6 well, that's what we did in the prior litigation that I  
7 had. The two experts would come to 30 randomly-  
8 selected days. So you may want to talk to Justice  
9 about, you know, coming to an agreement, because  
10 otherwise you're dealing with a humongous volume of  
11 material. So if the experts agree on random days,  
12 that's fine.

13 MR. CHERTOFF: Did you continue to work on  
14 the Soto brief in 1997?

15 MR. FAHY: It was assigned to the Appellate  
16 Section, Jerry Simms. I helped with the statement of  
17 facts.

18 MR. CHERTOFF: So you did continue to work on  
19 it.

20 MR. FAHY: On the brief, yes.

21 MR. CHERTOFF: And did you actually analyze  
22 or make comments about the legal portion of it?

23 MR. FAHY: I reviewed it.

24 MR. CHERTOFF: Did you analyze and make  
25 comments about the legal portion of it, the legal

1 arguments?

2 MR. FAHY: I might have. I don't -- it  
3 looked pretty good to me from what Mr. Simms had  
4 written.

5 MR. CHERTOFF: Did you have discussion with  
6 Mr. Waugh about the brief?

7 MR. FAHY: It was discussed all over the  
8 Department.

9 MR. CHERTOFF: Did you discuss it with Mr.  
10 Verniero?

11 MR. FAHY: I knew he read it and okayed  
12 sending it out. I don't recall a specific discussion.

13 MR. CHERTOFF: Did you have discussion with  
14 him about or a communication with him about whether the  
15 brief should be sent to DOJ in Washington?

16 MR. FAHY: I think we said that we would send  
17 them a copy.

18 MR. CHERTOFF: Let me show you F-22 for  
19 identification. It's a memo to Peter Verniero from you  
20 dated March 10th, 1997. That talks about the Appellate  
21 brief. Do you have that?

22 MR. FAHY: Yes.

23 MR. CHERTOFF: On the bottom in handwriting  
24 is the Attorney General responded, "John Fahy. Looks  
25 okay to me. After we file we may want to send a copy



1 to DOJ in Washington."

2 MR. FAHY: Yes.

3 MR. CHERTOFF: Signed "Peter." Do you know  
4 what that refers to or why that would be?

5 MR. FAHY: I would think that he wanted to  
6 send a copy of the brief to Washington.

7 MR. CHERTOFF: For what purpose?

8 MR. FAHY: Well, to continue the discussions  
9 that he had about what our arguments were in the case.

10 MR. CHERTOFF: Was that in order to suggest  
11 to the Department of Justice that they ought to view  
12 the Soto decision as flawed and therefore that that  
13 ought to affect the way they went forward with their  
14 review?

15 MR. FAHY: I would think that would be part  
16 of it.

17 MR. CHERTOFF: Do you know if it was sent  
18 down to Washington?

19 MR. FAHY: I can't recall. I don't know that  
20 I sent it but...

21 MR. CHERTOFF: Now, I want to go back to you,  
22 Mr. Rover.

23 Do you know whether the Attorney General  
24 personally got involved in reviewing the actual  
25 specific dates for the survey or the sample that were

1 requested by the Civil Rights Division?

2 MR. ROVER: Whether the Attorney General  
3 personally was involved?

4 MR. CHERTOFF: Yes.

5 MR. ROVER: I'm sure that I brought that  
6 information to the attention of Alex Waugh and I have  
7 no idea whether he talked to the Attorney General or  
8 not.

9 MR. CHERTOFF: Were you asked to review the  
10 suggested dates by the Civil Rights Division in order  
11 to comment and pass it up the line to Mr. Waugh?

12 MR. ROVER: I believe I was -- I think the  
13 Department of Justice said that they picked them at  
14 random and one of the issues was a common sense thought  
15 was what if there were, you know, 20 Fridays out of the  
16 30? In other words, we wanted to see if they were  
17 distributed somewhat evenly. And in that respect I  
18 think I looked at what days of the week they were.

19 MR. CHERTOFF: Now again, I want to be  
20 chronological. We're going to come up to April 22nd.  
21 That's when you finally prepare the memo that's the  
22 kind of outcome of your discussions with Mr. Waugh  
23 about, among other things, the consent-to-search data,  
24 right?

25 MR. ROVER: Correct.

1 MR. CHERTOFF: But also in this period you  
2 were dealing with the issue of turning documents or  
3 potentially turning documents over to the government,  
4 correct?

5 MR. ROVER: That's correct.

6 MR. CHERTOFF: In this period of time in  
7 early 1997, did you run across a document that was an  
8 audit or a survey of the statistics of arrests at the  
9 Perryville station in Hunterdon County?

10 MR. ROVER: I believe, and I think I've  
11 testified, I believe sometime in the early part of '97  
12 that came into my possession.

13 MR. CHERTOFF: And would you describe,  
14 summarize for us what that showed?

15 MR. ROVER: Offhand, I don't know if you have  
16 the document --

17 MR. CHERTOFF: Let me see if I can show it to  
18 you. Is it -- maybe G-5, which I think is already  
19 there. Maybe in front of Mr. Fahy.

20 SENATOR ROBERTSON: Is there another --

21 MR. CHERTOFF: I think it's April 24th, '96  
22 from Detective Gilbert to Lieutenant Colonel Littles  
23 regarding preliminary statistical data, Hunterdon  
24 County, Perryville station. It's GC1399.

25 MR. ROVER: G-5, 001399?

1 MR. CHERTOFF: Yeah.

2 MR. ROVER: Okay. Yes.

3 MR. CHERTOFF: And did you -- this came into  
4 your possession. How did it come into your possession?

5 MR. ROVER: I can't recall. I think I  
6 testified that either Sergeant Gilbert or Jack Fahy  
7 gave it to me. I can't recall.

8 MR. CHERTOFF: And this list, if you look at  
9 the documents received before starting on the third  
10 page, this gives a breakdown of the ethnic background  
11 of people who were arrested during the year period  
12 that's covered from '94 to '95, correct?

13 MR. ROVER: Yes, it does.

14 MR. CHERTOFF: And it indicates, for example,  
15 that approximately -- my math isn't that great, maybe  
16 40 percent of them are minority, is that correct?  
17 Sixty-eight out of -- 68 as opposed to 103 non-  
18 minorities. Actually, it's a little --

19 MR. ROVER: Which page are you on?

20 MR. CHERTOFF: I withdraw that. I'm looking  
21 at Page GC1401.

22 MR. ROVER: Right.

23 MR. CHERTOFF: It actually indicates that of  
24 the breakdown of people arrested in that period is 64  
25 black, 27 Hispanic and approximately 78 white. That's

1 the page marked GC1401. Do you see that?

2 MR. ROVER: Yes, I do. The race says -- oh,  
3 okay. This says 66 black, 103 white, two Asian.

4 MR. CHERTOFF: But then there's a subcategory  
5 for Hispanic so if you break it out --

6 MR. ROVER: Okay. So you're adding them in,  
7 okay. Yes, I see that.

8 MR. CHERTOFF: You were trying to determine  
9 whether this should be turned over, correct, to the  
10 Department of Justice?

11 MR. ROVER: I asked Alex whether it would --  
12 should be turned over.

13 MR. CHERTOFF: And what did he say to you?

14 MR. ROVER: My recollection is he told me  
15 that it shouldn't be turned over and that it doesn't  
16 relate to the Turnpike.

17 MR. CHERTOFF: He said it should not be  
18 turned over.

19 MR. ROVER: That's my recollection.

20 MR. CHERTOFF: Now, when he says it doesn't  
21 relate to the Turnpike, in fairness I-78 is -- I mean I  
22 think everybody knows this but, for the record, I-78 is  
23 a different highway than the Turnpike.

24 MR. ROVER: Yes, it is.

25 MR. CHERTOFF: But you clearly brought this

1 to his attention?

2 MR. ROVER: Yes. When I got possession of  
3 it, which I don't know what part of --

4 MR. CHERTOFF: Was there any discussion that  
5 you had about it besides what you've related?

6 MR. ROVER: I believe when it came into my  
7 possession it was as simple as Alex, you know, what  
8 should I do with this? And again, not to minimize my  
9 involvement, but I really was not up to speed on all  
10 this and I was looking for guidance as to what -- how  
11 it should be encompassed in the DOJ review.

12 MR. CHERTOFF: Now, let's go to this April  
13 22nd memo. I'm going to show you W-27. It's OAG865.  
14 It's got a cover page of -- it says -- it looks like  
15 notepaper from Alexander Waugh and it's handwritten,  
16 dated 4-23-97 to PV and then the next page is a draft  
17 memo to Alex Waugh and Jack Fahy by George Rover and  
18 it's dated April 22nd, 1997.

19 MR. ROVER: I have that memo.

20 MR. CHERTOFF: Now, first of all, why did you  
21 address a copy of this to Mr. Fahy?

22 MR. ROVER: It would have had to have been at  
23 the request of Alex.

24 MR. CHERTOFF: Mr. Fahy, did you get this  
25 document?

1 MR. FAHY: I'd have to look at it, sir.  
2 I would have assumed that I got this if my  
3 name is on it.  
4 MR. CHERTOFF: Did you ever read it?  
5 MR. FAHY: It looks very unfamiliar to me  
6 now.  
7 MR. CHERTOFF: All right. Mr. Rover, this is  
8 a product of your discussions with Mr. Waugh, correct?  
9 MR. ROVER: That's correct.  
10 MR. CHERTOFF: And I want to focus you to  
11 Page 6. In the second full paragraph it says, "A  
12 second unrelated issue involves NJSP consent-to-search  
13 data." Right?  
14 MR. ROVER: Yes, it does.  
15 MR. CHERTOFF: Now again, to put this in  
16 context, this was the issue that had been raised to you  
17 by Sergeant Gilbert when he told you about the  
18 comparison he had made between Maryland and New Jersey,  
19 right?  
20 MR. ROVER: Yes.  
21 MR. CHERTOFF: And you understood when  
22 Sergeant Gilbert raised it that he considered it  
23 important because, in fact, he checked with you twice  
24 to make sure you had conveyed that to Mr. Waugh.  
25 MR. ROVER: That's correct.

1 MR. CHERTOFF: In fact, what happened is he  
2 gave it to you. He told you to tell Alexander Waugh  
3 and then he asked you again whether you had done it.  
4 MR. ROVER: That's correct.  
5 MR. CHERTOFF: And you confirmed it to him.  
6 MR. ROVER: That's correct.  
7 MR. CHERTOFF: So you knew this was an  
8 important issue at least to Sergeant Gilbert because he  
9 had asked about it twice.  
10 MR. ROVER: That's correct.  
11 MR. CHERTOFF: Now, let's go through -- and  
12 again, you can't tell us why Mr. Waugh never actually  
13 asked for the underlying figures?  
14 MR. ROVER: No, I can't.  
15 MR. CHERTOFF: Now, let's go through the  
16 portion of the memo here, starting at Page 6. You  
17 indicate here that you're anticipating that USDOJ,  
18 while expressing interest in State Police traffic stop  
19 data is more interested in consent-to-search data. And  
20 you then indicate at the end of the paragraph you  
21 believe this information does not relate to the issue  
22 being examined by the USDOJ since it addresses post-  
23 stop law enforcement activity. Now, am I correct that  
24 what you're basically saying here is you anticipated  
25 DOJ would be asking for the consent-to-search data even

1       though strictly speaking it was outside the scope of  
2       what they originally said they were interested in  
3       coming out of the Soto case?

4               MR. ROVER: I can only go by early contacts  
5       with the person from the Department of Justice and  
6       initially they asked I think in February for warnings  
7       and ticket summaries and it was generally limited to  
8       what appeared to be initial stop information. Early  
9       on. And I believe that that's where my focus was.

10              MR. CHERTOFF: And then you go on to say,  
11       "Why then do I believe that USDOJ's interested in this  
12       data? I anticipate that USDOJ will attempt to follow  
13       the same course of action pursued by plaintiffs in the  
14       Maryland case. The use of consent-to-search statistics  
15       is evidence of selective prosecution. In the Maryland  
16       action the plaintiffs successfully argued that the  
17       percentage of minorities subjected to consent searches  
18       supported a finding that the Maryland State Police  
19       engaged in selective prosecution." Now, this is, of  
20       course, what you had been told by Sergeant Gilbert,  
21       correct?

22              MR. ROVER: That's correct.

23              MR. CHERTOFF: And you say at the end of the  
24       paragraph, "What's very troubling is that the basis for  
25       the entry of the consent order was the fact that the

1       Maryland State Police requested consent to searches  
2       from what the plaintiffs claim was a high percentage of  
3       minorities." And again, you got that from Sergeant  
4       Gilbert, correct?

5              MR. ROVER: Yes.

6              MR. CHERTOFF: Now, the next paragraph you  
7       say this. You say, "It's my opinion that these figures  
8       are irrelevant to the inquiry of whether law  
9       enforcement officers are engaging in selective  
10       prosecution. This information has nothing to do with  
11       the reason why a motorist is stopped initially, which  
12       is the basis of the USDOJ inquiry." Now, it is  
13       obviously self-evidently clear that consent-to-search  
14       activity is irrelevant to why people were stopped  
15       because it only happens after people are stopped. So  
16       that's pretty self-evident, right?

17              MR. ROVER: Yes. I think I could have  
18       expressed it a little bit better than I did though.

19              MR. CHERTOFF: But why was it your opinion  
20       that consent-to-search information is irrelevant in  
21       general to the question of selective prosecution?

22              MR. ROVER: As I just said, I think you can't  
23       read the first sentence without reading the second.  
24       And the sentences should be -- it should have been one  
25       sentence in essence saying it's irrelevant to initial

1 stop information because it's post-stop. Certainly law  
2 enforcement officers can engage in selective  
3 prosecution in the post-stop context.

4 MR. CHERTOFF: So you would agree with me now  
5 that although consent-to-search data is irrelevant to  
6 why people get stopped, it can still be very relevant  
7 in a selective enforcement investigation?

8 MR. ROVER: It could be relevant, yes.

9 MR. CHERTOFF: Now, when you passed this on  
10 to Mr. Waugh, did he ever focus on that particular  
11 issue with you? Did you ever have discussions about  
12 that concept about whether it was relevant or not?

13 MR. ROVER: No, I did not. Not that I  
14 recall, I should say.

15 MR. CHERTOFF: Did he ever get back to you on  
16 that particular point about what the Attorney General's  
17 view was on that issue?

18 MR. ROVER: Not that I recall.

19 MR. CHERTOFF: Now, you then go on to say  
20 finally on the last page. "At the very least, we  
21 should state to USDOJ that if it wants to use this data  
22 as the indicator of State Police activity, that the  
23 USDOJ must be required to examine in each case the  
24 factual circumstances that resulted in the officer  
25 requesting the consent to search."

1 Now, is that consistent with what we said  
2 earlier? The numbers might be very suggestive, to make  
3 it conclusive you have to actually analyze the  
4 individual facts.

5 MR. ROVER: That's correct.

6 MR. CHERTOFF: At any point in time after you  
7 sent this memo, did anybody ever come back to you  
8 through Mr. Waugh or anybody else and say, tell the  
9 State Police we want them to pull the files on the  
10 consent to searches and we want to take a look at the  
11 underlying facts to see if there really is a problem?

12 MR. ROVER: No.

13 MR. CHERTOFF: Do you know if this memo was  
14 passed on to anybody else?

15 MR. ROVER: I now know that it was passed on  
16 to the Attorney General.

17 MR. CHERTOFF: Did there come a time within  
18 about a month after you did the memo that you were  
19 called to a meeting to discuss this issue at the  
20 Attorney General's Office?

21 MR. ROVER: This and other issues, yes.

22 MR. CHERTOFF: And that meeting was scheduled  
23 for May 20th, 1997, correct?

24 MR. ROVER: That's correct.

25 MR. CHERTOFF: Did you get --

1 MR. ROVER: Could I add just one point on the  
2 memo?

3 MR. CHERTOFF: Sure.

4 MR. ROVER: I just want to make it clear --  
5 two points. First, I want to make it clear, on Page 8  
6 I put in the memo "I am not," and I underlined the word  
7 "not" suggesting that we refused to provide the  
8 documents and I think it's important that we take  
9 notice of that. It's not like we're refusing to turn  
10 them over. There was never any discussion about that.

11 And the second aspect of it is the view --  
12 the view here was since our position is that the  
13 consent-to-search statistics in and of themselves were  
14 not dispositive, do we talk to Justice ahead of time to  
15 try and let them know that that's kind of our position?  
16 Or do we wait until they raise it? And that's  
17 generally what this memo was discussing.

18 MR. CHERTOFF: And is that actually what you  
19 anticipated coming up at this meeting, that there was  
20 going to be -- well, there was an understanding that if  
21 the Department of Justice wanted this stuff, they were  
22 going to be able to get it, right?

23 MR. ROVER: Certainly.

24 MR. CHERTOFF: Was a discussion that you  
25 anticipated coming out of this memo about a way to

1 convince the Justice Department either not to look at  
2 the consent-to-search data at all or to look at it only  
3 insofar as it might shed light on the stop data, but to  
4 try to deflect them away from using consent to search  
5 as a mode of analysis?

6 MR. ROVER: Well, I think since the State  
7 Police certainly did not want -- or the State of New  
8 Jersey did not want to enter into a consent order, and  
9 since the State Police did not believe they were  
10 engaging in unconstitutional conduct, I would imagine  
11 that if we could persuade the Justice Department to  
12 evaluate it in a way we felt was more probative, it  
13 would work -- it would be the position we would like  
14 them to take, although they could just say no, we're  
15 not going to do that.

16 MR. CHERTOFF: So that essentially sets the  
17 table for the May 20th meeting. Now, how did you learn  
18 about the May 20th meeting?

19 MR. ROVER: I don't know how I learned about  
20 the meeting. I know in discussions with Alex I  
21 indicated that, you know, we wanted to have a meeting  
22 and get people together on this, on this and other  
23 issues.

24 MR. CHERTOFF: And did there come a time you  
25 got an agenda about the meeting?

1 MR. ROVER: Yes, I did.

2 MR. CHERTOFF: Now, we're going to show you  
3 -- we have multiple copies of the agenda marked W-29.  
4 It's GC2210, 973 and 974. And they're all marked and  
5 typed Department of Law and Public Safety, Office of  
6 the Attorney General, Interoffice Memorandum. Okay.  
7 Now, you recognize the typed agenda?

8 MR. ROVER: Yes, I do.

9 MR. CHERTOFF: Who prepared it?

10 MR. ROVER: I think Alex prepared it. I may  
11 have looked at it, a draft of it, but I think Alex  
12 prepared it.

13 MR. CHERTOFF: On the last of the documents,  
14 OAG974 it has some handwriting in it other than Alex  
15 Waugh's signature. Is that your handwriting?

16 MR. ROVER: Yes, it is.

17 MR. CHERTOFF: And does that reflect notes  
18 you took at the meeting of certain things?

19 MR. ROVER: I suspect -- I believe I might  
20 have written this before I went to the meeting, on my  
21 copy of the agenda.

22 MR. CHERTOFF: Did you also know going into  
23 the meeting that the Department of Justice had renewed  
24 its request for, among other things, consent-to-search  
25 forms relating to the 30 days that they were sampling

1 from the Moorestown and Cranbury stations?

2 MR. ROVER: Yes. I believe a memo was sent  
3 to Colonel Williams on the 15th or something of March.

4 MR. CHERTOFF: So you knew going into the  
5 meeting that the consent-to-search issue was not going  
6 to go away because the Department of Justice actually  
7 renewed its request for it?

8 MR. ROVER: I think that's high-lighting it.  
9 I think no one thought that the Department of Justice  
10 was not going to pursue that. I think the renewed  
11 request was, we have the sample dates, you know, let's  
12 start thinking about pulling stuff together. But it  
13 wasn't a renewed request regarding the consent to  
14 searches. It was understood that Justice did want  
15 those.

16 MR. CHERTOFF: Now, who was at the meeting at  
17 the Attorney General's Office on May 20th that you  
18 remember?

19 MR. ROVER: Attorney General Verniero,  
20 Executive Assistant Attorney General Waugh, Jack Fahy,  
21 myself, Colonel Williams, Captain -- I think it's  
22 Captain Blaker and Sergeant Gilbert.

23 MR. CHERTOFF: And directing your attention  
24 to the portion of the agenda, this production of  
25 consent-to-search documents. That's the portion that



1 relates to the Maryland case and the New Jersey case  
2 issues we've talked about, right?

3 MR. ROVER: Yes.

4 MR. CHERTOFF: And this correlates with the  
5 second part of your memo, right?

6 MR. ROVER: Yes, it does.

7 MR. CHERTOFF: Who did most of the talking at  
8 the meeting?

9 MR. ROVER: I don't know who did most of the  
10 talking. I know or I believe that the conversation  
11 began with Sergeant Gilbert I think because he knew the  
12 most about the case. And after that I don't know who  
13 else talked.

14 MR. CHERTOFF: What do you recall Sergeant  
15 Gilbert saying about the issue of the Maryland case and  
16 consent-to-search documents?

17 MR. ROVER: I can't remember specifically. I  
18 would imagine that he gave -- he did -- in essence what  
19 he did in my phone call which is he described the  
20 background of the case generally and talked about that  
21 the numbers in New Jersey correlated with that or in  
22 the same ball park which is a phrase Tom used. And  
23 that it was an issue of concern with the State Police.

24 MR. CHERTOFF: Did anybody else in the State  
25 Police echo that concern?

1 MR. ROVER: I can't recall. I'd be guessing.  
2 I would imagine they did but I'd be guessing.

3 MR. CHERTOFF: Now, was there a discussion at  
4 this portion of the meeting about your observation in  
5 the memo that if you're going to look at consent-to-  
6 search data to be conclusive, you have to look at the  
7 underlying files?

8 MR. ROVER: I don't recall that, but when I  
9 left this meeting I was fairly -- my recollection is  
10 when I left the meeting all of the issues were covered.  
11 I can't specifically recall who said what about what.

12 MR. CHERTOFF: Was there some discussion  
13 about the fact that if you're going to look at consent-  
14 to-search data and you want to be conclusive, you  
15 really should look at the underlying files.

16 MR. ROVER: Again, I'm not trying to play  
17 games. I don't have a specific recollection, but given  
18 my memo and given this agenda, I would imagine that  
19 there was a discussion of that issue. It would just  
20 seem like it would have to be.

21 MR. CHERTOFF: Was there a discussion about  
22 the fact that -- or about whether it would be possible  
23 to get the Department of Justice to agree to use the  
24 consent-to-search forms only insofar as it might  
25 reflect on the initial stop, without getting into the

1 consent-to-search issue as a separate basis for  
2 evaluating racial profiling?

3 MR. ROVER: I can't remember specifically,  
4 but considering the fact that subsequently when we  
5 turned to consent to searches over in November that was  
6 generally the position we took. I would imagine that  
7 that was discussed at this meeting.

8 MR. CHERTOFF: Was there a discussion about  
9 the fact that it was consent-to-search documents that  
10 had led to the Maryland and to the consent decree and  
11 whether it was possible or foreseeable that because of  
12 the comparability of the New Jersey statistics, the New  
13 Jersey Office of the Attorney General might have to  
14 agree to a consent decree? Did that concern come up?

15 MR. ROVER: Yeah, I would say that concern  
16 came up. I have a general recollection of that.

17 MR. CHERTOFF: And what was the response to  
18 that concern and who made that?

19 MR. ROVER: A particular response to that  
20 concern I don't recall. Specifically to that -- in  
21 other words, when that statement was made or that  
22 discussion occurred, I don't know if there was a  
23 particular response. I'm sure there was a discussion  
24 that the State would prefer not to enter a consent  
25 decree.

1 MR. CHERTOFF: Well, how was that put and who  
2 stated it?

3 MR. ROVER: I do recall the Attorney General,  
4 and I think I caught the tail-end of a remark saying,  
5 you know, we are not going to enter into a consent  
6 order.

7 MR. CHERTOFF: Was there a discussion at all  
8 about possible communication with the Department of  
9 Justice in Washington about something of Janet Reno or  
10 anything of that that you remember?

11 MR. ROVER: I've honestly looked at the  
12 transcripts of other persons who have testified in  
13 preparation for my testimony today and I just don't  
14 recall that. I just don't recall.

15 MR. CHERTOFF: At any point in the meeting do  
16 you remember anybody turning to Colonel Williams and  
17 saying point-blank, is there racial profiling?

18 MR. ROVER: I don't remember that.

19 MR. CHERTOFF: Did anybody say at the meeting  
20 -- was there any discussion in the meeting of putting  
21 aside what position would be taken with the Civil  
22 Rights Division in the litigation and negotiation? Was  
23 there any discussion in the meeting about taking a look  
24 at either the stop data or the consent-to-search data  
25 and doing whatever would be necessary to actually make

1 a determination from a management standpoint about  
2 whether there's a problem?

3 MR. ROVER: I have no recollection of that.

4 MR. CHERTOFF: As of this point in time, just  
5 so we have the table set, you have the Soto case up in  
6 the Appellate Division, right?

7 MR. ROVER: Yes.

8 MR. CHERTOFF: You have the Civil Rights  
9 Division in Washington knocking on your door, so to  
10 speak, correct?

11 MR. ROVER: Yes.

12 MR. CHERTOFF: So it's fair to say this is a  
13 front-burner issue?

14 MR. ROVER: Yes.

15 MR. CHERTOFF: And as far as you knew, it  
16 commanded the attention certainly of the Executive  
17 Assistant Attorney General and the Superintendent of  
18 the State Police?

19 MR. ROVER: Yes.

20 MR. CHERTOFF: There was debate about whether  
21 you could -- what kind of inferences you could draw  
22 from the statistics, right?

23 MR. ROVER: Yes. I think it was expressed in  
24 my memo, yes.

25 MR. CHERTOFF: At this meeting or any other

1 meeting you remember attending in 1997, was there ever  
2 a discussion of how do we go about finding out if we  
3 have a real problem by doing whatever it takes in terms  
4 of statistical analysis or looking at files or doing  
5 interviews? How do we go about doing that? Was that  
6 discussed in this meeting or any other meeting you  
7 attended in '97?

8 MR. ROVER: That was not discussed. I would  
9 remember that because I would think they would have  
10 asked me to maybe assist in doing that.

11 MR. CHERTOFF: And nobody ever did?

12 MR. ROVER: No, sir.

13 MR. CHERTOFF: Now, Mr. Fahy, you were at  
14 this same meeting, right?

15 MR. FAHY: Yes, sir.

16 MR. CHERTOFF: Is your recollection  
17 consistent with what Mr. Rover has told us?

18 MR. FAHY: Basically. Again, I don't recall  
19 specifics. I remember that the Attorney General was  
20 not inclined to sign a consent decree. I don't recall  
21 specifics about numbers of consent to searches, but it  
22 was on the agenda, something may have been said about  
23 that. Anything else? Generally I would say I don't  
24 recall -- I don't recall the Colonel saying something  
25 to the Superintendent -- saying something to the

1 Attorney General that was related in his testimony.

2 MR. CHERTOFF: I'm sorry, what don't you  
3 remember?

4 MR. FAHY: Wasn't there something that you  
5 asked me whether the Superintendent --

6 MR. CHERTOFF: I think I asked you whether  
7 the Superintendent was asked point-blank is there  
8 racial profiling?

9 MR. FAHY: I can't say that I recall that at  
10 this time.

11 MR. CHERTOFF: To close up the loop on this,  
12 there came a point in time back in November, later in  
13 November '97 that you finally did produce or indicate  
14 you were going to produce these consent-to-search  
15 documents to DOJ, right?

16 MR. ROVER: That's correct.

17 MR. CHERTOFF: And is that consistent with  
18 the view in this meeting the position you all took was  
19 that it was being turned over, not because the post-  
20 stop activity was relevant, but because in the  
21 documents, the consent-to-search forms, there's usually  
22 some kind of a statement about why someone was stopped  
23 in the first place?

24 MR. ROVER: Are you referring to a letter  
25 that --

1 MR. CHERTOFF: Yeah. It's a letter -- it's  
2 R-20. It's a letter of November 5th to Mark Posner  
3 from you with DOJ 5464 on the bottom.

4 (Pause)

5 MR. CHERTOFF: Do you see that?

6 MR. ROVER: One moment, please.

7 MR. CHERTOFF: Okay.

8 (Pause)

9 MR. ROVER: I've reviewed the letter.

10 MR. CHERTOFF: So am I correct -- first of  
11 all, you didn't produce -- you just produced the  
12 consent-to-search forms, right?

13 MR. ROVER: That's all that Justice  
14 requested.

15 MR. CHERTOFF: You didn't produce any actual  
16 underlying data or analysis of the forms, right?

17 MR. ROVER: No, sir.

18 MR. CHERTOFF: And consistent with what you  
19 had said occurred at the meeting on May 20th, the  
20 position taken was that the forms were being produced,  
21 not because consent-to-search was relevant, but because  
22 the forms might have some information on it relating to  
23 the initial stop, is that the position you took?

24 MR. ROVER: Yes. I believe the last sentence  
25 takes that position.

1 MR. CHERTOFF: Did you become aware again  
2 later in 1997 that there was increasing information  
3 becoming available through the State Police concerning  
4 statistics as it related to stops and searches and  
5 arrests?

6 MR. ROVER: The only other -- the only other  
7 information that jumps to mind is a 1996 Moorestown  
8 audit that came to my attention I think in July.

9 MR. CHERTOFF: Before we come to that, I want  
10 to ask you this. Was Sergeant Gilbert regularly  
11 keeping you informed about information that has been  
12 gathered by the State Police concerning ongoing review  
13 or ongoing monitoring of stops and searches in  
14 Moorestown and Cranbury?

15 MR. ROVER: My recollection during this time  
16 period is I obviously was interacting with Sergeant  
17 Gilbert in getting the documents necessary to satisfy  
18 the DOJ request. I don't recall him telling me that  
19 there were ongoing inquiries at that time.

20 MR. CHERTOFF: Are you disputing that he kept  
21 you informed or are you just saying you don't remember  
22 one way or the other?

23 MR. ROVER: In our conversations he could  
24 have mentioned something. I just don't recall him  
25 saying that. And if there were any -- if there was

1 anything of significant detail, I think I would have  
2 remembered, but if it was -- it's possible if it was  
3 general information -- you know, it's possible, yes.

4 MR. CHERTOFF: Now, anything again, anything  
5 significant or material you passed up to Mr. Waugh?

6 MR. ROVER: That's correct.

7 MR. CHERTOFF: I want to be quite clear. Did  
8 you ever make a decision to hold to yourself any  
9 information you got from Sergeant Gilbert or anybody  
10 else relating to this matter and not pass it up to Mr.  
11 Waugh?

12 MR. ROVER: No.

13 MR. CHERTOFF: Are you absolutely confident  
14 that it was your regular practice and habit to convey  
15 any material information with respect to this matter to  
16 your superior, the Executive Assistant Attorney  
17 General?

18 MR. ROVER: I feel pretty confident that I  
19 would talk with Alex on anything substantive.

20 MR. CHERTOFF: Now, you mentioned there's a  
21 Moorestown audit from 1996 that came into your  
22 possession in July 1997. Let me show you -- let me  
23 show you W-30 for identification. It's OAG975. It's  
24 got a cover sheet to Peter Verniero from Alexander  
25 Waugh dated July 29, 1997.

1           Okay. Putting aside the cover page, do you  
2 remember the documents underneath it?

3           MR. ROVER: Yes.

4           MR. CHERTOFF: Okay. How did you get these  
5 documents? How did they come into your possession in  
6 July 1997?

7           MR. ROVER: I believe I got them from Alex.

8           MR. CHERTOFF: That would be Mr. Waugh?

9           MR. ROVER: Yes.

10          MR. CHERTOFF: Do you know how he came into  
11 possession of them?

12          MR. ROVER: No.

13          MR. CHERTOFF: What did he say to you about  
14 them?

15          MR. ROVER: I can't recall a specific -- I  
16 don't have a specific recollection of him talking about  
17 the substance of the document. The issue that  
18 presented itself is what are we going to do with  
19 respect to the DOJ inquiry?

20          MR. CHERTOFF: And that presented itself  
21 because you felt these were relevant to what had been  
22 promised to the Department of Justice?

23          MR. ROVER: Well, the Department of Justice  
24 had not asked for an audit or analysis at this time,  
25 but clearly this is an analysis of a portion of the

1 Turnpike and it certainly raised an issue I think  
2 between both of us that it may be relevant.

3           MR. CHERTOFF: And did you believe it was  
4 relevant? Was your opinion is it seemed like they were  
5 relevant?

6           MR. ROVER: You couldn't say that they  
7 weren't relevant. I didn't know if there were any  
8 other policy considerations that would override that.  
9 But it would almost be impossible to say they're not  
10 relevant.

11          MR. CHERTOFF: I mean in the original sample  
12 information request, the federal government asked for  
13 all analyses, assessments, studies or reports  
14 undertaken by the State Police from 1990 to the present  
15 relating to composition of, you know, groups of  
16 motorists with traffic law violations or things of that  
17 sort. Was that covered by that?

18          MR. ROVER: When I obtained possession of  
19 that document, I guess it's a blank information  
20 request, in speaking about it with Alex, it was  
21 described to me as a template of what -- or a guideline  
22 of what Justice may be asking for and that they would  
23 be calling us to set forth what they were actually  
24 looking for. And I think at the end of the -- at the  
25 end of January began the discussions with Mr. Posner

1 from the Justice Department where he would make  
2 specific requests for particular documents.

3 MR. CHERTOFF: As the person who was actually  
4 talking directly to the Department of Justice in  
5 Washington on behalf of the State, was it your opinion  
6 that it seemed that these documents in this exhibit  
7 were relevant?

8 MR. ROVER: Yes.

9 MR. CHERTOFF: So when you talked about this  
10 with Mr. Waugh, what did he tell you to do?

11 MR. ROVER: My recollection is that he told  
12 me to hold onto it and that he would get back to me.

13 MR. CHERTOFF: And after a couple weeks went  
14 by, did you approach him again?

15 MR. ROVER: Yes, I did.

16 MR. CHERTOFF: And what did you ask him?

17 MR. ROVER: I believe I asked him -- I don't  
18 recall specifically, but I believe I asked him, you  
19 know, what's up with the audit report?

20 MR. CHERTOFF: And what did he say?

21 MR. ROVER: My recollection is that he didn't  
22 have a decision but that I should hold on to it but I  
23 should let him know if Justice asked for it.

24 MR. CHERTOFF: And did you ever actually get  
25 a specific -- well, let me come back to that later.

1 So you held onto it for the rest of 1997?

2 MR. ROVER: Yes, I took his answer as saying,  
3 the second time, as don't produce it, but if they ask  
4 for it, then let me know.

5 MR. CHERTOFF: And they didn't specifically  
6 ask for it in '97?

7 MR. ROVER: Not until December of 1998.

8 MR. CHERTOFF: We'll get there in a second.  
9 But when you said he didn't have it -- when he told you  
10 the second time you went to him that he didn't have the  
11 decision yet, did you understand to what he was  
12 referring to who was making the decision?

13 MR. ROVER: There was nothing he said to me  
14 that led me to believe anything in particular, but I  
15 assumed it would have been a discussion with the  
16 Attorney General. But that is an assumption.

17 MR. CHERTOFF: Did he indicate to you that he  
18 was making the decision himself?

19 MR. ROVER: No.

20 MR. CHERTOFF: I mean was what he said, I  
21 haven't made a decision yet or I don't have a decision  
22 yet?

23 MR. ROVER: I can't recall. I just can't  
24 recall the exact phrasing. It could have been as  
25 simple as he just didn't have a chance to get to it

1 himself or with somebody else in a meeting. I just  
2 can't recall.

3 MR. CHERTOFF: Now, you say it came up again  
4 in December 1998?

5 MR. ROVER: Yes.

6 MR. CHERTOFF: How did this come up in  
7 December 1998?

8 MR. ROVER: I received a phone call from  
9 Justice I believe in the early or the middle part of  
10 the month asking if they could speak to some active  
11 state troopers. And I told Justice that I would get  
12 back to them. And I believe a day or two later I  
13 received another call from Justice and they asked me if  
14 we had any audits or statistical analysis of anything  
15 on the southern part of the Turnpike and could I check  
16 to see if any of those documents existed. And I said I  
17 would get back to them.

18 MR. CHERTOFF: Now, after that did you attend  
19 a meeting with Colonel Williams and two Lieutenant  
20 Colonels from the State Police?

21 MR. ROVER: I have no recollection of that  
22 meeting.

23 MR. CHERTOFF: But you do have a recollection  
24 of checking with someone about whether -- well, let me  
25 step back.

1 This was finally that request hitting the  
2 nail on the head asking for the audit, right?

3 MR. ROVER: That's correct.

4 MR. CHERTOFF: Now by then Alexander Waugh is  
5 now Judge Waugh and he's gone, right?

6 MR. ROVER: Yes.

7 MR. CHERTOFF: Who did you go to to find out  
8 what you should do?

9 MR. ROVER: Dave Hespe, the First Assistant  
10 Attorney General.

11 MR. CHERTOFF: And did you call him up first?

12 MR. ROVER: Oh, yes, I called him first.

13 MR. CHERTOFF: What did you tell him?

14 MR. ROVER: I believe I told him I had two  
15 issues that I needed to be resolved and I can't  
16 remember if I said I just have two issues or if I said  
17 one involves this and one involves that.

18 MR. CHERTOFF: And did you set up an  
19 appointment to go over and see him?

20 MR. ROVER: Yes, I did.

21 MR. CHERTOFF: And who did you meet with when  
22 you saw him?

23 MR. ROVER: I went to a meeting in Dave  
24 Hespe's office with Al Ramey and Jack Fahy.

25 MR. CHERTOFF: And what was discussed at the



1 meeting?

2 MR. ROVER: The first issue was whether or  
3 not the Department of Justice could speak to these  
4 active state troopers.

5 MR. CHERTOFF: And with respect to this  
6 request for an audit, what was discussed?

7 MR. ROVER: I believe I went into the meeting  
8 and said, you know, here it is, Justice has asked for  
9 this -- made a request for a document that this falls  
10 clearly within and what do you want me to do?

11 MR. CHERTOFF: Did you bring the memo?

12 MR. ROVER: Did I bring the document?

13 MR. CHERTOFF: Yeah, the document.

14 MR. ROVER: Oh, yes.

15 MR. CHERTOFF: Okay. And what was the  
16 response to the people in the room?

17 MR. ROVER: I know First Assistant Attorney  
18 General Hesse told me that they were working on  
19 something right now that they might be able to release  
20 at some time in the future and that don't turn it over,  
21 get back to Justice and say we're looking and let me  
22 know if they ask again.

23 MR. CHERTOFF: And did anybody else say  
24 anything else?

25 MR. ROVER: I don't believe -- the other

1 people in the room were silent, but I can't recall what  
2 was said.

3 MR. CHERTOFF: And did you carry out Mr.  
4 Hesse's instructions?

5 MR. ROVER: Yes, I did.

6 MR. CHERTOFF: And did you tell that to the  
7 Department of Justice?

8 MR. ROVER: I told the Department of Justice  
9 that I've passed their request through the channels and  
10 when I got a response I would get back to them.

11 MR. CHERTOFF: And what -- did they follow up  
12 at all? Did the Department of Justice follow up at  
13 all?

14 MR. ROVER: Not before my file was  
15 transferred, no.

16 MR. CHERTOFF: Your file was eventually  
17 transferred in February of '99?

18 MR. ROVER: That's correct.

19 MR. CHERTOFF: I want to make sure that we're  
20 clear on this. You said Mr. Hesse told you to tell the  
21 Department of Justice that we're looking for it and,  
22 you know, basically to say we'll get back to you when  
23 we find it or something?

24 MR. ROVER: I don't know --

25 MR. CHERTOFF: I want to know exactly what

1 Mr. Hespe told you you should say to --

2 MR. ROVER: Okay. I'm trying to remember.  
3 There were two things he said. One was that we're  
4 working on something now, but he didn't tell me that to  
5 tell Justice. He told me personally, "We're working on  
6 something now that we may be able to share with them at  
7 some time in the future."

8 With respect to me, he asked me to go back as  
9 if it was a pending request, I guess would be an  
10 accurate characterization.

11 MR. CHERTOFF: In other words, to go back and  
12 tell Justice you were looking to see if there was  
13 anything that would satisfy them?

14 MR. ROVER: That's my recollection.

15 MR. CHERTOFF: But actually you weren't  
16 looking because you at least had one thing that would  
17 satisfy them.

18 MR. ROVER: Yes.

19 MR. CHERTOFF: So I'd guess you'd say that  
20 answer is a little bit I guess you'd say cute maybe, is  
21 that right?

22 MR. ROVER: Say that again?

23 MR. CHERTOFF: It would be fair to describe  
24 the answer that you were told to give as kind of a cute  
25 answer or maybe a little bit misleading?

1 MR. ROVER: I don't want to use the word  
2 "misleading."

3 MR. CHERTOFF: I'll withdraw the question.  
4 You people can form your own impression.

5 And so you didn't hear anything further about  
6 that until February of 1999, correct? Or through  
7 February of 1999.

8 MR. ROVER: Correct.

9 MR. CHERTOFF: Now, there comes a point in  
10 time in February of 19 -- one other thing before we  
11 move on to February of 1999.

12 I'm going to show you exhibit G-25, which is  
13 a document to Colonel Williams from Sergeant Gilbert  
14 through Lieutenant Blaker on analysis of reports from  
15 Moorestown and Cranbury on the 30 sample dates. It's  
16 GC2172.

17 (Pause)

18 MR. CHERTOFF: Do you have that?

19 MR. ROVER: Yes, I do.

20 MR. CHERTOFF: Did you know whether the  
21 content of this, forget the actual memo, do you know  
22 whether the content of this was conveyed to you by  
23 Sergeant Gilbert?

24 MR. ROVER: I don't have any recollection of  
25 Sergeant Gilbert during this time period of giving me

1 this information and I think this is related to an  
2 answer I gave earlier. During this time period I was  
3 interacting with Sergeant Gilbert regarding the  
4 production of documents. I just -- I don't recall him  
5 saying that he had performed an analysis of the sample  
6 dates picked out by the Department of Justice.

7 MR. CHERTOFF: So you just don't remember one  
8 way or the other?

9 MR. ROVER: I don't.

10 MR. CHERTOFF: Now, in February of 1999, did  
11 you come to learn that there was an announcement of the  
12 State Police Review Team?

13 MR. ROVER: If it was that time --

14 MR. CHERTOFF: It was February 10th is when  
15 it was announced by the Attorney General that there  
16 would be a State Police Review Team led by Mr. Zoubek.

17 MR. ROVER: I believe so, yes.

18 MR. CHERTOFF: And then Mr. Zoubek contacted  
19 you shortly thereafter?

20 MR. ROVER: Yes.

21 MR. CHERTOFF: What did he ask you for?

22 MR. ROVER: He asked me for the DOJ file. My  
23 personal file related to the Department of Justice.

24 MR. CHERTOFF: Did he tell you why he wanted  
25 that?

1 MR. ROVER: Say that again?

2 MR. CHERTOFF: Did he tell you why he wanted  
3 that?

4 MR. ROVER: I think he said that he was going  
5 to handle the interaction with the Department of  
6 Justice.

7 MR. CHERTOFF: Did you give him your file?

8 MR. ROVER: Yes, I did.

9 MR. CHERTOFF: Did you prepare a cover memo  
10 for the file?

11 MR. ROVER: A transition memo, yes.

12 MR. CHERTOFF: Okay. Now, I'm going to show  
13 Z-14, OAG5433, a memo to Paul Zoubek from you dated  
14 February 26, 1999, which is a three-page document. And  
15 I want to turn to the last page. It says, "These," and  
16 I think he meant to say "there," "are numerous  
17 documents that I have not produced to DOJ and they  
18 include the following." And then you have a list of  
19 documents and then also said, "These are other  
20 documents not produced to DOJ which I have kept in a  
21 separate file." Now, as we go down this list, the July  
22 5th, 1996 IAB motor vehicle stop audit of Moorestown  
23 station, Lieutenant Gilbert, is that a reference to  
24 that audit that you had gone to Mr. Waugh about and Mr.  
25 Hespe about whether you should turn it over to the

1 Department of Justice?

2 MR. ROVER: Yes.

3 MR. CHERTOFF: And then as we go down to six,  
4 seven and eight, is the reference to Hunterdon County  
5 statistics, is that April 24th memo, that's the memo,  
6 the Perryville, Hunterdon County statistic memo I  
7 showed you a short while ago dated April 24th, 1996,  
8 right?

9 MR. ROVER: That's correct.

10 MR. CHERTOFF: And Gloucester County data  
11 base arrest data, what is that that you withheld from  
12 DOJ?

13 MR. ROVER: With respect to that document, I  
14 don't have a real clear recollection, but I think it  
15 was a data base of arrest data. I don't know when or  
16 from whom I got it.

17 MR. CHERTOFF: Would you have gotten it from  
18 Sergeant Gilbert?

19 MR. ROVER: I may have.

20 MR. CHERTOFF: Now, in deciding not to  
21 produce documents to DOJ, who decided that these  
22 documents shouldn't be provided?

23 MR. ROVER: Well, with respect to one, six,  
24 seven and eight, I believe Alex Waugh.

25 MR. CHERTOFF: And you had conversations

1 about it with each of those -- with respect to each of  
2 those documents?

3 MR. ROVER: Yes.

4 MR. CHERTOFF: Did you ever make a unilateral  
5 decision to withhold a document from DOJ?

6 MR. ROVER: Well, I don't say I withheld  
7 documents from DOJ, I responded to their requests  
8 and --

9 MR. CHERTOFF: Let me rephrase the question.

10 Did you ever make a unilateral decision on  
11 any document that was even a moderately close call not  
12 to produce something to DOJ?

13 MR. ROVER: No. I think if it was a  
14 moderately close call, I would reach out for someone  
15 and say here this is, what do you think?

16 MR. CHERTOFF: Now, all these documents here,  
17 these are documents you specifically listed for Mr.  
18 Zoubek because you believed that they fell within the  
19 scope of what might arguably be called for, right?

20 MR. ROVER: Well, I wanted to be very up-  
21 front. I mean maybe they didn't, but I wanted to make  
22 sure that, you know, no one had the perception that I  
23 was hiding anything, I wanted to be up-front in my  
24 transition memo.

25 MR. CHERTOFF: And these were all documents,

1 as you indicated, that the decision not to produce you  
2 consulted with Mr. Waugh about?

3 MR. ROVER: Not all of them.

4 MR. CHERTOFF: I'm sorry; one, six, seven and  
5 eight.

6 MR. ROVER: Yes.

7 MR. CHERTOFF: Okay. What about two, three,  
8 four and five, do you know whether you had spoken to  
9 Mr. Waugh about those?

10 MR. ROVER: With respect to two, my  
11 recollection is that I had recently received from  
12 Sergeant Gilbert some additional training materials and  
13 in addition to that, the Department of Justice had  
14 generally asked for specific training materials. I  
15 don't recall them asking for like just give me all your  
16 training materials. So I gave them in-service  
17 materials. So a combination that these documents had I  
18 believe come in -- I don't know if it was in the last  
19 two or three weeks, coupled with whether or not Justice  
20 had actually asked for those particular documents,  
21 these documents fell in that group.

22 MR. CHERTOFF: What about three, four and  
23 five?

24 MR. ROVER: With respect to five, I don't  
25 have a recollection of why -- I don't even recall the

1 document. I have a recollection of why I didn't  
2 produce that, I don't know if it just recently came in,  
3 I just don't know.

4 With respect to four, I had recently received  
5 a request from the Department of Justice asking if we  
6 had any other data relating to the 30 sample dates and  
7 I can't recall exactly, I think he said do you have  
8 other stop notation pads or anything of that import. I  
9 believe I called Sergeant Gilbert and he said no, we  
10 don't have those. And it ended up saying -- he said  
11 that we have negative OPR, which I guess are probable  
12 cause searches. And I said I believe they are produced  
13 in with the investigation and arrest reports. And he  
14 advised me that no, they were really a separate  
15 document. And he said that he had already given them  
16 to me in the past and I believe that he was correct  
17 that I, in fact, did have those and I would have --  
18 they should have been produced. And that was not a  
19 decision that Alex told me not to do. It was, I would  
20 say, a mistake on my part.

21 MR. CHERTOFF: Let me -- just two more things  
22 to cover before my questions are done.

23 I'm going to ask that a copy of G-33 be put  
24 before you. This is a notebook which Sergeant Gilbert  
25 testified about yesterday that he turned over to Mr.

1 Zoubek. Were you around when that notebook got turned  
2 over? It was a blue notebook.

3 MR. ROVER: Yes. I was at a meeting over in  
4 the Division of Criminal Justice when that was turned  
5 over.

6 MR. CHERTOFF: That was March 15th? About.

7 MR. ROVER: I know there's a date, so I'll  
8 take your -- I'll accept your representation on that.

9 MR. CHERTOFF: Did Mr. Zoubek react to this  
10 notebook at all after he got it?

11 MR. ROVER: I've obviously been asked that  
12 question. I don't have a recollection of his reaction.  
13 My recollection is the meeting happened and it was over  
14 in five minutes.

15 MR. CHERTOFF: Did he ever talk to you about  
16 it?

17 MR. ROVER: The particular meeting?

18 MR. CHERTOFF: No, the notebook -- whether  
19 you had seen any of the documents in the notebook  
20 previously.

21 MR. ROVER: No. He didn't talk to me about  
22 the notebook as a whole. I believe he talked to me  
23 about a particular document sometime later in 1999.

24 MR. CHERTOFF: Which document was that?

25 MR. ROVER: I believe it was a document

1 relating to the Maryland case.

2 MR. CHERTOFF: Was it an undated piece of  
3 paper with Maryland consent search data?

4 MR. ROVER: I can't recall if he showed it to  
5 me or we talked about it on the telephone, but I  
6 believe it was an early 1997 document relating to the  
7 Maryland case and consent searches.

8 MR. CHERTOFF: What was the discussion about  
9 that?

10 MR. ROVER: I believe that he talked to me  
11 about the memo and said, "Did you ever receive this"?  
12 And my answer was, I have no recollection of having  
13 ever received that document. And he -- I think he had  
14 a general discussion about what about the consent-to-  
15 search issue? And I believe I said to him that there  
16 was a meeting at sometime in May of 1997 where a number  
17 of people assembled to discuss the Maryland case and  
18 consent to searches.

19 MR. CHERTOFF: And did you indicate to him  
20 that there had been discussion about the comparison  
21 between the Maryland numbers and the New Jersey numbers  
22 in that meeting?

23 MR. ROVER: I can't remember specifically. I  
24 would imagine, you know, that I just didn't say that  
25 there was a meeting. I would imagine I told him a

1 little something.

2 MR. CHERTOFF: Now, if you look at this blue  
3 notebook. If you look at the very first page after the  
4 cover, there's a report of Lieutenant F. Hinkle dated  
5 3-29-96 regarding internal audit of summonses having to  
6 do with Perryville and Washington, correct? It's the  
7 very first sheet after the cover.

8 MR. ROVER: Yes, I see it.

9 MR. CHERTOFF: Okay. Now, that, in fact, is  
10 what's referred to in your memo of February 29th, 1999  
11 as something that you had but you hadn't produced to  
12 DOJ, right?

13 MR. ROVER: That's correct.

14 MR. CHERTOFF: So that was clearly something  
15 that had been provided to you prior to February of  
16 1999, correct?

17 MR. ROVER: That's correct.

18 MR. CHERTOFF: And do you know whether you  
19 got this one from Mr. Waugh or from Sergeant Gilbert?

20 MR. ROVER: I believe I got it from Sergeant  
21 Gilbert and talked about it with Alex Waugh.

22 MR. CHERTOFF: And if you go a little further  
23 on, there's a document dated 9-24-96 from Lieutenant  
24 Hinkle to Captain Touw, patrol issues concerns at  
25 Moorestown station, a sheet of paper. Do you see that?

1 MR. ROVER: How far down did you go?

2 MR. CHERTOFF: Maybe about eight to ten  
3 sheets down. Patrol issues concerns at Moorestown  
4 station.

5 MR. ROVER: Yes.

6 MR. CHERTOFF: Okay. Is that part of the  
7 document that you got from Mr. Waugh on July 29, 1997  
8 that you list as item number one as documents not  
9 produced?

10 (Pause)

11 MR. ROVER: Yes.

12 MR. CHERTOFF: Now, let me ask you this. In  
13 connection with -- actually, let me turn to you, Mr.  
14 Fahy, just for a minute.

15 You heard the testimony by Mr. Rover about  
16 the meeting with Mr. Hesper in approximately December of  
17 1998. Do you recall that meeting?

18 MR. FAHY: Yes, sir.

19 MR. CHERTOFF: Is it your memory consistent  
20 or inconsistent with what Mr. Rover has told us  
21 transpired at that meeting?

22 MR. FAHY: It's generally consistent. I  
23 think -- I got called out of the blue and I think I  
24 asked a question or two with well, are they asking for  
25 this? Is it relevant? Because I hadn't kept up so

1 much with the requests from Justice. But generally,  
2 yeah. Because they were going to look into it.

3 MR. CHERTOFF: Now, let me ask you one last  
4 question, Mr. Rover.

5 After Mr. Zoubek took over dealing with the  
6 Department of Justice, how much further interaction did  
7 you have with the Department of Justice?

8 MR. ROVER: Subsequent to the turnover of the  
9 file?

10 MR. CHERTOFF: Yeah.

11 MR. ROVER: I don't believe I had any.

12 MR. CHERTOFF: And what was your actual  
13 function of the State Police Review Team? I mean were  
14 you involved in review related to racial profiling?

15 MR. ROVER: No, I was not on the Review Team.

16 MR. CHERTOFF: Were you available to answer  
17 questions?

18 MR. ROVER: What I recall is that I was asked  
19 to do two assignments. One, to review the experience  
20 of the Maryland State Police regarding the Maryland  
21 case. And two, to deal with the Pittsburgh Police  
22 Department regarding their consent experience, so to  
23 speak.

24 MR. CHERTOFF: Now, Mr. Fahy, let me ask you.  
25 Did Mr. Zoubek ever ask you about this May 28th meeting

1 in 1999?

2 MR. FAHY: Not that I recall.

3 MR. CHERTOFF: So he never asked you whether  
4 you attended the meeting on May 20th and what was said?

5 MR. FAHY: Not that I -- well, I didn't  
6 participate in the Review Team.

7 MR. CHERTOFF: If you had been asked, you  
8 would have confirmed the May 20th meeting and the  
9 subject of the discussion, correct?

10 MR. FAHY: If I had some records to refresh  
11 my recollection. I don't know out of the blue off the  
12 top of my head but, sure, if they gave me something and  
13 it showed I was there, why not?

14 MR. CHERTOFF: Did the Attorney General ever  
15 ask you, Mr. Fahy or Mr. Rover, about your  
16 recollections about whether there was a May 20th  
17 meeting?

18 MR. FAHY: I haven't spoken to him.

19 MR. ROVER: I haven't either.

20 MR. CHERTOFF: In 1999 he didn't discuss that  
21 -- he didn't ask you whether you remember --

22 MR. ROVER: Oh, no.

23 MR. CHERTOFF: And that's true for you, too,  
24 Mr. Fahy?

25 MR. FAHY: I really haven't spoken to him



1 since the meetings back in '96 or seven.

2 MR. CHERTOFF: Now, I want to direct your --  
3 did you, Mr. Rover, or you, Mr. Fahy, participate at  
4 all in the drafting of the interim report on racial  
5 profiling?

6 MR. FAHY: No.

7 MR. ROVER: No.

8 MR. CHERTOFF: I want to direct your  
9 attention -- did you read it after it came out?

10 You can say no, you're not going to get  
11 punished, I mean.

12 MR. ROVER: I didn't.

13 MR. FAHY: I glanced at it. I kind of  
14 wondered why it was such big news. I mean we had  
15 always taken the position that there could be some  
16 racial profiling in the State Police and --

17 MR. CHERTOFF: You never thought it was an  
18 illusion, you always thought it was a real issue?

19 MR. FAHY: With regard to some troopers, yes.

20 MR. CHERTOFF: All right. Well, let me ask  
21 you, Mr. Rover, I want to focus your attention on a  
22 draft version of this that was issued on April 7th,  
23 1999, but in fairness it was later deleted or  
24 substantially reworked. It's Z-19, OAG2619. The April  
25 7th draft. It's actually Page 2. And the paragraph

1 reads as follows: "We feel constrained to comment that  
2 some of the statistical information we rely upon,  
3 including particularly revealing data concerning  
4 consent searches, were only recently disclosed by the  
5 State Police to the Office of the Attorney General.  
6 Certain internal studies and audits prepared at the  
7 request of the Superintendent, were not made known to  
8 the Deputy Attorneys General who were representing the  
9 State in the Soto litigation. This circumstance has  
10 seriously compromised the State's litigation posture  
11 and also has needlessly delayed initiating appropriate  
12 remedies and reforms."

13 Now, the sentence that says "Certain internal  
14 studies and audits prepared a the request of the  
15 Superintendent, were not made known to the Deputy  
16 Attorneys General who were representing the State in  
17 the Soto litigation." Mr. Rover, do you know to what  
18 that refers?

19 MR. ROVER: Certain internal studies and  
20 audits?

21 MR. CHERTOFF: That were not made known to  
22 you. It's stated here that certain internal studies  
23 and audits were not made known to the Deputy Attorneys  
24 General who were representing the State in the Soto  
25 litigation. Do you have any knowledge that that's

1 true? Is that your position? Do you think things were  
2 not made known to you?

3 MR. ROVER: Well, I wasn't a DAG in the Soto  
4 litigation.

5 MR. CHERTOFF: So this doesn't refer to you.

6 MR. ROVER: I had nothing to -- I reviewed  
7 the Soto brief on the appeal, but I wasn't involved in  
8 the Soto litigation.

9 MR. CHERTOFF: And you never made the  
10 accusation that the State Police withheld documents  
11 from you, right?

12 MR. ROVER: Oh, no.

13 MR. CHERTOFF: And is it your position to  
14 your knowledge that they did withhold documents from  
15 you?

16 MR. ROVER: I'm not aware of everything that  
17 was subsequently turned over, but certainly I had some  
18 documents that they turned over to me. I don't know  
19 the universe of documents that were out there as to --  
20 I can't make that decision or I can give an opinion on  
21 that.

22 MR. CHERTOFF: Mr. Fahy, do you know whether  
23 you're referred to as someone who was denied -- or  
24 documents -- or documents were not made known to you  
25 that you requested?

1 MR. FAHY: I don't know if that refers to me.  
2 I can tell you what did happen. I had a request from  
3 Mr. Zoubek to produce an interoffice communications I  
4 had back and forth with State Police, and I did that.  
5 And then he came down one day and he had some reports  
6 and he said do you recall these being provided to you  
7 by the State Police. I said, no. They're not in my  
8 file. And it really didn't go beyond that. Light  
9 probing as to -- I mean it was just brief.

10 MR. CHERTOFF: Well, what reports did he show  
11 you that you said you didn't have in your files?

12 MR. FAHY: I can't recall offhand, sir. It  
13 could have been -- it could have been one or two of  
14 these.

15 MR. CHERTOFF: Could it have been the July  
16 the -- could it have been the Moorestown report that's  
17 attached to the July 27th, 1997 memo to the Attorney  
18 General?

19 MR. FAHY: Could have. I can't remember.

20 MR. CHERTOFF: Was it the Perryville audit?  
21 The document that's in front of you?

22 MR. FAHY: I can't remember now, sir. It  
23 lasted about five minutes. And I just took a flip  
24 through and said I didn't get anything of this kind of  
25 detail. That doesn't mean, like I said earlier, there

1 weren't some discussion.

2 But I just didn't have in my files anything  
3 of that detail. And I would assume that if it had been  
4 given to me, they would be in my files. There was no  
5 reason to hide them.

6 MR. CHERTOFF: Well, let me ask you this. I  
7 mean -- and tell me if you -- this paragraph, as it's  
8 written, admittedly a draft, levels what amounts to a  
9 series accusation that the State Police withheld  
10 documents in a way that seriously compromised the State's  
11 litigation posture. Essentially it's saying that  
12 because of a deliberate withholding of information,  
13 there was harm to the State of New Jersey in its  
14 handling of this matter.

15 Now, did you -- were you ever actually --  
16 since you were handling this sort of litigation, did  
17 anybody ever ask you to express an opinion as to  
18 whether the State Police did harm the litigation  
19 posture of the State in Soto?

20 MR. FAHY: No. And I don't think I would  
21 have ever had enough information to make that claim,  
22 sir. That's -- that's a pretty strong statement, and I  
23 knew nothing about anyone withholding stuff from me  
24 intentionally.

25 MR. CHERTOFF: Okay. I have no more

1 questions.

2 SENATOR GORMLEY: We're going to take about a  
3 half hour break. And then the Committee members will  
4 ask the witnesses questions.

5 (Recess)

6 SENATOR GORMLEY: We'll reconvene the hearing  
7 with one final question from Mr. Chertoff.

8 MR. CHERTOFF: Mr. Rover, I just want to  
9 direct your attention to that July 29th, 1997 memo,  
10 cover page which has the attached memo that you --  
11 regarding Moorestown, that you were told to delay or  
12 withhold from producing until further instructions by  
13 Mr. Hespe, do you have that? It's marked W-30 on the  
14 cover page. Do you have that?

15 MR. ROVER: Yes, I do.

16 MR. CHERTOFF: Okay. The last page, does  
17 that list -- the last page of the document, does that  
18 list an analysis of consent searches for 1995,  
19 including percentages of minority and non-minority  
20 consent searches?

21 MR. ROVER: Are you asking does it --

22 MR. CHERTOFF: Yeah.

23 MR. ROVER: Does it -- yes, it has data  
24 relating to consent searches, 1995.

25 MR. CHERTOFF: And it indicates that in 1995,

1 62 percent of the consent searches at Cranbury were  
2 minority and 38 percent were non-minority.

3 MR. ROVER: Yes.

4 MR. CHERTOFF: And this is what you were told  
5 to forebear from producing, right?

6 MR. ROVER: Yes.

7 MR. CHERTOFF: Nothing further.

8 SENATOR GORMLEY: Jo?

9 MS. GLADING: I just have questions in a  
10 couple of areas that haven't been covered. I wonder if  
11 you can give Mr. Fahy those two documents, both of  
12 them. But before I get to that, when you mentioned  
13 before, Mr. Fahy, that when you were part of this  
14 Committee that was chaired by Colonel Littles that you  
15 advised them that they should get an expert to advise  
16 them on statistical matters, is that right?

17 MR. FAHY: No, I don't --

18 MS. GLADING: Um?

19 MR. FAHY: I don't recall that I said it at  
20 that time.

21 It's my opinion that the State Police were  
22 going to be doing extensive studies, they should have  
23 experts. I can't say that I said it at that meeting.

24 MS. GLADING: So, you didn't advise them to  
25 get an expert?

1 MR. FAHY: I can't recall saying that.

2 MS. GLADING: At the time of -- you -- I  
3 think you testified earlier that you were not familiar  
4 with the consent search issue in Maryland specifically,  
5 is that correct?

6 MR. FAHY: No, that's not correct either. I  
7 went with Tommy Gilbert to Maryland at the request of  
8 an attorney from Maryland to come down and let him know  
9 what we were doing in New Jersey.

10 MS. GLADING: Did you testify that you were  
11 not familiar with the consent search study that was  
12 done in Maryland?

13 MR. FAHY: I didn't take any paperwork from  
14 that meeting that day. I learned later on that a  
15 different State Police official got it for Tommy  
16 Gilbert over the internet, I think, in October. But  
17 that was from reading the transcript.

18 MS. GLADING: Okay. Are you familiar with  
19 statistical studies that were done by Dr. Lamberth  
20 (phonetic)?

21 MR. FAHY: In Maryland?

22 MS. GLADING: In Maryland.

23 MR. FAHY: I never saw them, no.

24 MS. GLADING: Dr. Lamberth was an expert in  
25 the Soto case, wasn't he?

1 MR. FAHY: He was an expert. He wasn't the  
2 lead expert for the defense. They had another expert  
3 from Pittsburgh.

4 MS. GLADING: On the issue of the other  
5 suppression cases that were pending around the State in  
6 -- immediately following Soto and the months subsequent  
7 to that, and your meeting with Prosecutor Ransavage,  
8 there was a transition report. And I think you were  
9 asked about this at your deposition, transition report  
10 written in the summer of '96 when there was a  
11 transition between Attorney General Poritz and Attorney  
12 General Verniero, do you recall being asked about that  
13 document during your deposition?

14 MR. FAHY: There were a few transition  
15 reports with different attorney generals. So, I'm sure  
16 that's one of them, yes.

17 MS. GLADING: Okay. We have a highly  
18 redacted version of that transition report, we just  
19 have a couple of paragraphs from it actually. And it  
20 discusses the Gloucester County case and the loss of  
21 the case in Gloucester and that it was being appealed  
22 and the length of the hearing. And it indicates, "Due  
23 to the protracted nature of the case, the State was  
24 provided with additional time to review and evaluate  
25 the transcripts covering the 75-day period."

1 "A number of similar motions to suppress have  
2 been brought in pending matters in several counties.  
3 Discussions are underway with the Public Defender about  
4 these matters."

5 That's the issue you testified to earlier,  
6 isn't it?

7 MR. FAHY: Yes. Well, over the years, there  
8 were motions brought in many counties. And they just  
9 didn't progress, the defendants did not prevail on the  
10 colorable basis test.

11 MS. GLADING: Right, that's not what I'm  
12 asking. You testified earlier that General Poritz  
13 wanted discussions to be held at the Public Defender's  
14 Offices so that a lot of money wasn't being spent to  
15 litigate these cases. If there was a colorable basis,  
16 you would look at troopers' backgrounds, you would  
17 share discovery, you would deal with these cases in a  
18 different way, is that right?

19 MR. FAHY: Generally, yes. That's -- she had  
20 Jim Ciancia chair that meeting. And she also had me  
21 deal with Director Farley. And there's a memo in the  
22 records telling him it was going to be his job to  
23 express to the prosecutors that they had to bear the  
24 cost of this, yes.

25 MS. GLADING: So, in this transition report -

1 - and it is written in July of '96 or sometime  
2 thereabouts, and it references discussions underway  
3 with the Public Defender about these matters, that's  
4 what it's referring to, right?

5 MR. FAHY: I didn't ever see the document you  
6 have probably. The way it happens is each person in  
7 the Department who has a significant issue is told to  
8 write a memo on what they're dealing with. And  
9 somehow, somewhere somebody puts it together in one  
10 report.

11 MS. GLADING: Could you take a look at the  
12 two documents that have been given to you? One is a  
13 May 21st, 1998 memo from you to General Verniero and it  
14 attaches a draft statement, apparently for his use  
15 after the -- his meeting with the representatives of  
16 the Black Ministers Council.

17 MR. FAHY: Yes, I'm familiar with this  
18 document.

19 MS. GLADING: Okay. It's F-24. And then I  
20 have also given you the actual statement that was  
21 released, which is SJC-4.

22 MR. FAHY: That, I don't know that I ever saw  
23 before. But I did see F-24, I wrote that.

24 MS. GLADING: Okay. If you could look at the  
25 top of page GC-2364.

1 MR. FAHY: Yes?

2 MS. GLADING: There's a sentence that reads  
3 -- it's discussing all of the institutional efforts  
4 that have been taken -- undertaken to address the  
5 continuing allegation of racial profiling against the  
6 State Police. That's what this document is, right? Is  
7 that correct?

8 MR. FAHY: I'm sure it's -- that's covered in  
9 here.

10 MS. GLADING: The document is intended to be  
11 a statement about all of the institutional steps that  
12 have been taken to address allegations of racial  
13 profiling, right?

14 MR. FAHY: I would think so because the  
15 outline addresses that also.

16 MS. GLADING: Okay. And in that page I  
17 directed you to, there's a sentence that -- there's a  
18 paragraph that reads, "A committee of officers and  
19 deputy attorney generals was formed to analyze the  
20 issue and make recommendations for improvements." And  
21 it's discussing -- and apparently the sentence before  
22 that -- sorry, it says, "I also apprized the ministers  
23 of an effort instituted approximately two years ago to  
24 ensure that the policy against racial profiling was  
25 being effectively implemented."

1 And then it says, "A committee of officers  
2 and deputy attorney generals was formed to analyze the  
3 issue and make recommendations for improvements."

4 Is that referenced to the Littles Committee?

5 MR. FAHY: Yes.

6 MS. GLADING: Okay.

7 MR. FAHY: That's what I was referring to.

8 MS. GLADING: And at the end of that  
9 paragraph, there is a reference to, "We will  
10 reinvigorate this Committee with the goal of making  
11 further progress."

12 This is a Committee that had not met, at this  
13 point, for a year and a half, right?

14 MR. FAHY: Like I said, I only went to  
15 meetings in the spring of '96. I don't know what the  
16 State Police did after that. I know they had a meeting  
17 in October, but I can't tell you that.

18 MS. GLADING: Okay.

19 MR. FAHY: I don't know what they did.

20 MS. GLADING: This is a Committee in which  
21 your participation ended effectively sometime in the  
22 summer of '96, right?

23 MR. FAHY: Yes.

24 MS. GLADING: Why would -- do you know if  
25 there were any steps taken to reinvigorate the

1 existence of this Committee?

2 MR. FAHY: There doesn't say that there were  
3 steps taken.

4 MS. GLADING: No, you're --

5 MR. FAHY: I'm --

6 MS. GLADING: What you wrote says, "We will  
7 reinvigorate this Committee with the goal of making  
8 further progress."

9 Were any steps like that taken?

10 MR. FAHY: Oh, I -- none that I know of. I  
11 was just -- what's attached here is also a outline to  
12 Attorney General Verniero, listing past actions and new  
13 initiatives. And one suggestion that I had was to  
14 reinvigorate that Committee.

15 MS. GLADING: Okay.

16 MR. FAHY: So, I'm doing a draft at the same  
17 time I'm doing the letter to the ministers.

18 MS. GLADING: Okay. If you could look at the  
19 May 27th, 1998 statement, what's marked SJC-4. If you  
20 could just scan that and tell me whether or not that  
21 suggestion was adopted.

22 (Pause)

23 MR. FAHY: Do you know if it's in here?

24 MS. GLADING: It's not, no.

25 MR. FAHY: Well, I don't know if it was

1 adopted at a time or not. He didn't put it in the  
2 letter.

3 MS. GLADING: Okay.

4 MR. FAHY: You'll have to ask Peter Verniero.

5 MS. GLADING: And the deletion was made. Do  
6 you know who made that deletion? Deleted that from the  
7 statement?

8 MR. FAHY: I have no idea.

9 MS. GLADING: And at the bottom of GC-2364,  
10 there's a reference to, "Besides training, ongoing  
11 efforts are also being made to ensure that supervisors  
12 within the State Police have sufficient information to  
13 monitor the stopping practices and any resulting  
14 enforcement action taken by road troopers."

15 In that sentence, were you referring to the  
16 inspection audits that were underway at that point?

17 MR. FAHY: No, they were talking about  
18 specialized training, in-service training for  
19 supervising officers in the State Police to ensure that  
20 when they were supervising, they understood that they  
21 had to deal with this issue also.

22 MS. GLADING: Yeah. Actually it says,  
23 "Ongoing efforts are also being made to ensure that  
24 supervisor within the State Police have sufficient  
25 information to monitor the stopping practices and any

1 resulting enforcement action."

2 So, is that a reference to inspection audits  
3 or gathering of data or information?

4 MR. FAHY: I'm not sure at this time.

5 MS. GLADING: No?

6 MR. FAHY: I mean I may have called someone  
7 at the State Police and asked them what's going on  
8 still with the efforts we talked about in the  
9 Committee. I don't recall now.

10 MS. GLADING: The Committee? The Committee  
11 that hadn't met for a year and a half, you mean?

12 MR. FAHY: Well, just because a Committee  
13 didn't meet, it didn't mean that Internal Affairs  
14 wasn't going to follow through on some things and  
15 training wasn't going to follow through.

16 MS. GLADING: Mr. Rover, I just have a couple  
17 of questions for you.

18 The -- can you describe for me how the  
19 exchange of information -- once you began sending --  
20 gathering information for D.O.J., how the exchange of  
21 information took place between you and Sergeant  
22 Gilbert?

23 MR. ROVER: My recollection is that we had  
24 these sample dates. And early on, the representative  
25 from Justice, I believe, pointed out a particular type



1 of document. I don't know if it was the radio logs or  
2 patrol charts that -- in other words, kind of work on  
3 these first and see if you can get them for me. And I  
4 think Tom was working on everything at the same time,  
5 but certain ones, at times, I would prioritize because  
6 Mr. Posner call me.

7 MS. GLADING: So, Tom was out gathering this  
8 information and giving it to you as he gathered it, is  
9 that correct?

10 MR. ROVER: I believe so. I mean I don't --  
11 it didn't -- I know I asked Tom not to hold it all and  
12 give it to me in a big pile because Mr. Posner told me  
13 just start getting this stuff.

14 MS. GLADING: Okay. Mr. Gilbert -- Mr.  
15 Gilbert testified -- I asked him when he finished  
16 getting the information together for you, and he said,  
17 "Probably in the area of July/August of '97, I think  
18 that we were well underway."

19 And then he says, "But I would say that I  
20 think by the early fall of '97, I think we were in  
21 pretty good shape as far as getting most of the  
22 documents in."

23 Because he had been out at the barracks  
24 collecting the documents, right?

25 MR. ROVER: Yes, he was.

1 MS. GLADING: Okay. Is that your  
2 recollection also?

3 MR. ROVER: It's hard for me to say. I mean  
4 I would imagine by October, November, a lot of the  
5 documents relating to the sample dates were secured. I  
6 don't think they all were. But --

7 MS. GLADING: Okay.

8 MR. ROVER: -- I think that they were.

9 MS. GLADING: You think you had most of them  
10 by October or November, as he said there? Or by early  
11 fall he said.

12 MR. ROVER: I think I had quite a few of  
13 them, yes.

14 MS. GLADING: Okay. You don't have any  
15 reason to believe that Tom Gilbert would have collected  
16 documents and held them back from you, right?

17 MR. ROVER: Tom? No.

18 MS. GLADING: Before I ask you about how you  
19 then handed those documents over to D.O.J., I have a  
20 couple of quick questions on consent to search forms.  
21 You testified earlier that you felt very  
22 strongly in April that the factual circumstances needed  
23 to be considered when consent to searches were looked  
24 at, is that right?

25 MR. ROVER: I think that's the point set

1       forth in my April memo.

2               MS. GLADING: Okay. So, in April or May,  
3 you've written that in the memo and you also know at  
4 some point in time around now that the New Jersey  
5 numbers are in the ballpark of the Maryland numbers, is  
6 that right?

7               MR. ROVER: That's correct.

8               MS. GLADING: Okay. The July 10th memo that  
9 Sergeant Gilbert -- in which he provided an analysis --  
10 in which he conducted an analysis of the 30 sample days  
11 talks about 38 files that were examined for consent to  
12 search. So, apparently there were 38 consents to  
13 search on those 30 random days, is that your  
14 understanding?

15              MR. ROVER: That makes sense. I just don't  
16 know.

17              MS. GLADING: Okay. Did you ever conduct any  
18 analysis of the consent to search forms that he had  
19 given you?

20              MR. ROVER: No, I did not.

21              MS. GLADING: Did you ever look at the  
22 factual circumstances of the consent to searches?

23              MR. ROVER: No, I did not.

24              MS. GLADING: It was 38 incidents, according  
25 to his analysis. So, that would have -- would not have

1       taken long, right?

2              MR. ROVER: I think it would have been  
3 manageable.

4              MS. GLADING: Um-hum, 15, 20 minutes to look  
5 at the 38 forms?

6              MR. ROVER: Well, I don't think it would have  
7 been that manageable. But, you know, it's very doable.  
8 I think you'd have to spend a little bit more time and  
9 compare them to each other. And I certainly wouldn't  
10 have had the expertise to do that. But, no, I did not.

11              MS. GLADING: And since he had written in  
12 July -- on July 10th of '97 his analysis of the consent  
13 to search forms, you testified earlier that you didn't  
14 believe that he held anything back from you. It's  
15 likely that you received the consent to search forms  
16 about that time, right?

17              MR. ROVER: I can't -- I've obviously thought  
18 about that question. My recollection is -- and I can't  
19 specifically say when Tom sent them over to me. My  
20 recollection is is that at some point in October,  
21 D.O.J. asked for the consent to searches like  
22 particularized them.

23              Now, there was an outstanding request for all  
24 six categories of documents, but D.O.J. was kind of  
25 prioritizing them as we went down the line. And that

1 request came in, I believe, sometime in October.

2 That precipitated me having to reach out to  
3 Alex Waugh and say, Justice now wants these.

4 MS. GLADING: Right, because we talked about  
5 that earlier.

6 MR. ROVER: Yes.

7 MS. GLADING: But my question is this. If a  
8 consent to search form is based on Gilbert's testimony  
9 or in Division headquarters, they're the easiest  
10 documents of all these documents to gather. He could  
11 walk down the hall and get them --

12 MR. ROVER: Okay.

13 MS. GLADING: -- and do an analysis. And we  
14 know he did an analysis by July 10th of '97.

15 MR. ROVER: Right.

16 MS. GLADING: And you testified earlier that  
17 as he collected these documents, he was handing them  
18 over to you.

19 So, are you suggesting that he sat on those  
20 documents?

21 MR. ROVER: No, I'm not. I'm not suggesting  
22 that. I'm just -- I don't have a recollection.

23 What I do have a recollection of is that at  
24 some point, I believe in October, there was discussions  
25 about the other categories of documents.

1 MS. GLADING: Let's talk about that for a  
2 second. What were the other categories of documents  
3 that --

4 MR. ROVER: Radio logs, patrol charts,  
5 tickets, warnings.

6 MS. GLADING: Um-hum.

7 MR. ROVER: I think investigation and arrest  
8 reports.

9 MS. GLADING: And you testified earlier, I  
10 think, that you sent a consent to search forms in  
11 November to D.O.J.

12 MR. ROVER: That's correct.

13 MS. GLADING: We weren't able to find any  
14 transmittal document and you seem to always include a  
15 transmittal document when you sent documents to D.O.J.  
16 Do you know why there wouldn't have been a transmittal  
17 document for that?

18 MR. ROVER: My recollection is that I think  
19 the November 5th letter, which went through the chain  
20 of review through Alex, and I learned through the  
21 Attorney General, was the document that I used to send  
22 a letter, to send the consent to searches down.  
23 Although I recognize it doesn't say attachments on it.

24 I can only surmise that because it was going  
25 to this review process, it didn't have that formal

1 transmittal. I mean they went. The documents went.

2 MS. GLADING: Okay. Let's talk about the  
3 other documents. On June 17th, 1997, you sent the  
4 radio logs for three dates in 19 -- three 1995 dates  
5 for Moorestown Station. And that seems to begin the  
6 production of documents to D.O.J., aside from the  
7 sample documents they had been asking to look at  
8 previously. That -- is that your recollection?

9 MR. ROVER: That's my recollection.

10 MS. GLADING: And then two days later you  
11 send them two more days of radio logs for -- for dates  
12 in '96.

13 A day later, you send them some additional  
14 radio logs for 26 dates.

15 And this document production that --  
16 continues over the next eight months. You send -- in  
17 July, you send radio logs for a couple of dates.

18 On July 7th, you send them for five more days  
19 for Moorestown, for three in '96, the radio logs.

20 You send the D.O.J. one day of radio logs on  
21 July 22nd.

22 On July 29th, you send them three days of  
23 investigation arrest reports.

24 On August 7th, you send them three days of  
25 investigation and arrest reports.

1 A pretty maddening pace, and it continues for  
2 months. Is that the pace at which Tom Gilbert was  
3 giving you these documents?

4 MR. ROVER: I can't recall if he always gave  
5 them to me at that pace. I mean I know there are times  
6 where documents came in and I might get to a few of  
7 them, but they wouldn't sit there for a month.

8 MS. GLADING: So, if Tom Gilbert testified  
9 that he got you all the documents, or basically all of  
10 them, by early fall. And you said it was around  
11 October, November you had most of them, is that -- that  
12 was your testimony, right?

13 MR. ROVER: I believe it was.

14 MS. GLADING: In 1997, right?

15 MR. ROVER: Correct.

16 MS. GLADING: The in November -- on November  
17 14th, you said a couple of days worth of patrol charts.  
18 On November 21st -- on November --

19 FEMALE SPEAKER: Tenth.

20 MS. GLADING: On November 10th, you sent  
21 patrol charts for additional days for Moorestown.

22 On November 24th, you send them tickets and  
23 warnings for Cranbury for three different dates and  
24 stop data for two days. And this continues well into  
25 1998.

1 Can you explain why, if you had most of the  
2 documents, why you -- I'm looking at January, January  
3 5th you send them tickets and warnings for two days.  
4 January 6th, you send them tickets and warnings for two  
5 days.

6 January 7th, you send them tickets for two  
7 days. January 8th, you send them warnings and tickets  
8 for two days.

9 Can you explain why the documents were  
10 provided to D.O.J. in this fashion?

11 MR. ROVER: My recollection is that by the  
12 end of December, the majority of the documents relating  
13 to the thirty days had gone to D.O.J.

14 I know there were other circumstances, and I  
15 -- I -- listen, I can't account for all of them. I  
16 mean in some cases, I might not have gotten to them  
17 when they came in. I might have gotten to part of a  
18 pile. You know, I'm certainly not saying Tom Gilbert  
19 was sitting on any documents.

20 There were other situations where documents -  
21 - I got calls from Mr. Posner saying, hey, I thought I  
22 had all the radio logs, you know, it seems like I'm  
23 missing these. Maybe you sent them, but I need them.

24 I just don't know. And I agree -- I  
25 understand your question.

1 MS. GLADING: It looks as though you were  
2 sitting there with boxes of documents in your office  
3 and you're kind of putting a couple into an envelope  
4 every couple of days and sending it down to D.O.J.,  
5 from the way the transmittal letters read.

6 MR. ROVER: I understand that. I don't -- I  
7 did not have a practice of just like pulling out like  
8 four of them and saying, oh, I got 30 other ones there.  
9 (Pause)

10 MS. GLADING: At some point in time, did Mr.  
11 Waugh say something to you that you interpreted as  
12 instructions to drag your feet in the way in which you  
13 provided documents to D.O.J.?

14 MR. ROVER: Alex Waugh, I believe, it was  
15 before the May 20th meeting, but I'm not sure, used the  
16 phrase, take your time but be responsive.

17 MS. GLADING: He testified that he later  
18 learned that you had interpreted that to be  
19 instructions to drag your feet and that it was  
20 inartfully worded by him. Did --

21 MR. ROVER: I've read his -- I've read his  
22 transcript. I had a couple of conversations with him.  
23 I think he said that I may have initially  
24 misinterpreted.

25 What I understood -- how I understood this to

1 work, my instructions, was D.O.J. is going to set the  
2 pace on when they wanted documents and what documents.  
3 And I was supposed to respond to their pace.

4 And so if -- and according to my  
5 instructions, if they weren't asking for something or  
6 pushing for it, I wouldn't initiate.

7 MS. GLADING: Okay. Well, by December 12th  
8 of 1996, the State knew what they were asking for.

9 By January, they knew that they were going to  
10 limit it to the southern end of the Turnpike.

11 By May, the State knew that D.O.J. was going  
12 to look at 30 sample dates and there were discussions  
13 about those dates that you were a part of.

14 MR. ROVER: Right.

15 MS. GLADING: And by June, you finished  
16 sending them sample documents and now you're going to  
17 send them the real thing.

18 MR. ROVER: Right.

19 MS. GLADING: So, you knew the pace at which  
20 D.O.J. had requested it. They had an outstanding  
21 request for all those documents that you named before,  
22 right?

23 MR. ROVER: Yes. Yes, they did. In, I  
24 guess, the middle of May.

25 MS. GLADING: Okay. So, if your instructions

1 were to respond to D.O.J. in the fashion in which they  
2 made requests, they had made their requests.

3 MR. ROVER: That's correct.

4 MS. GLADING: Okay. You said earlier that  
5 you think you misinterpreted something that Alex Waugh  
6 said, is that correct?

7 MR. ROVER: I read Alex's testimony and I  
8 think we had a couple conversations on what my  
9 instructions were. Maybe he thought I misinterpreted.  
10 I never saw it as pure delay, but I did see it as not  
11 initiating.

12 MS. GLADING: Not initiating.

13 MR. ROVER: Yes.

14 MS. GLADING: But we've clarified, as I just  
15 did a minute ago, that there was really no need for the  
16 State to initiate. It had an outstanding and  
17 considerably large document request that was clarified  
18 and resolved by June of 1996, right?

19 MR. ROVER: Yes.

20 MS. GLADING: Okay. So, the D.O.J. didn't  
21 have to initiate anything at that point, it was up to  
22 the State to respond, right?

23 MR. ROVER: Yes, it was up to the State to  
24 respond.

25 MS. GLADING: Thanks. I don't have anything

1 else. Thanks.

2 SENATOR GORMLEY: Senator Robertson? You  
3 have to put the mike on.

4 SENATOR ROBERTSON: Yeah, I have it now.  
5 Thank you, Mr. Chairman.

6 Mr. Fahy, you had testified that you've been  
7 involved in the Attorney General's Office for 22 years,  
8 I believe?

9 MR. FAHY: Twenty-one.

10 SENATOR ROBERTSON: Twenty-one years. And  
11 that between the years of 1989 and 1996, you had become  
12 involved in the issue of racial profiling, is that  
13 correct?

14 MR. FAHY: Yes, sir.

15 SENATOR ROBERTSON: Now, during that period  
16 of time, I'll just go quickly through this just to put  
17 it on the record, and this is, by no means, exhaustive,  
18 although it gives a flavor for how important an issue  
19 this was.

20 In 1989, for instance, WOR-TV up in New York  
21 had done a series on potential racial profiling by the  
22 State Police.

23 MR. FAHY: I'm aware of it.

24 SENATOR ROBERTSON: You recall that? The New  
25 Jersey Law Journal called for an investigation based on

1 the WOR-TV series.

2 In 1990, Colonel Dintino had come on board,  
3 issued a statement saying he'd rather see a drop in  
4 drug related statistics than to have troopers violate  
5 the rights of the driving public, do you remember  
6 discussions of that sort?

7 MR. FAHY: I remember that, sir.

8 SENATOR ROBERTSON: In 1991, first we had  
9 State versus Kennedy, that was first talking about the  
10 defendant's use of statistical surveys as establishing  
11 a colorable basis for their claims, you recall that?

12 MR. FAHY: Yes.

13 SENATOR ROBERTSON: State versus Kennedy. Of  
14 course, in 1991, we had State versus Durant, and I  
15 believe you testified a little bit about that important  
16 case.

17 In 1993, Attorney General DelTufo issued a  
18 second Attorney General statewide narcotics action plan  
19 which, in some cases, is thought by some people to  
20 operate at cross purposes with racial profiling.

21 MR. FAHY: I had nothing to do with that.

22 SENATOR ROBERTSON: But you're aware, in  
23 general, of how important an issue it was. In 1993,  
24 the NAACP filed charges of discrimination with the EEOC  
25 against the State Police concerning hiring and

1 promotional practices.

2 MR. FAHY: I've heard in the office that it  
3 happened.

4 SENATOR ROBERTSON: Okay. Taking a look at  
5 all of this and, of course, in 1994 during the course  
6 of trial in the Soto case, you had mentioned before you  
7 had a former State Trooper, an African American,  
8 testified that he as trained to actually look for  
9 motorists --

10 MR. FAHY: Two of them did.

11 SENATOR ROBERTSON: Two of them did. All  
12 right. So, you were very, very aware of the fact that  
13 this was a very, very important issue.

14 MR. FAHY: It was important to me.

15 SENATOR ROBERTSON: Well, it was important to  
16 you directly. But wouldn't you conclude from all of  
17 the discussion of it in the newspapers, on TV, on the  
18 streets, in the motoring public and elsewhere that it  
19 was an important issue, not just to those who worked  
20 for the State of New Jersey, but to everybody in the  
21 State?

22 MR. FAHY: I don't know. I mean I didn't see  
23 the Legislature have hearings then, so --

24 SENATOR ROBERTSON: Is it your testimony that  
25 you were not aware of the fact this is an important

1 issue to the people of the State?

2 MR. FAHY: It is an important issue. It's a  
3 very important issue as far as I'm concerned.

4 SENATOR ROBERTSON: I'm not asking you for a  
5 rhetorical answer.

6 MR. FAHY: No, but --

7 SENATOR ROBERTSON: I'm actually asking you  
8 for a factual answer.

9 MR. FAHY: You said --

10 SENATOR ROBERTSON: Are you aware of the fact  
11 -- are you aware of the fact that this is an important  
12 issue to the people of the State of New Jersey?

13 MR. FAHY: I would assume it is, sir.

14 SENATOR ROBERTSON: Okay. You mentioned  
15 before that you were aware -- you were made aware  
16 verbally of statistics that suggested that some of the  
17 New Jersey State Police numbers were similar to some of  
18 the numbers in Maryland, correct?

19 MR. FAHY: I didn't know what our numbers on  
20 consent to searches were. I later found out that they  
21 were in the ballpark. But I don't have as good a  
22 recollection of the meeting that maybe Alex and George  
23 have.

24 SENATOR ROBERTSON: But generally --

25 MR. FAHY: I'm just sorry, I don't.



1 SENATOR ROBERTSON: But generally speaking,  
2 you were being kept apprized or briefed in some way,  
3 shape or form verbally by Sergeant Gilbert, correct?

4 MR. FAHY: I was being kept advised that our  
5 numbers were running about the same --

6 SENATOR ROBERTSON: Okay.

7 MR. FAHY: -- in South Jersey, yes.

8 SENATOR ROBERTSON: All right. But you had  
9 not seen the natural study of those numbers, correct?

10 MR. FAHY: I didn't see the thing in writing,  
11 no.

12 SENATOR ROBERTSON: Okay. Where did you  
13 think he got those numbers from?

14 MR. FAHY: Well, like I said earlier, I  
15 thought that they would be looking at the radio logs  
16 and patrol charts the same way we had to send tons of  
17 them to experts in the Soto case. I thought the State  
18 Police were probably looking at them and estimating, to  
19 the best of their ability, since they had an increased  
20 number of documents that had race reported on them now  
21 that they're running about the same.

22 SENATOR ROBERTSON: Now, you just put your  
23 finger on something that may be important. You're  
24 talking about the amount of documents that you sent  
25 over in the Soto case. That's because the defendants

1 there were permitted by Court Rule to discover those  
2 documents, correct?

3 MR. FAHY: Sir, we entered -- we entered a  
4 consent decree, not so much me. I advised, after --  
5 after Curtis Kennedy, the office decided that if  
6 someone made a colorable basis showing, we would  
7 cooperate. And I advised Gloucester County from what I  
8 saw that the Public Defender gave in Gloucester, they  
9 met that test. And that we should provide them what  
10 they wanted.

11 And at that time, it was to gather a  
12 statistical database which involved radio logs, patrol  
13 charts, tickets.

14 Unfortunately, as you know from the case,  
15 two-thirds of them didn't have any racial identifiers  
16 on them.

17 SENATOR ROBERTSON: Okay. And during the  
18 course of the case, the prosecution team was critical  
19 of the methodologies being used by the experts hired by  
20 the defendants, correct?

21 MR. FAHY: Not -- not so much on the creation  
22 of the database, sir. The database, we all understood,  
23 was a problem. That for the defense and for the State,  
24 we would have preferred a database for the 100 percent  
25 identified.

1           The criticism was largely related to the  
2 violator survey, which you needed to compare to the  
3 database. Because even our experts said their  
4 population survey running about 15 percent, minority  
5 population driving on the Turnpike, was within a  
6 reasonable range. He wasn't -- our expert said well,  
7 you can say it's -- it's ten -- it's maybe ten percent  
8 to 25 percent. But 15 wasn't a bad number as far as  
9 population.

10           But we're criticizing the traffic survey,  
11 yes.

12           SENATOR ROBERTSON: Well, if you never  
13 inquired further into the methodologies being used for  
14 the numbers you were being apprized of by Sergeant  
15 Gilbert, how do you know that the methodology there as  
16 either advantageous to the State or to the Department,  
17 or at all valid?

18           MR. FAHY: I think you're mixing apples and  
19 oranges. Mr. Gilbert was gathering the database of  
20 known activity. We didn't criticize the defense.

21           As a matter of fact, our experts and their  
22 experts were working together. And it's amazing how  
23 close they came up in that -- in that study. It was  
24 like just arithmetically, we were off a few cases. But  
25 they came very close, the defense and the State, as to

1           the number of stops they could identify and how many  
2 they could racially identify.

3           So, our experts, both the State and defense,  
4 had an idea like that.

5           And when Sergeant Gilbert's getting increased  
6 numbers, it has to do with that kind of database that  
7 you would gather. Maybe not for the time period of  
8 three years, like we did in Soto, but for the few  
9 months that he was looking at it maybe.

10           What we criticized was the second part of the  
11 equation where the Courts say --

12           SENATOR ROBERTSON: What was the baseline?

13           MR. FAHY: Yes. Establishing the baseline,  
14 yes, sir.

15           SENATOR ROBERTSON: Now, with respect to the  
16 consent search data, you indicated that it hadn't  
17 really occurred to you that a -- that a thorough  
18 analysis of that would be useful in yielding material  
19 that would be helpful.

20           MR. FAHY: Maybe it would be useful if -- but  
21 you have to understand the sphere I'm operating in.  
22 I'm litigating for six years trying to get a study that  
23 really identifies the stop information. And maybe it  
24 would be useful to some court or to someone, but we  
25 haven't gotten to the -- in my view, we didn't get

1 square one on the -- a decent study on the stop data.

2 SENATOR ROBERTSON: And why was that?

3 MR. FAHY: Well, they were -- until Colonel  
4 Williams, in 1996, strongly advised State Troopers,  
5 based upon my recommendations to him that this was a  
6 problem in Soto, experts for the State and defense said  
7 it was a problem, two-thirds missing data limits  
8 statistical experts in making conclusions, they can try  
9 to extrapolate.

10 But when I advised Colonel Williams of that,  
11 he issued a read and initial order telling the troopers  
12 this is a problem and we need to have better  
13 information regarding rates.

14 SENATOR ROBERTSON: Well, we're talking about  
15 the baseline study now.

16 MR. FAHY: Yes.

17 SENATOR ROBERTSON: The thing that you  
18 originally --

19 MR. FAHY: Yes.

20 SENATOR ROBERTSON: -- requested in 1993, you  
21 said you didn't get very far with that, correct?

22 MR. FAHY: No, that was a -- that was a  
23 violator survey, which is different than -- in this  
24 equation, you measure the documents of known activity  
25 versus an estimate of who is similarly situated and

1 available to be stopped or most likely to be stopped.

2 Now, some people offer that anyone going over  
3 55 is available to be stopped and that's sufficient  
4 enough. I've heard that argument.

5 Others would argue, well, that doesn't really  
6 reflect what the troopers are doing. You need a more  
7 complex study.

8 And that's why we were going to experts to  
9 say, well, what would that entail? Do we measure  
10 people --

11 SENATOR ROBERTSON: Well, in fact, we had the  
12 same discussion during the racial profiling hearings  
13 that we had in 1999. I had the exact same discussion  
14 with Mr. Zoubek sitting here one morning taking a look  
15 at their data.

16 MR. FAHY: Okay.

17 SENATOR ROBERTSON: Very apparent that the  
18 consent search data had to be applied against something  
19 and all of the details had to be applied against some  
20 baseline.

21 MR. FAHY: Well, the case law tells you that,  
22 whether it's an employment law or --

23 SENATOR ROBERTSON: And my --

24 MR. FAHY: -- or selective enforcement.

25 SENATOR ROBERTSON: Right. And my -- my

1 question to you is having made the recommendation to  
2 develop a violator's survey or an adequate baseline  
3 that would help you in court, or help everybody in  
4 understanding the situation, why then wasn't it done?

5 MR. FAHY: I got cut off a few times this  
6 morning when I tried to talk about that. It was a  
7 complex issue. We went to see experts. We sincerely,  
8 I thought, when we were working with Justice, might  
9 come up with a study that could be done.

10 I want to say one thing: Several Attorney  
11 Generals thought about doing a violator survey. But  
12 when we came back from the experts, it wasn't clear  
13 that anyone gave us some definitive study that could be  
14 done.

15 And I don't think an Attorney General -- I'm  
16 talking generally. The Attorney Generals wanted to go  
17 down the road of every time one of these motions was  
18 filed doing a study that doesn't have the imprimatur or  
19 some statistician saying this will really answer the  
20 question. And doing one where? On Route 80. On the  
21 Turnpike? On the Parkway?

22 It looked like the technology really hadn't  
23 been agreed upon by the statisticians. I don't know  
24 that it has been to this day.

25 But I do understand most recently there's new

1 technology with regard to radar guns that can also take  
2 photographs of the occupants of vehicles. And there's  
3 been some talk about utilizing that as the first type  
4 of study you can do, at least a speed study.

5 SENATOR ROBERTSON: Well, even separate and  
6 apart from the baseline question, going back to the  
7 consent search data, for instance supposing you were  
8 dealing with a trooper who's the arresting officer in a  
9 case that's before a court. Whose statistics don't  
10 appear to be that abusive, or don't appear to be that  
11 troublesome when, you know, the rest of the barracks  
12 might be, let's just say, as an example. Wouldn't it  
13 pay to do a substantive analysis of the consent search  
14 data in order to come to some realization such as that?

15 MR. FAHY: I'm not opposed to doing a study  
16 on consent to search data, sir. I'm just saying we  
17 didn't get to the simple study, a speed study versus  
18 actual reality, what took place. And it's fairly easy.

19 If we talk to the experts and try to get into  
20 the reasons -- if you want to do an arrest study or if  
21 you want to do a consent to search study, it's much  
22 more complicated, the variables.

23 SENATOR ROBERTSON: Your --

24 MR. FAHY: I'm not saying there aren't  
25 certain numbers that can't alert you that there may be

1 a problem.

2 SENATOR ROBERTSON: But you weren't  
3 prosecuting speeding tickets. You were prosecuting  
4 serious crimes involving drug possession and so forth.

5 So, my point being this, it's not just a  
6 question of the stop data. It's a question of the  
7 consent to search data.

8 Have you ever been stopped for a search?

9 MR. FAHY: Sir -- fortunately, no.

10 SENATOR ROBERTSON: Have you ever been  
11 stopped for speeding?

12 MR. FAHY: Yes.

13 SENATOR ROBERTSON: Okay. When was that?

14 MR. FAHY: Do I have to answer?

15 (Laughter)

16 SENATOR ROBERTSON: And --

17 MR. FAHY: It's a complex issue, sir. In any  
18 --

19 SENATOR ROBERTSON: No, but -- no, I'm  
20 serious when I ask this. Because, you know, we've been  
21 spending a lot of time here talking about who knew what  
22 when, and we're getting a little bit away from -- and I  
23 understand why those are important questions. We're  
24 getting a little bit away from the issue of racial  
25 profiling and the issue of what happens out on the

1 street, the extent to which innocent citizens may be  
2 subjected to intrusive searches. And sometimes on the  
3 basis perhaps of their ethnicity.

4 MR. FAHY: It happens --

5 SENATOR ROBERTSON: So, that's one of the  
6 reasons -- that's one of the reasons I'm asking you if  
7 you've ever been stopped. The answer is yes.

8 I've take it you have never been searched,  
9 however.

10 MR. FAHY: No.

11 SENATOR ROBERTSON: You have never asked to  
12 be searched?

13 MR. FAHY: No.

14 SENATOR ROBERTSON: And you're familiar with  
15 what is done when a search takes place, correct?

16 MR. FAHY: Well, generally. I've never --  
17 believe me, I know that I'm not a police officer --

18 SENATOR ROBERTSON: Well --

19 MR. FAHY: -- I'm a lawyer.

20 SENATOR ROBERTSON: Right. Right. But  
21 notwithstanding, lawyers are able to make observations  
22 of real life --

23 MR. FAHY: Well, I've never been one of those  
24 lawyers that wanted to ride along with the cops. I'm  
25 an office lawyer, trial lawyer.

1                   SENATOR ROBERTSON: Well, I'm looking at it  
2 from the point of view of the motorist. You can  
3 understand that it's a reason -- it's a -- it's a  
4 significant intrusion to have your person and your car  
5 searched, correct?

6                   MR. FAHY: I would think so.

7                   SENATOR ROBERTSON: That being the case, it  
8 didn't occur to you that it was a good idea to take a  
9 look at consent search data to find out if some groups  
10 are being asked to have their cars searched more than  
11 others?

12                   MR. FAHY: Well, in theory, sir, I think that  
13 there's a lot of studies that can be done. But I don't  
14 know anywhere in the country where they have been done.  
15 In theory, maybe this Committee can appropriate money  
16 to do a study like that. I think it's a wonderful  
17 issue to investigate.

18                   But it hasn't been done in this jurisdiction  
19 or any other. I'm fairly familiar with the cases and  
20 the issues and I don't know of any jurisdiction that's  
21 done violative surveys in a simpler area, such as  
22 stopping, let alone getting into consent to searches  
23 and arrests.

24                   And I just want to point out one thing. I'm  
25 not just taking this out of a vacuum. In the

1 Gloucester County case, the judge said he would not  
2 consider arrest information.

3                   And in the -- in the Middlesex County case,  
4 they didn't say they would get into arrest information.  
5 They accept it for what it's worth because they have  
6 nothing to compare it to. And the Public Defenders  
7 didn't do the study, and so we didn't do a study.

8                   Now, I know of none in the country. But is  
9 it a good idea? I would think so if this is a big  
10 issue, a national issue now.

11                   I'm just saying from the experts I talked to,  
12 this is a big issue. It's going to be costly, many  
13 variables, sure. It could be done, I guess.

14                   SENATOR ROBERTSON: All right. Let me move  
15 on to something else.

16                   With respect to the review of documents by  
17 the interim report team, focusing your attention to  
18 1999, there was an interim report being prepared. You  
19 indicated that you were shown certain documents and  
20 asked whether or not you had ever seen them before, do  
21 you recall that?

22                   MR. FAHY: Yeah, in about a five-minute stop  
23 by the office type of deal.

24                   SENATOR ROBERTSON: Okay. And who was it  
25 that stopped by your office?

1 MR. FAHY: Paul Zoubek came by and he said  
2 did you see these documents? And I said, no.

3 SENATOR ROBERTSON: Did it ever occur to you  
4 at that point, or subsequently, that that stop and your  
5 response would be used or cited as the basis of a good  
6 faith belief that the State Police had withheld  
7 documents?

8 MR. FAHY: I certainly didn't intend it for  
9 that purpose, sir.

10 SENATOR ROBERTSON: Would you think that that  
11 conclusion is a fair one to the State Police?

12 MR. FAHY: Not on what I provided to them. I  
13 don't know what else they looked at. I wasn't part of  
14 the review team. But not -- not based upon my limited  
15 comment, no.

16 SENATOR ROBERTSON: That's all I have, Mr.  
17 Chairman.

18 Oh, I have one quick question for Mr. Rover,  
19 I'm sorry.

20 SENATOR GORMLEY: You have a quick question?

21 SENATOR ROBERTSON: With respect to -- with  
22 respect to memos that you wrote, what were your  
23 instructions, if any, as to whom to copy or whom not to  
24 copy on those memos?

25 MR. ROVER: No instructions. I mean -- I

1 didn't have any instructions. I think most of the  
2 memos I wrote went to Alex. And there was no  
3 instruction to or not to copy anyone. Like on my  
4 options memo, I addressed it to Jack also, that was at  
5 Alex's request, rather than just send it to Alex.

6 SENATOR ROBERTSON: That's all I have.

7 SENATOR GORMLEY: Senator Kosco?

8 SENATOR KOSCO: Thank you, Mr. Chairman.

9 Mr. Fahy, just -- I get the impression  
10 through these hearings that the A.G.'s office was more  
11 concerned about representing the State and to prove  
12 that racial profile wasn't happening than to come to  
13 the conclusion that, yeah, it probably is happening and  
14 what are we going to do to eliminate it. Am I getting  
15 the wrong impression here?

16 MR. FAHY: Not totally. It's half and half,  
17 sir.

18 I say -- and I'm proud to say the fact that  
19 nowhere in no court did I, representing any  
20 administration, go in and say that racial profiling  
21 does not take place in the State. That's too broad a  
22 statement.

23 What we were saying was that it is not an  
24 official sanction practice. That to the best of our  
25 knowledge, actions being taken through the revision of

1 S.O.P.'s and training and if there is evidence that a  
2 particular trooper or group of troopers is presenting -  
3 - is conducting this activity that actions can be  
4 taken.

5 But the information that is presented in the  
6 Soto or Charles Ellis Jones cases or Kennedy didn't  
7 establish that in our mind. I know the -- and we had -  
8 - we had a win in Warren County. We had a win as to  
9 the issue of pattern and practice of the troop as a  
10 whole in Middlesex. And then we lost a case in  
11 Gloucester County.

12 So, that was -- that was something that had  
13 to be addressed further after Gloucester County.

14 SENATOR KOSCO: We more or less established  
15 that we did have some type of a pattern of racial  
16 profiling. And in your opinion, who do you think  
17 should have initiated the remedy for this? Where  
18 should this remedy have come from?

19 We've been asking questions here and we've  
20 been asking a specific question: Has anyone ever come  
21 to you and said here's a problem, this is what we  
22 should do about it? Who should have initiated that?

23 MR. FAHY: Well, we understood that it was an  
24 issue and a problem right back to the time we worked --

25 SENATOR KOSCO: Yeah, but who should have

1 initiated a fix?

2 MR. FAHY: I think people tried to initiate a  
3 fix. I think Colonel Dintino did. I think Bob DelTufo  
4 did. I think Carl Williams did.

5 And we can be critiqued as to how much was  
6 done, but efforts were made. And maybe they weren't  
7 good enough, but they're as much as I've seen anywhere  
8 else in the country. And if you want to criticize us,  
9 we did the best we could.

10 SENATOR KOSCO: In reviewing all the  
11 documents, most of the -- most of the documents do not  
12 CC the Attorney General. They CC the assistant, the CC  
13 other people, supervising deputies, but none of the  
14 documents specifically carbon copy the Attorney  
15 General's Office direct.

16 MR. FAHY: I don't -- there's a hundred --

17 SENATOR KOSCO: Is there -- is there a policy  
18 that everything goes through a channel before it gets  
19 to the Attorney General?

20 MR. FAHY: Well, generally there's a chain of  
21 command in the office. And if you walk through a boss,  
22 you send it through your boss, yes. Maybe not as  
23 strict as the military, but pretty much so.

24 Now, if you're working on a particular  
25 project, there's a memo or two that I sent directly to



1 Peter Verniero. That's because I got a call from his  
2 office that he wanted something. Like what was that  
3 information you had on the violator survey. So, he's  
4 my boss. I would go -- I would send that to him.

5 But generally, when I was in Legal Affairs, I  
6 would go to the Legal Affairs Director. If I'm in  
7 Criminal Justice, I work through the Criminal Justice  
8 Director.

9 It's not as strict as the military, but  
10 there's definitely a chain of command, sir.

11 SENATOR KOSCO: Thank you.

12 Mr. Rover, you -- you've outlined here sort  
13 of specifically that you were told to respond only,  
14 don't ask questions. You didn't make decisions. No  
15 freelancing. You talked directly to Mr. Waugh. Is  
16 this -- is this the -- these are the facts, right?  
17 That's exactly what you were told?

18 MR. ROVER: Yes, sir.

19 SENATOR KOSCO: I have the letter here that -  
20 - from April 22nd, 1997 from you to Mr. Waugh. And in  
21 this letter, you make a whole bunch of recommendations  
22 or suggestions and throughout the letter it's I  
23 suggest, I suggest, I suggest, I propose. And -- so,  
24 which is it?

25 MR. ROVER: I --

1 SENATOR KOSCO: Did you not have the ability  
2 or the authority to make suggestions to him or did you  
3 just respond only to the -- or did you ask to send down  
4 to the State? To the Federal Government?

5 MR. ROVER: The answer to that, Senator, is  
6 prior to writing that memo, I talked about that memo  
7 with Alex. That's the options memo.

8 So, he knew. And he asked me to prepare that  
9 memo.

10 SENATOR KOSCO: So, you did have the  
11 opportunity make suggestions and recommendations?

12 MR. ROVER: I did talk to Alex. But I wasn't  
13 to initiate anything independently. But I -- on that  
14 memo, for example, I spoke with Alex and he -- we  
15 talked about those two issues. And he asked me to  
16 prepare what he called an options memo. So, in that  
17 respect, yes.

18 SENATOR KOSCO: Thank you.

19 SENATOR GORMLEY: Okay. Senator Lynch?

20 SENATOR LYNCH: Mr. Fahy, Mr. Rover, have  
21 either of you discussed your testimony or view  
22 documents with others on the witness list or superiors  
23 in your respective spheres in the last three weeks?

24 MR. FAHY: Well, Debbie Stone works in my  
25 office. And we've both talked a little bit about

1 coming over here. I don't think I talked to George in  
2 the last three weeks.

3 SENATOR LYNCH: Anyone else?

4 MR. FAHY: Not of substance. I asked Paul  
5 Zoubek the other day how'd it go. And he said it was a  
6 long day for him like it was for me.

7 SENATOR LYNCH: But you didn't review  
8 documents with anyone?

9 MR. FAHY: Oh, I did, with my -- with the  
10 lawyers from the Department.

11 SENATOR LYNCH: Right, other than the  
12 assigned lawyers?

13 MR. FAHY: No, sir.

14 SENATOR LYNCH: And you, Mr. Rover?

15 MR. ROVER: The same --

16 SENATOR LYNCH: You had any phone calls in  
17 the last two weeks from current superiors or previous  
18 superiors or anything like that?

19 MR. ROVER: No. No.

20 SENATOR LYNCH: Okay. Mr. Fahy, why didn't  
21 you attend the Littles Committee meeting in October of  
22 '96, do you know?

23 MR. FAHY: I have no idea, sir. I -- I  
24 wouldn't try to attribute any bad motive on the part of  
25 the State Police for my not being there.

1 SENATOR LYNCH: Okay. So, you weren't  
2 noticed?

3 MR. FAHY: I might have been. I have a lot  
4 of course cases, too --

5 SENATOR LYNCH: Okay.

6 MR. FAHY: -- besides profiling. So, I could  
7 have been in court.

8 SENATOR LYNCH: And in the earlier meetings,  
9 the three meetings or so that you attended in the  
10 spring and early summer of 1996 of the Littles  
11 Committee, was there a discussion as to how information  
12 would flow and whether there'd be any memoranda about  
13 the meetings and whose responsibility it would be to go  
14 forward in respective spheres?

15 MR. FAHY: No. I knew that obviously people  
16 would go forward in the areas they worked in because  
17 the Colonel had assigned people from Internal Affairs  
18 and training and -- so, I -- it's probably logical who  
19 would go forward in certain areas.

20 But with regard to reporting, I never even  
21 knew Tommy Gilbert took down notes and minutes.

22 SENATOR LYNCH: Did you make any notes?

23 MR. FAHY: I may have made a legal pad a note  
24 or two, but --

25 SENATOR LYNCH: But you didn't keep a file or

1 folder --

2 MR. FAHY: No.

3 SENATOR LYNCH: -- regarding your  
4 participation in the Littles Committee meetings?

5 MR. FAHY: I may have. I think -- I think my  
6 attorney said that you found out about the agendas  
7 because I had them in my folder.

8 SENATOR LYNCH: But you didn't keep your own  
9 personal notes?

10 MR. FAHY: And I didn't keep them the way  
11 that I do a lot of other folders, like a litigation  
12 folder. It was much more informal, just threw in  
13 whatever I got.

14 SENATOR LYNCH: You made a statement earlier  
15 that sometime during the course of 1996 that there was  
16 a -- you were somewhat happy because there was an  
17 increase in the percentage of reporting on call logs of  
18 race of the driver and you also indicated there was an  
19 increase on the patrol charts.

20 MR. FAHY: That's -- I viewed that as a very  
21 good thing.

22 SENATOR LYNCH: But isn't it a fact that  
23 there was never any indication the patrol charts of  
24 race until the latter part of 1998?

25 MR. FAHY: Well, I may get a little -- I may

1 be a little confused about the S.O.P. F-3 and the  
2 Colonel's directive. I think there was internal debate  
3 in the State Police about what records it would change.

4 I know over the course of the years, I had  
5 suggested maybe putting race on tickets. I was  
6 frustrated and the Court was frustrated that we  
7 couldn't get this information. And I think in the  
8 beginning, they decided that the trooper would call it  
9 in and the dispatcher would mark it down. And if there  
10 was a change later on, maybe that did happen. But I  
11 wasn't intimately involved in making those decisions or  
12 talking to them about it.

13 SENATOR LYNCH: But insofar as having race  
14 identified on the patrol charts itself filled out by  
15 the stopping trooper, you don't -- you're not familiar  
16 with when that was finally put on the charts?

17 MR. FAHY: By '98 -- if you're representing  
18 it happened in '98, that was so far out of giving legal  
19 advice to the State Police on any issue --

20 SENATOR LYNCH: But you indicated earlier in  
21 your testimony that you were happy that that was  
22 starting to happen in large percentages in 1996.

23 MR. FAHY: Yeah, but I may have  
24 misunderstood. Where it was coming from, whether it  
25 was coming from radio charts or patrol logs, I,

1 frankly, didn't care as long as we had it somewhere.

2 SENATOR LYNCH: When it comes to alerting you  
3 to a problem involving high percentages of minorities  
4 and consent searches, you don't need a traffic survey  
5 or a violator's survey in order to get a warning that  
6 there may -- that there's an alert of a problem going  
7 on out there, do you?

8 MR. FAHY: No, not to get -- not to get an  
9 alert. To resolve the issue --

10 SENATOR LYNCH: I'll get to that.

11 MR. FAHY: -- you do -- under the case law,  
12 you do, sir.

13 SENATOR LYNCH: I'll get to that. In terms  
14 of determining that there is obviously some problem out  
15 there, if you're getting -- if you're getting 90  
16 percent numbers back on minority consent to search, you  
17 know you've got a problem.

18 MR. FAHY: That may raise a flag, sir.

19 SENATOR LYNCH: And 90 percent, as well?

20 MR. FAHY: Yeah, I don't -- I don't know  
21 where you would draw the line or where a court would  
22 but --

23 SENATOR LYNCH: Right.

24 MR. FAHY: -- the higher the number,  
25 obviously --

1 SENATOR LYNCH: You're talking now about how  
2 you would litigate it.

3 MR. FAHY: Not how I would litigate it.

4 SENATOR LYNCH: Well, if you were going to do  
5 a scientific analysis of consent to search percentages  
6 of minorities versus non-minorities and so forth, you  
7 would be actually doing that to somehow explain away or  
8 attempt to explain away why you're getting 80 percent  
9 and 90 percent minority consent to search, wouldn't  
10 you?

11 MR. FAHY: Not necessarily, sir. I mean the  
12 issue of where the numbers should be --

13 SENATOR LYNCH: What could you --

14 MR. FAHY: -- is very complex.

15 SENATOR LYNCH: What could you find on the  
16 other side of that equation to be helpful?

17 MR. FAHY: Well, the other side of that  
18 equation, sir, is for a long time. And I explained  
19 this to Mr. Chertoff, the State Police have been  
20 publishing reports, the State Police Annual Reports  
21 every year as long as I know, the Uniform Crime  
22 Reports. And the arrest rates are like -- I think --  
23 the Colonel may be better to answer this, 46, 47  
24 percent. That's reported in the newspapers.

25 To me, as a person, is that troubling?

1           Raises a flag? Yeah, a little -- in my -- if I was a  
2           minority, I would probably would even be more sensitive  
3           to it. But what's been done about it?  
4           SENATOR LYNCH: But you would be --  
5           MR. FAHY: And is it the right number? I  
6           have no idea.  
7           SENATOR LYNCH: Aren't you more concerned --  
8           isn't the most dramatic action taken out there a  
9           search?  
10          MR. FAHY: No. I think the most dramatic  
11          action is an arrest or somebody getting shot.  
12          SENATOR LYNCH: In terms of stopping versus  
13          searching, which is more significant?  
14          MR. FAHY: Oh, obviously search.  
15          SENATOR LYNCH: Okay.  
16          MR. FAHY: Searching is much more intrusive.  
17          SENATOR LYNCH: So, if you're yielding raw  
18          data high percentages of minorities and consent to  
19          search, that's significant, isn't it?  
20          MR. FAHY: Yeah, I would think so.  
21          SENATOR LYNCH: In the -- and you were in the  
22          December 24, '96 meeting and the May 20 whatever it was  
23          with Peter Verniero that -- in which there was some  
24          discussion about the Department of Justice inquiry?  
25          MR. FAHY: Yes, sir.

1           SENATOR LYNCH: And in both cases, you  
2           indicated that the then Attorney General was concerned  
3           about this being described as an investigation,  
4           correct?  
5           MR. FAHY: He didn't want to call them  
6           investigations, sir.  
7           SENATOR LYNCH: And it was suggested earlier  
8           on --  
9           MR. FAHY: And he didn't want to sign a  
10          consent decree either.  
11          SENATOR LYNCH: And it was suggested earlier  
12          that he was faced in May of 1997 with not only the  
13          ramifications of what was going on in the Soto appeal,  
14          but also the Justice Department inquiry and that -- so,  
15          there were significant issues, I think, was the term,  
16          that were on the table.  
17          MR. FAHY: I don't understand the question.  
18          If you --  
19          SENATOR LYNCH: Let me ask you this. Besides  
20          the fact that you had this Department of Justice  
21          inquiry going on in May of 1997, which whether you call  
22          it an investigation or not is irrelevant to me --  
23          MR. FAHY: Right, it was going on.  
24          SENATOR LYNCH: And you have the Soto appeal,  
25          the interim appeal coming to a -- coming to a head --

1 MR. FAHY: Yeah, the brief was filed in the  
2 spring, I think, of '97.

3 SENATOR LYNCH: In the Attorney General's  
4 quest to have this not described as an investigation,  
5 did you sense at all that this had something to do, as  
6 well, with the fact that you had a gubernatorial  
7 election going on?

8 MR. FAHY: He didn't use those words, sir.  
9 He didn't say anything like that to me. But, you know,  
10 you'll have to ask him.

11 SENATOR LYNCH: And you, again, made no notes  
12 of your participation in the December 24, '96 meeting  
13 with the Attorney General as well as the May meeting  
14 with the Attorney General -- May, '97?

15 MR. FAHY: I don't think my practice, sir, is  
16 to bring a legal note pad. But if -- and maybe I can  
17 jot down a word or two. But I don't have a direct  
18 assignment, then that note pad may just have had the  
19 page ripped off and thrown away.

20 Obviously if I have a direct assignment that  
21 I need the notes for later, I'll save it until the  
22 assignment's done.

23 SENATOR LYNCH: Mr. Rover, in December, '96,  
24 January, '97, you're approached by Alex Waugh to take  
25 on this responsibility of acting as a go between in

1 retrieving information for the Department of Justice?

2 MR. ROVER: Yes.

3 SENATOR LYNCH: And at that time, you were at  
4 the ABC?

5 MR. ROVER: Yes, I was the DAG Three in the -  
6 -

7 SENATOR LYNCH: Did you find that unusual  
8 that they would be calling upon you in your role at the  
9 ABC to become the, in effect, conduit and intermediary  
10 between State Police and the Department of Law or  
11 Criminal Justice and the U.S. Department of Justice?

12 MR. ROVER: Yeah, I found it unusual. At the  
13 time, I was flattered. And now I'm not.

14 SENATOR LYNCH: In retrospect --

15 (Laughter)

16 SENATOR LYNCH: In retrospect, do you have a  
17 clear understanding of why you would be put in that  
18 position today?

19 MR. ROVER: Now? No. I don't know if it was  
20 Alex's choice. I had worked with him before --

21 SENATOR LYNCH: Well, didn't it become clear  
22 to you somewhere along the line that they wanted to  
23 have someone responsible for the interaction with the  
24 Department of Justice and the State Police and the  
25 retrieval of documents outside of the high echelon of

1 the Attorney General's Office, as well as outside of  
2 Criminal Justice?

3 MR. ROVER: I can't answer that. There was  
4 nothing said to me that that was the reason. I don't  
5 know if it was -- if that was a reason or if it was  
6 because Alex wanted to rely on it. I don't know, sir.

7 I mean I understand your question and you're  
8 scratching your head. I understand that.

9 MR. FAHY: Senator, an important event  
10 happened during that time period. Legal Affairs, which  
11 was the staff that had been reviewing this under Peter  
12 Perretti, Bob DelTufo, Debbie Poritz had been  
13 disbanded.

14 So, you understand, there weren't -- the  
15 staff wasn't on the floor anymore that had been  
16 handling this issue.

17 Where they would look otherwise, the Division  
18 of Law --

19 SENATOR LYNCH: First of all, Mr. Fahy, I  
20 didn't ask you the question

21 But secondly, now that you're on it, aren't  
22 there scores of people serving in the Division of  
23 Criminal Justice --

24 MR. FAHY: Yes, sir.

25 SENATOR LYNCH: -- who could have been

1 assigned this task?

2 MR. FAHY: Yes, sir. I'm just saying the  
3 staff that had been working on it --

4 SENATOR LYNCH: You answered the question.

5 MR. FAHY: -- was disbanded.

6 SENATOR LYNCH: How often, Mr. Rover, did you  
7 start to communicate with Tommy Gilbert from January  
8 through December of 1997?

9 MR. ROVER: It's hard for me to answer. I  
10 would imagine in January, February, a little bit more  
11 frequently. And then I think it got infrequently. And  
12 then it became a little bit more frequently towards --

13 SENATOR LYNCH: And more frequently --

14 MR. ROVER: -- somewhere --

15 SENATOR LYNCH: -- might be -- mean he was  
16 contacting you two or three times a week?

17 MR. ROVER: Maybe not that often, but at  
18 least once a week.

19 SENATOR LYNCH: Um-hum. And that was usually  
20 information exchange?

21 MR. ROVER: In most cases, yes.

22 SENATOR LYNCH: And he would alert you to  
23 what he was doing?

24 MR. ROVER: A lot of times it was me  
25 contacting him saying maybe I got a phone call that,

1 hey, can you speed-up patrol charts for this particular  
2 day or something.

3 And there were times he called me. I -- it's  
4 hard for me to recall.

5 SENATOR LYNCH: For instance, when the 30  
6 random dates were selected and finally agreed upon  
7 after some debate, did Tommy Gilbert give you any  
8 indication at that moment in time or that point in time  
9 how long it would take him to retrieve this information  
10 for those 30 random dates?

11 MR. ROVER: I don't think he -- I don't think  
12 he had an idea initially.

13 SENATOR LYNCH: And was he communicating with  
14 you then on a weekly basis as to what he was retrieving  
15 with regard to those 30 random dates?

16 MR. ROVER: I don't recall. I think there  
17 may have been a time period early on where I didn't  
18 hear from him as often, maybe the first month or two  
19 while he was putting stuff together. And then maybe  
20 hear from him more towards the end.

21 SENATOR LYNCH: And when did Alex Waugh  
22 leave?

23 MR. ROVER: I think December -- December of  
24 '97 or January of '98.

25 SENATOR LYNCH: And from that moment forward,

1 did you -- you began reporting to -- through the same  
2 chain of command to Hesse?

3 MR. ROVER: Yes.

4 SENATOR LYNCH: How often did you talk to  
5 Hesse about the ongoing with the Department of Justice?

6 MR. ROVER: I can't recall talking to him  
7 until December of '98.

8 SENATOR LYNCH: Until December of '98? From  
9 January -- did he go there in January of '98?

10 MR. ROVER: I don't know -- whenever he came  
11 there. I can't remember having much contact with  
12 anybody through '98.

13 SENATOR LYNCH: I thought that you felt it  
14 your responsibility originally to communicate pretty  
15 much everything you found out to Alex.

16 MR. ROVER: Yes, I did. But there was --

17 SENATOR LYNCH: You didn't feel the same  
18 responsibility once Hesse got there?

19 MR. ROVER: No, that's not true. There were  
20 really no questions emanating out of the Department of  
21 Justice. I think the -- I got the impression they were  
22 waiting -- it seemed from the questions I was getting  
23 from Justice that they were waiting for the appeal.

24 SENATOR LYNCH: Well, actually you were --  
25 you -- previous to Alex leaving, you had been taking



1 his lead as to how to send the information into the  
2 Department of Justice, did you not?

3 MR. ROVER: (No verbal response.)

4 SENATOR LYNCH: And you continued after that  
5 to have a flow of information from you to the  
6 Department of Justice in the early months of 1998, did  
7 you not?

8 MR. ROVER: Yes, I did.

9 SENATOR LYNCH: And did you get Hesse's  
10 permission to do that?

11 MR. ROVER: I may have had a discussion or  
12 two with Dave Hesse. But what I'm saying is a lot of  
13 the issues regarding what were the random dates,  
14 something like the option memo, they weren't coming up  
15 anymore.

16 SENATOR LYNCH: But information was flowing  
17 from you to the Department of Justice.

18 MR. ROVER: Some information was flowing.

19 SENATOR LYNCH: Weren't you memoing Hesse on  
20 that?

21 MR. ROVER: No, I wasn't.

22 SENATOR LYNCH: Nothing?

23 MR. ROVER: No, I wasn't.

24 SENATOR LYNCH: And no oral communication  
25 either?

1 MR. ROVER: I can't -- I can't recall any  
2 oral communication.

3 SENATOR LYNCH: So, now you're freelancing?

4 MR. ROVER: No, sir, that's not correct.

5 SENATOR LYNCH: Well, who are you reporting  
6 to?

7 MR. ROVER: I'm reporting to Dave Hesse. But  
8 there were no issues that came up.

9 SENATOR LYNCH: Your -- you -- you have a  
10 constant flow of documents to the Department of Justice  
11 in the early part of 1998, that's not an issue?

12 MR. ROVER: In early 1998, I may have spoken  
13 to Dave Hesse and let him know that there are some  
14 additional documents going out and there may be in the  
15 couple of times during 1998, but not much.

16 SENATOR LYNCH: Don't you think he'd be  
17 interested in seeing what those documents were and are?

18 MR. ROVER: (No verbal response.)

19 SENATOR LYNCH: For instance, don't you think  
20 he'd like to see all the results of the -- of the  
21 random audit and the stop data and other issues that  
22 you were forwarding along to the Department of Justice?

23 MR. ROVER: I wasn't forwarding that  
24 information to the Department of Justice.

25 SENATOR LYNCH: My track shows that in August

1 of '98, you informed the Department of Justice that the  
2 State Police vehicles should be outfitted with video  
3 cameras by 1/1/99.

4 MR. ROVER: Correct.

5 SENATOR LYNCH: Where'd you get that  
6 information from?

7 MR. ROVER: I would imagine Sergeant Gilbert.

8 SENATOR LYNCH: Did you think that was  
9 significant enough to report to Hesse?

10 MR. ROVER: I may have said something to Dave  
11 Hesse then, I don't recall. I --

12 SENATOR LYNCH: But nothing in your file and  
13 no memos?

14 MR. ROVER: No, sir.

15 SENATOR LYNCH: And you sent the Department  
16 of Justice on December 8th, '98 interoffice  
17 communication on patrol charts, same race and sex?

18 MR. ROVER: December?

19 SENATOR LYNCH: December 8th, 1998?

20 MR. ROVER: I may have spoken to Dave Hesse  
21 about some of those matters. I don't recall.

22 SENATOR LYNCH: Well, first, did you recall  
23 sending that in December?

24 MR. ROVER: If you have a document in front  
25 of you, Senator, then, yes.

1 SENATOR LYNCH: But you have no memo to  
2 Hesse, nor do you have any current recollection of  
3 talking to Hesse about it?

4 MR. ROVER: No, I don't.

5 SENATOR LYNCH: So, from January of 1998 into  
6 the second week in December, 1998, you have no  
7 recordation or no recall of any interaction with Hesse,  
8 who you were reporting to?

9 MR. ROVER: I don't think there were any  
10 memos going to Dave Hesse.

11 SENATOR LYNCH: Was there any interaction  
12 between you and Hesse regarding the amount -- items  
13 that you were forwarding along to the Department of  
14 Justice and with the pace of retrieval of information,  
15 et cetera?

16 MR. ROVER: I believe there was some  
17 discussions. I don't think there was anything  
18 significant.

19 SENATOR LYNCH: Did anyone superior to you  
20 ever suggest to you from the time you had engaged here  
21 in the early part of January of 1997 that they weren't  
22 interested in written documentation of material?

23 MR. ROVER: That they weren't interested in?

24 SENATOR LYNCH: Written documentation of  
25 material from you.

1 MR. ROVER: No. In other words, don't send  
2 me something? I just want to make sure I --

3 SENATOR LYNCH: Without saying that in so  
4 many words.

5 MR. ROVER: Okay. No. No one ever said in  
6 any kind of words, you know, make sure you don't copy  
7 me on that or --

8 SENATOR LYNCH: So, what documentation of the  
9 issues that Tommy Gilbert was retrieving for you, for  
10 instance, the -- the 30-day random audit, what -- what  
11 documentation did you forward to your superior on that  
12 in 1997 or 1998?

13 MR. ROVER: In talking with Alex, I would  
14 just tell him documents were going out with respect to  
15 the sample dates. But I did not have -- I didn't have  
16 a checkoff sheet for him to know --

17 SENATOR LYNCH: Would you tell him what was  
18 in those documents?

19 MR. ROVER: They were patrol charts. I think  
20 he knew the categories of documents.

21 SENATOR LYNCH: Would you tell him the  
22 significance of them in terms of percentage of  
23 minorities and so forth?

24 MR. ROVER: I did not do a statistical  
25 breakdown.

1 SENATOR LYNCH: And did he ask for it?

2 MR. ROVER: No, he did not.

3 SENATOR LYNCH: And did he ask for you to  
4 send them the memos?

5 MR. ROVER: Say that again, sir?

6 SENATOR LYNCH: Did he ask for you to send  
7 him copies of the memos you were sending down or the  
8 correspondence you were sending down to the Department  
9 of Justice?

10 MR. ROVER: I think early on, he was copied  
11 on the initial ones. And then I believe he didn't want  
12 to be copied anymore.

13 SENATOR LYNCH: You remember that  
14 particularly that he made it clear to you that he  
15 didn't want to be copied anymore?

16 MR. ROVER: I don't -- I didn't put any  
17 significance -- I think he saw them as a -- as a  
18 transmittal memo.

19 SENATOR LYNCH: Um-hum.

20 MR. ROVER: I did -- let's put it this way, I  
21 didn't just stop copying him.

22 SENATOR LYNCH: How about an -- would he want  
23 an information flow that he would have a copy of as to  
24 what you're actually providing the Department of  
25 Justice? Since you had been put into this position as

1 an intermediary?

2 MR. ROVER: He didn't ask for that, sir.

3 SENATOR LYNCH: Thank you.

4 SENATOR GORMLEY: Senator Matheussen?

5 SENATOR MATHEUSSEN: Mr. Rover, I know it's  
6 been a long afternoon, I won't be too long.

7 But I have -- I'd like to take you back, if I  
8 could, to February 26th, that was the day of your  
9 deposition, your questioning.

10 MR. ROVER: Oh, okay.

11 SENATOR MATHEUSSEN: Your questioning by this  
12 Committee.

13 MR. ROVER: Okay.

14 SENATOR MATHEUSSEN: By Mr. Chertoff. Okay.  
15 During that period of time -- actually Senator Gormley  
16 took over in one section of the questioning, and I'll  
17 just readd it -- read it briefly for you and then  
18 perhaps I'd like you to comment on it. It says,  
19 Senator Gormley now. "Okay. And you saw your role as  
20 focusing with him on the information he was providing  
21 as information interfaced with the Justice Department's  
22 review."

23 Now, he's talking about Detective Gilbert.

24 Your answer, "Yes, sir."

25 Senator Gormley, "Okay. During this period

1 of time, let's say January 1st, the first few months of  
2 1997, as a result of that relationship with Sergeant  
3 Gilbert, you were having conversations with Sergeant  
4 Gilbert."

5 Your answer, "That's correct."

6 Senator Gormley, "Okay. During that period  
7 of time, Sergeant Gilbert relayed to you, based upon  
8 the reviews that he had done, that he had concern  
9 regarding the vulnerability of New Jersey, once the  
10 information related to New Jersey, in terms of the  
11 reviews that he's done was compared to Maryland's. Did  
12 he express concern saying, given the statistics that I  
13 have and given the statistics of what caused the action  
14 in Maryland, we have a problem?"

15 Your answer, "No. I will tell you --"

16 Senator Gormley, "He never said that?"

17 The witness, you, "What Tom Gilbert said to  
18 me was that at some point that our consent numbers are  
19 in the ballpark with Maryland and there is an  
20 appearance there, end quote. Now, maybe I'm just saying  
21 that, what you said differently. But there's an  
22 appearance there that I want you to make sure you tell  
23 Alex, Alex Waugh."

24 Senator Gormley, "Okay. Well, now because I  
25 don't want to put words in your mouth, it sounded like

1 a problem to him, didn't it?"

2 Your answer, "No."

3 Senator Gormley, "It didn't sound like a  
4 problem?"

5 Your answer, "I didn't perceive it that way,  
6 sir. I did not. Well, hold it, when I say a problem  
7 here we go, maybe I'm not disagreeing with you. The  
8 appearance that our numbers were in the same ballpark  
9 as Maryland, that appearance concerned him."

10 Senator Gormley, "Let me ask the question.  
11 Do you think it was an appearance or fact? I mean I'm  
12 curious because he's gone, done a survey, and put raw  
13 data together. There is a question of appearance. But  
14 when there's an appearance, that's when you go out and  
15 you garner facts. Didn't he go out and garner facts  
16 and present them to you?"

17 Your answer, "No, he did not. He told me on  
18 two occasions, the first time he said, George, here's  
19 the Maryland case, our numbers are not in the same  
20 ballpark -- are in the same ballpark. I said -- he  
21 goes, could you make sure you let Alex Waugh know. I  
22 said, Tom, I'll do that. This is the first, I'm like,  
23 hearing about this. I don't even --"

24 Senator Gormley, "Did he go over the numbers  
25 with you?"

1 Your answer, "No, he did not then."

2 Senator Gormley, "Can I ask a question? Did  
3 he ask for the numbers -- did you ask for the numbers?"

4 Your answer, "No, I did not."

5 Senator Gormley asked you, and I ask you  
6 again, why didn't you ask him for the numbers?

7 MR. ROVER: I didn't ask for the numbers  
8 because -- and I think, Mr. Chertoff -- we touched on  
9 this a bit before. Early on, particularly in that  
10 time, I think I was only working on this about a month.  
11 And my focus was on responding to a particular request  
12 from the Department of Justice.

13 And I think at that time, it was for tickets  
14 and warnings.

15 When Tom gave me this information, I passed  
16 it along to Alex, but I didn't independently say, you  
17 know, give me information. It didn't register with me.  
18 And I think it -- it goes to the whole idea of  
19 freelancing meaning, George, report to me. And I was  
20 never asked to go back and say, Sergeant Gilbert, you  
21 know, give me those numbers.

22 SENATOR MATHEUSSEN: You went through the  
23 same questioning again and there was a second period of  
24 time when he came to you with some extra numbers. And  
25 at that time, he also asked you about a week later, he

1 came to you and said there's some more information I  
2 have. And, by the way, did you tell Alex. And you  
3 responded, yes, I did.

4 At that time, Senator Gormley asked you  
5 again, "Did you ask him for the numbers? Did you ask  
6 him for the data?"

7 And you said, "No, I did not."

8 He also said, "Well, did Alex ask you to ask  
9 him for the numbers?"

10 And you said, "No, he did not."

11 Why -- I -- I can't imagine you can answer  
12 for Alex, I'll ask him this question when he gets here,  
13 but why didn't either one of you ask him for this data?

14 MR. ROVER: I can't answer for Alex and,  
15 again, for me, you know, looking back, I don't know.  
16 But it didn't register with me at that time. My focus  
17 was responding to particular requests from D.O.J. And  
18 it wasn't the big picture --

19 SENATOR MATHEUSSEN: Was it --

20 MR. ROVER: -- the big picture for me.

21 SENATOR MATHEUSSEN: Was it the big picture?

22 MR. ROVER: No, it wasn't.

23 SENATOR MATHEUSSEN: It was not?

24 MR. ROVER: It --

25 SENATOR MATHEUSSEN: Senator --

1 MR. ROVER: It is, but it wasn't for me.

2 SENATOR MATHEUSSEN: Senator Gormley asked  
3 you if you recognized it to be a problem. And you and  
4 he discussed the definition of a problem.

5 Let me ask it in a different way. Did you  
6 think what Sergeant Gilbert was giving to you, in terms  
7 of verbal information, the statistics that he had to  
8 back it up with, did you think that was significant  
9 information? If not a problem, did you think it was  
10 significant? That is consent searches and the numbers  
11 on them?

12 MR. ROVER: I don't remember statistics  
13 because the phrase he used was in the ballpark.

14 SENATOR MATHEUSSEN: Okay.

15 MR. ROVER: The words that I did use, though,  
16 were appearance and concern. And I think the word  
17 concern might fall into the category that you're  
18 talking about with significant. That the State Police  
19 was concerned.

20 SENATOR MATHEUSSEN: But were you concerned?

21 MR. ROVER: I think -- personally, yes, I  
22 think I was concerned. The numbers -- first -- from a  
23 lawyer's standpoint, you have one case where a result  
24 comes out in one way, and you have another case where  
25 the facts are leading the same way and you can perceive

1 that the case will come out the same way in the second  
2 jurisdiction. So, yes.

3 And that would be why I would have made sure  
4 that I told Alex Waugh on two occasions.

5 SENATOR MATHEUSSEN: Let's talk on that level  
6 for a moment, if we could.

7 Aside from the social implications of racial  
8 profiling, the fact of the matter is, thinking like an  
9 attorney now, the fact of the matter is we had a very  
10 significant decision. As a matter of fact, it was so  
11 significant it was the first time it actually had ever  
12 occurred.

13 A judge found in favor of the defense when it  
14 came to the issue of racial profiling, did he not, in  
15 the Soto case?

16 MR. ROVER: Yes.

17 SENATOR MATHEUSSEN: Okay. Wouldn't that, to  
18 some degree, put the State's cases in other similar  
19 situations in jeopardy?

20 MR. ROVER: (No verbal response.)

21 SENATOR MATHEUSSEN: The decision that was  
22 rendered by Judge Francis in Gloucester County,  
23 couldn't that have put other cases of similar nature in  
24 jeopardy? As an attorney now.

25 MR. ROVER: I guess.

1 SENATOR MATHEUSSEN: Okay.

2 MR. ROVER: Yes. I think that's a fair  
3 statement.

4 SENATOR MATHEUSSEN: Did that pause -- did  
5 that give you some pause or some concern as an attorney  
6 that this could give us some problems?

7 MR. ROVER: My answer to that is that at time  
8 it didn't. And maybe part of it was I probably hadn't  
9 even looked at the Soto -- didn't know much about the  
10 Soto case at that point in time. I mean I'm not making  
11 an excuse. It just -- it didn't register with me.

12 Also I, you know, never practiced any  
13 criminal law. So -- but I understand, it's a fair  
14 point.

15 SENATOR MATHEUSSEN: Okay. Did you perceive  
16 your relationship with Sergeant Gilbert as being one of  
17 you're his supervisor in some respects?

18 MR. ROVER: No.

19 SENATOR MATHEUSSEN: Did you feel as though  
20 your relationship with Sergeant Gilbert gave you the  
21 opportunity to ask him to do certain things?

22 MR. ROVER: I never got --

23 SENATOR MATHEUSSEN: And he would have  
24 complied with.

25 MR. ROVER: I never got the sense that if I

1 asked Sergeant Gilbert to do something he wouldn't do  
2 it.

3 SENATOR MATHEUSSEN: Did you get a sense that  
4 Sergeant Gilbert had some information that he shared  
5 with you verbally but there was certainly something to  
6 back that up with?

7 MR. ROVER: It didn't register then, but you  
8 -- it would be logical.

9 SENATOR MATHEUSSEN: It would be logical,  
10 okay. Did you think that Sergeant Gilbert should be in  
11 charge of an issue so significant that the State of New  
12 Jersey had just lost a case in Gloucester County on --  
13 for the first time a judge recognizing racial profiling  
14 and throwing out our evidence. Did you think that was  
15 an issue that Sergeant Gilbert should be alone, left  
16 unattended, left unsupervised to decide what he should  
17 do with that documentation? Or did you think you  
18 should enter into it as a conduit between the Attorney  
19 General's Office and State Police?

20 MR. ROVER: I guess I have a couple thoughts.  
21 One is if it went up his chain of command, that would  
22 be one area.

23 And second of all, I don't thin it should  
24 have fallen on Tom Gilbert.

25 SENATOR MATHEUSSEN: Okay. Did you have

1 discussions between yourself and your supervisor, Mr.  
2 Waugh, about these conversations with Tom Gilbert --  
3 Sergeant Gilbert?

4 MR. ROVER: Yes, I -- I had two  
5 conversations. And then I had discussions about the  
6 options memo.

7 SENATOR MATHEUSSEN: And during those  
8 conversations, he never once asked you to go back to  
9 Gilbert and get that documentation?

10 MR. ROVER: No, because if he did, I would  
11 have.

12 SENATOR MATHEUSSEN: You would have. Did you  
13 have any discussions in that same respect with Paul  
14 Zoubek about what Sergeant Gilbert had told you?

15 MR. ROVER: Could you -- I want to make sure  
16 I understand the question.

17 SENATOR MATHEUSSEN: In January, beginning of  
18 1997, did you have a similar discussion with Paul  
19 Zoubek, the same kind of discussion that you had with -  
20 -

21 MR. ROVER: I don't even think I -- I don't -  
22 - I don't even know if I knew him then.

23 SENATOR MATHEUSSEN: Okay, fine. And  
24 Attorney General Verniero?

25 MR. ROVER: Oh, on.



1 SENATOR MATHEUSSEN: Definitely, no. Okay.  
2 Let me go to a report that was issued -- and  
3 I think Mr. Chertoff read for you the opening --  
4 opening phrases from what was the draft of the interim  
5 report to the Governor on racial profiling. It was  
6 prepared by General Verniero and First Assistant  
7 Attorney General Paul Zoubek.

8 And the opening comments that apparently were  
9 somewhat left out, but were left in the context of the  
10 report, I'll read them again. "We feel constrained to  
11 comment that some of the statistical information we  
12 rely upon, including particularly revealing data  
13 concerning consent searches were only recently  
14 disclosed by the State Police to the Office of the  
15 Attorney General."

16 "Certain internal studies and audits prepared  
17 at the request of the superintendent were not made  
18 known to the Deputy Attorney's General who were  
19 representing the State in the Soto litigation. The  
20 circumstances has seriously compromised the State's  
21 litigation posture and also has needlessly delayed  
22 initiating appropriate remedies and reforms."

23 Are you aware of that statement?

24 MR. ROVER: I see it in front of me, yes.

25 SENATOR MATHEUSSEN: Were you aware of it

1 when it was put out in the interim report in April of  
2 1999?

3 MR. ROVER: No.

4 SENATOR MATHEUSSEN: Do you think that's a  
5 fair statement to make in 1999 after what you knew in  
6 1997?

7 MR. ROVER: This was a draft? I mean I just  
8 want to be careful.

9 SENATOR MATHEUSSEN: It was a draft. But  
10 later on, that same language or language similar to it  
11 were put in the final document. And there's also a  
12 subsequent hearing on it.

13 MR. ROVER: I think maybe I can answer your  
14 question.

15 SENATOR MATHEUSSEN: Please do.

16 MR. ROVER: Given that there was a May 20  
17 meeting, in particular, in 1997, I think you could say  
18 that there was a discussion about statistical  
19 information and consent to searches.

20 SENATOR MATHEUSSEN: Do you think it would be  
21 fair if the State Police felt as though at that point  
22 in time that, hey, look, we had given you the  
23 information, you, the Attorney General's Office, not  
24 necessarily you, in particular, but you the Attorney  
25 General's Office. And now all of the sudden a report's

1 coming out saying we didn't hand it over? Do you think  
2 that's a reason for them to be concerned or to be  
3 perhaps upset?

4 MR. ROVER: I would think that they might be  
5 upset, yes.

6 SENATOR MATHEUSSEN: At a public hearing held  
7 on April 26th by this Committee, April 26th, 1999 under  
8 questioning it was asked -- this question was actually  
9 posed by me, I'm now questioning First Assistant  
10 Attorney General Zoubek. I say, "But I'll go back to  
11 the beginning questions presented by the Chairman,  
12 Senator Gormley, which disturbed me when I read this  
13 report," meaning the interim report, the final version,  
14 "on Page 23 indicating that you had started compiling  
15 information in mid-March as a review team, but noticed  
16 that the information that you had been receiving, and I  
17 quote," quote now, "Some of which had not been  
18 previously been provided to the Office of the Attorney  
19 General, the Division of Criminal Justice," end quote.  
20 And I asked him then, "Who did not provide the  
21 information either to the A.G.'s Office or to the  
22 Division of Criminal Justice?"

23 I really never got an answer as to who it  
24 was. Eventually it said that the superintendent did  
25 not.

1 Again, knowing what you knew in 1997, do you  
2 think that's a fair evaluation of the relationship  
3 between the Attorney General's Office and State Police  
4 with regard to the information concerning consent  
5 searches that Sergeant Gilbert had been working on.

6 MR. ROVER: You ask hard questions.

7 SENATOR MATHEUSSEN: These are hard issues.

8 MR. ROVER: You have to give me a little  
9 leeway. In -- given the fact that there was a May 20  
10 meeting in a certain -- to a certain extent, I think  
11 you could say that that was unfair. But I don't know  
12 if there was other information that, in fact, didn't  
13 come over here until March. So, I --

14 SENATOR MATHEUSSEN: Okay. Now, you said  
15 before in your testimony that there was a universe of  
16 information, you're not sure -- either it was you or  
17 Mr. Fahy who said that, but there was a universe of  
18 information, you're not exactly sure. But I'm only  
19 concentrating now on consent searches and the data that  
20 was compiled by Sergeant Gilbert.

21 MR. ROVER: Okay, I don't understand the  
22 question. Help me.

23 SENATOR MATHEUSSEN: I just -- there is no  
24 question.

25 MR. ROVER: Okay.

1           SENATOR MATHEUSSEN: The -- finally, you had  
2 said before -- I think it was either Senator Robertson  
3 or Senator Lynch who asked you, and you commented that  
4 you said that New Jersey was willing to accept the  
5 Department of Justice's pace when it came to providing  
6 them information. Why were we willing to accept the  
7 pace of the Department of Justice? Why weren't -- why  
8 not set our own pace? Why weren't we looking into  
9 profiling and trying to find out answers for ourselves?  
10 Why weren't we looking for an outside agency to do that  
11 for us?

12           MR. ROVER: I can only say that they were the  
13 instructions given to me.

14           SENATOR MATHEUSSEN: By whom?

15           MR. ROVER: Alex Waugh.

16           SENATOR MATHEUSSEN: Did you ask him why?

17           MR. ROVER: No, I did not.

18           SENATOR MATHEUSSEN: Did you know if he made  
19 those instructions himself or did he get those  
20 instructions from someone else?

21           MR. ROVER: I don't know, sir.

22           SENATOR MATHEUSSEN: Just as an aside, not  
23 now sitting where you are now, but do you think if we  
24 really wanted to solve the problem of profiling that we  
25 would have gone by the pace of the Department of

1 Justice or we would have set our own pace?

2           MR. ROVER: Do I have to answer that?

3           SENATOR MATHEUSSEN: I think you did. Thank  
4 you. Thank you.

5           MR. FURNARI: I'll just take it. Thank you.

6           Mr. Rover, before you were given this  
7 assignment, did I understand you correctly that you had  
8 never ever been involved in a criminal case?

9           MR. ROVER: Let me make sure it's accurate,  
10 but I'm almost certain -- I certainly have never, to my  
11 recollection, tried a criminal case. I never worked in  
12 a -- did a trial in the Division of Criminal Justice.

13           In Legal Affairs, I didn't do criminal  
14 litigation.

15           MR. FURNARI: Did you ever --

16           MR. ROVER: I did most policy matters.

17           MR. FURNARI: Did you ever do a motion to  
18 suppress?

19           MR. ROVER: I don't believe I've ever done a  
20 motion to suppress.

21           MR. FURNARI: Did you ever litigate a case  
22 where there was issues of probably cause --

23           MR. ROVER: No.

24           MR. FURNARI: -- search?

25           MR. ROVER: No.

1 MR. FURNARI: And so you're over at this job  
2 at the ABC -- what's -- could you tell me what that  
3 means?

4 MR. ROVER: The Alcohol Beverage Control.

5 MR. FURNARI: And what are the -- what are  
6 the issues that they deal with at that office?

7 MR. ROVER: Drinking. I mean licenses --

8 MR. FURNARI: And --

9 MR. ROVER: -- things of that -- more  
10 administrative law.

11 MR. FURNARI: And then they gave you the  
12 authority to be the person to be dealing with the  
13 Department of Justice, the State of New Jersey's  
14 representative, Department of Justice, on the issue of  
15 racial profiling?

16 MR. ROVER: (No verbal response.)

17 MR. FURNARI: That's correct. I mean I know  
18 that's rhetorical.

19 It's -- you know, it's hard for us, I go -- I  
20 agree with Senator Kosco's analysis before that it's  
21 hard to see that the Attorney General's Office was  
22 concerning itself with the issue other than the legal  
23 stance of defending the State of New Jersey of any  
24 potential actions, rather than trying to get to the  
25 heart of the matter.

1 I want to say this, too. When we juxtapose  
2 it with the State Police, who seem to be reacting  
3 differently, discovering there's a problem,  
4 investigating the problem, doing research and coming up  
5 with data, making recommendations as to how one might  
6 attempt to resolve that, even though I'm not saying  
7 that the State Police are recognizing that racial  
8 profiling is going on, they're recognizing something's  
9 wrong with those statistics and looking for answers.

10 But Mr. -- Mr. Fahy, you litigated the Soto  
11 case, right?

12 MR. FAHY: Yes, sir.

13 MR. FURNARI: Now, if the defense attorneys  
14 in that case -- and they didn't -- but if they had the  
15 data that you were privy to that came from Sergeant  
16 Gilbert, would that have made their case better or  
17 worse?

18 MR. FAHY: That's just speculative, I don't  
19 know. Because the judge -- the reason the judge ruled  
20 that arrest data was not going to be admitted, and the  
21 Judge may have ruled the consent to search data was not  
22 going to be admitted, the judge was focusing on stop  
23 data. And that's --

24 MR. FURNARI: But that's -- I mean you're  
25 starting to get to the legalese issues of what this

1 court may have done.

2 I'm just telling you when you start off your  
3 memo about the merits of your case through the Superior  
4 -- I imagine you do that --

5 MR. FAHY: I'm sure the defense would have  
6 tried to make something out of it, if that's what you  
7 mean.

8 MR. FURNARI: But it also --

9 MR. FAHY: But I don't know how it would have  
10 been received by the Court because they tried that in  
11 other cases putting arrest data in and courts have  
12 different reactions. The Courts would say that's  
13 apples and oranges, stop data versus arrest data.

14 MR. FURNARI: Yeah, but by the time we get to  
15 Sergeant Gilbert's data on consent searches, and you've  
16 seen those numbers, it certainly -- I think you're the  
17 one who said it, it raises a flag, right?

18 MR. FAHY: I've only seen them recently,  
19 though, sir. Yeah, we think high numbers and consent  
20 to searches, the defense would want to know.

21 I'm not saying strictly in the terms of  
22 Brady material, whether the State would have an  
23 obligation, clearly exculpatory. But if you want to  
24 get into issues of whether there would have been an  
25 obligation to turn it over or not in a litigation

1 sense, no.

2 But I'm sure they would have wanted to have  
3 it, defense attorneys.

4 MR. FURNARI: Well, let's just ask -- let's  
5 go into that a little bit, and I don't want to bore  
6 everyone here with too much legalese, but even in the  
7 Brady sense, you mean you think that -- that that would  
8 be okay? Would have been okay for the State of New  
9 Jersey or the attorney who actually was trying the Soto  
10 case to have this data available to him and not produce  
11 it to the defense? It wouldn't be exculpatory?

12 MR. FAHY: That's a very tough question, sir.  
13 And, you know, being -- I don't know if you're a  
14 lawyer, but I -- to say -- if there were statistics in  
15 a case from 1987, '88, '89 dealing with stops and then  
16 you get more information from a decade later on consent  
17 to searches, whether you have an absolute discovery  
18 obligation under 313 of the Discovery Rule or under  
19 Brady, that's a tough call and I don't know what the  
20 final answer would be.

21 MR. FURNARI: And --

22 MR. FAHY: I'm glad I didn't have to make it.

23 MR. FURNARI: That's all I have.

24 SENATOR GORMLEY: Senator Zane?

25 SENATOR ZANE: Mr. Rover, did the -- whatever

1 was going on from the Department of Justice, ever shift  
2 from a review to an investigation?

3 MR. ROVER: Not to my knowledge.

4 SENATOR ZANE: You testified earlier that --  
5 for example, you had a Moorestown audit that you had in  
6 1997. And I believe that your testimony essentially  
7 was that you had correspondence from the -- as well as  
8 apparently -- contact, as well, from the Department of  
9 Justice, and that particular document you held until  
10 1998 before that was turned over, correct?

11 MR. ROVER: Yes, I had a conversation with  
12 Alex Waugh about that document.

13 SENATOR ZANE: And he's the one that told you  
14 to hold that.

15 MR. ROVER: Correct.

16 SENATOR ZANE: Did you personally believe  
17 that that document was well within the ambit of what  
18 the Department of Justice was requesting to conduct  
19 their review?

20 MR. ROVER: I thought it was relevant.

21 SENATOR ZANE: So, the answer is yes?

22 MR. ROVER: Again, I -- I think -- I thought  
23 it was relevant, yes.

24 SENATOR ZANE: Do you believe that the  
25 directive from Mr. Waugh to not give that information

1 to the Department of Justice was lawful?

2 MR. ROVER: I want to be careful. What do  
3 you mean not lawful?

4 SENATOR ZANE: Do you feel it was -- do you  
5 feel it was legal in light of what they were asking  
6 for?

7 MR. ROVER: Well --

8 SENATOR ZANE: Do you feel that he was within  
9 the law to not provide that document to the United  
10 States Department of Justice?

11 MR. ROVER: I guess the answer to that would  
12 be yes. There was no legal obligation to provide  
13 anything. You know, I think this was a voluntary  
14 process, so to speak.

15 SENATOR ZANE: There was a --

16 MR. ROVER: And --

17 SENATOR ZANE: I'm sorry, go ahead, finish.

18 MR. ROVER: And I think coupled with the fact  
19 that the Department of Justice hadn't asked for that.

20 SENATOR ZANE: In light of your determination  
21 that it was relevant, do you think that it was moral  
22 not to give that document to the Federal Government, in  
23 light of what they had requested, especially in light  
24 of the fact that your position was to provide that  
25 information to the Federal Government, was it not?

1 MR. ROVER: I just don't understand moral,  
2 though.  
3 SENATOR ZANE: You don't understand moral?  
4 Right from wrong.  
5 MR. ROVER: I think it depends on how you  
6 interpret the relationship between us and the  
7 Department of Justice. And if our -- if the view of  
8 that relationship was we will cooperate with respect to  
9 documents that the Department of Justice asks for.  
10 SENATOR ZANE: So, you play the game that if  
11 they don't ask for it, we're not going to give it?  
12 MR. ROVER: I didn't -- I was -- they were my  
13 instructions.  
14 SENATOR ZANE: If they don't ask for it,  
15 don't give it?  
16 MR. ROVER: Basically, yes.  
17 SENATOR ZANE: But they weren't aware you  
18 were playing that game, were they, the Department of  
19 Justice?  
20 MR. ROVER: I can't answer. I don't know. I  
21 mean they had an opportunity to ask for documents.  
22 SENATOR ZANE: How would they know what to  
23 ask for?  
24 MR. ROVER: (No verbal response.)  
25 SENATOR ZANE: I mean somebody testified they

1 wanted to talk to some troopers and they were presented  
2 or persuaded not to, am I correct?  
3 MR. ROVER: Oh, no, they were given  
4 permission.  
5 SENATOR ZANE: Then I misunderstood that.  
6 MR. ROVER: I'm sorry. They were --  
7 SENATOR ZANE: My mistake.  
8 MR. ROVER: They were given permission to do  
9 that.  
10 SENATOR ZANE: Back to my same question, how  
11 would they know these documents existed or these  
12 reports existed?  
13 MR. ROVER: I don't know, sir.  
14 SENATOR ZANE: Do you have the document near  
15 you or available to you that constituted their  
16 requested for documents? Or their request for  
17 information, their being the United States Department  
18 of Justice.  
19 MR. ROVER: They had a -- a blank form of  
20 request.  
21 SENATOR ZANE: And you made a determination  
22 what -- that this document was a relevant document,  
23 consistent with that form?  
24 MR. ROVER: Not necessarily consistent with  
25 that form, but just in general with what they were --

1 appeared to be looking at.

2 SENATOR ZANE: You indicated before that you  
3 did not practice any criminal law, correct?

4 MR. ROVER: That's correct.

5 SENATOR ZANE: Did it, at any point, occur to  
6 you this might be obstruction of justice?

7 MR. ROVER: No, sir.

8 SENATOR ZANE: Never entered your mind?

9 MR. ROVER: No, sir.

10 SENATOR ZANE: Never had a discussion with  
11 any superiors that this might be obstruction of  
12 justice, not providing requests and information to the  
13 United States Department of Justice?

14 MR. ROVER: I was following instructions from  
15 my superior and --

16 SENATOR ZANE: Well, there were a lot of  
17 Germans in the Second World War following instructions,  
18 but that didn't get them off the seat.

19 Did it occur to you that this might be -- I'm  
20 not saying it is -- that this might be obstructing  
21 justice?

22 MR. ROVER: I think I would have felt  
23 differently about it if we had a legal obligation to  
24 produce the documents, sir.

25 SENATOR ZANE: Therefore, it did not occur to

1 you that this might be obstructing justice?

2 MR. ROVER: No, it didn't.

3 SENATOR ZANE: Did you have any opinion at  
4 all as to whether or not the directive not to provide  
5 the information, such as the Moorestown audit for 1997,  
6 was coming from anyone else other than your immediate  
7 supervisor?

8 MR. ROVER: I had no information.

9 SENATOR ZANE: Do you have any reason to  
10 believe that that would have been clear at some higher  
11 level than his level?

12 MR. ROVER: I know you won't like the answer,  
13 but it's not really -- it's a question that I think  
14 someone else should be answering.

15 SENATOR ZANE: Yeah, I understand that. And  
16 I -- and if you don't know, if you have no idea --

17 MR. ROVER: Okay, I don't. I --

18 SENATOR ZANE: You have no sense as to  
19 whether or not that decision would have been made at  
20 Waugh's level?

21 MR. ROVER: I really don't.

22 SENATOR ZANE: Okay. Senator Lynch asked you  
23 a question about freelancing with documents that were  
24 going to the Department of Justice, do you recall that  
25 question?



1 MR. ROVER: Generally, yes.  
2 SENATOR ZANE: You did not like the term  
3 freelancing, correct?  
4 MR. ROVER: That's correct.  
5 SENATOR ZANE: Okay. But nevertheless, the  
6 fact remains that you were deciding for quite some  
7 period of time what documents when, totally on your  
8 own, were you not?  
9 MR. ROVER: With respect to this stop and  
10 patrol charts and radio logs, yes.  
11 SENATOR ZANE: And for what period of time  
12 were you doing that, making those decisions on your  
13 own? Was it months? Was it a week?  
14 MR. ROVER: There was a general  
15 understanding of what documents were going to the  
16 Department of Justice. So, these categories of  
17 documents, they said, were fine to go.  
18 SENATOR ZANE: Who's they that said that?  
19 MR. ROVER: Alex Waugh.  
20 SENATOR ZANE: But he wasn't there any  
21 longer, was he? And you now had a new supervisor,  
22 didn't you, David Hesse?  
23 MR. ROVER: Yes, I did.  
24 SENATOR ZANE: Was he telling you what  
25 documents to send or not send?

1 MR. ROVER: (No verbal response.)  
2 SENATOR ZANE: I think you already testified  
3 he wasn't.  
4 MR. ROVER: I don't recall specific  
5 conversations with him. The documents that generally  
6 went out in '98 were training materials.  
7 SENATOR ZANE: Are you --  
8 MR. ROVER: And then -- and --  
9 SENATOR ZANE: I'm sorry.  
10 MR. ROVER: And then another document, I  
11 think, that went out in December was information about  
12 the law enforcement summit that he asked -- that David  
13 Hesse asked me to send to Justice.  
14 SENATOR ZANE: You presented a lengthy memo  
15 to Paul Zoubek in -- on February the 26th, 1999  
16 regarding documents that had not been provided, am I  
17 correct?  
18 MR. ROVER: That's correct, sir.  
19 SENATOR ZANE: The caption under your --  
20 under your name, it says, "To Paul Zoubek," and his  
21 position. Afterwards it says, from "George N. Rover,  
22 Assistant Attorney General, Division of Gaming  
23 Enforcement," is that what you were assigned to at that  
24 time?  
25 MR. ROVER: Yes, sir.

1 SENATOR ZANE: So, you were assigned to  
2 Gaming Enforcement, but you were handling this, is that  
3 correct?

4 MR. ROVER: Yes. And prior to that, I was in  
5 the ABC.

6 SENATOR ZANE: I understand that. Could you  
7 explain why you were in Gaming Enforcement and you were  
8 handling this matter?

9 MR. ROVER: I changed jobs from the ABC.

10 SENATOR ZANE: Well, I understand. But what  
11 you were doing, was it Gaming Enforcement?

12 MR. ROVER: I'm sorry?

13 SENATOR ZANE: What you were doing now, was  
14 this Gaming Enforcement? Or were you, at the time you  
15 wrote this memo, no longer doing things regarding the  
16 racial profiling issue, and were you then off to Gaming  
17 Enforcement?

18 MR. ROVER: I was working in Gaming  
19 Enforcement at that time that I wrote that.

20 SENATOR ZANE: What would the Division have  
21 been that you would have been with when you were  
22 working on the issues of racial profiling and required  
23 you to provide --

24 MR. ROVER: The Division of ABC.

25 SENATOR ZANE: So, you were with ABC when you

1 were providing the information --

2 MR. ROVER: Yes, sir.

3 SENATOR ZANE: -- to the Department of  
4 Justice. And the items that are on the letter --  
5 you're familiar with the document, am I correct?

6 MR. ROVER: Yes, sir.

7 SENATOR ZANE: The items that are on that, I  
8 guess a three-page document, the decision not to  
9 forward these documents that you were revealing to Paul  
10 Zoubek, who made the decision not to forward all of  
11 these documents?

12 MR. ROVER: I think I went down the list. I  
13 think there were four or five that Alex did.

14 SENATOR ZANE: And then the rest you?

15 MR. ROVER: And there was a couple -- I think  
16 I testified that some of the other documents, I  
17 believe, had come in recently from State Police on some  
18 of the training materials.

19 SENATOR ZANE: Did you ever ask -- I mean  
20 you're a lawyer, you're an educated man. Did you ever  
21 ask either of your supervisors why you weren't provided  
22 that information?

23 MR. ROVER: I think on -- I have two answers  
24 to that. Some of the information had recently come in  
25 in one -- in certain situations.

1 In another situation, certain of the  
2 information was not asked for. And then in one  
3 situation, I think I admitted with the probable --  
4 negative OPR's or whatever they're called, that Justice  
5 had just asked whether there were any other documents  
6 for those particular dates.

7 And I had spoken to Tom Gilbert, he said that  
8 I had them. And I had thought that they went with the  
9 investigation and arrest reports.

10 SENATOR ZANE: You attended a meeting, I  
11 believe, on May the 20th, 1997 with Attorney General  
12 Verniero and others, am I correct?

13 MR. ROVER: That's correct.

14 SENATOR ZANE: Where was the meeting held?

15 MR. ROVER: It was in the Attorney General's  
16 Office.

17 SENATOR ZANE: And was there a briefing of  
18 the Attorney General at that time on racial profiling?

19 MR. ROVER: What I recall is that a number of  
20 the items, if not all the items on the agenda, I felt,  
21 after the meeting were touched upon, if not covered.

22 SENATOR ZANE: Well, did somebody have to say  
23 to him, General, this is what's going on. We want to  
24 apprise you of the situation of racial profiling here  
25 in New Jersey?

1 MR. ROVER: I can't recall a lot of what  
2 happened at that meeting, sir.

3 SENATOR ZANE: He participated in the  
4 meeting, did he not?

5 MR. ROVER: Yes, he did.

6 SENATOR ZANE: Spoke at the meeting.

7 MR. ROVER: Yes, he did.

8 SENATOR ZANE: This isn't the meeting where  
9 we had the agenda, is it? The agenda that we talk  
10 about, is this the same meeting?

11 MR. ROVER: Yes, it is.

12 SENATOR ZANE: This is the meeting where he  
13 said he wouldn't enter into a consent order, am I  
14 correct?

15 MR. ROVER: Yes, it is.

16 SENATOR ZANE: Do you feel that he was  
17 briefed and familiar with the issue of racial profiling  
18 at the time of that meeting, based upon your  
19 observations of his participation and comments at that  
20 meeting?

21 MR. ROVER: I believe he had an understanding  
22 of the issues.

23 SENATOR ZANE: It didn't seem foreign to him,  
24 is that correct?

25 MR. ROVER: That's correct.

1                   SENATOR ZANE: How long did that meeting  
2 last?  
3                   MR. ROVER: (No verbal response.)  
4                   SENATOR ZANE: If you recall.  
5                   MR. ROVER: It wasn't 15 minutes. But I  
6 don't think it was an hour and a half. That's about  
7 the best I can do.  
8                   SENATOR ZANE: So, when he made the comment  
9 that he would not enter into a consent order,  
10 consistent with what had happened in Maryland, you had  
11 no doubt that he understood the problem before he made  
12 a statement like that, is that correct?  
13                   MR. ROVER: I thought it was a strong  
14 statement.  
15                   SENATOR ZANE: Now I'd like you to answer my  
16 question.  
17                   MR. ROVER: Could you --  
18                   SENATOR ZANE: Yeah. You had a feeling --  
19 did you have a feeling that in light of his response  
20 regarding a consent order, that he made that statement  
21 with a good understanding of the problem, sufficient  
22 enough to make an answer or a comment that he wouldn't  
23 enter into a consent order, is that correct?  
24                   MR. ROVER: Here's the spot you put me in and  
25 -- sometimes people say things to puff or whatever the

1 word people use. I mean I had been in meetings. And,  
2 again, I'm not -- I'm not trying to characterize what  
3 he said, but sometimes I've been in meetings and I've  
4 said, they're not getting this over my dead body, you  
5 know. I know he made the statement. But for me to  
6 make the jump that you want me to make, I'm just a  
7 little hesitant. I -- you know, I testified that he  
8 made the statement. I just don't know if I can read  
9 into it all you want me to read into it.  
10                   SENATOR ZANE: Well, were there terms of the  
11 consent order discussed?  
12                   MR. ROVER: Oh, no.  
13                   SENATOR ZANE: So, it was just a concept?  
14                   MR. ROVER: I would say that would be  
15 accurate.  
16                   SENATOR ZANE: I'm sorry?  
17                   MR. ROVER: I would say that would be  
18 accurate.  
19                   SENATOR ZANE: And you already testified that  
20 you felt that he had sufficient knowledge that he  
21 understood what was going on with racial profiling,  
22 correct?  
23                   MR. ROVER: The issue did not seem foreign to  
24 him.  
25                   SENATOR ZANE: Okay. Thank you.

1 SENATOR GORMLEY: Senator Girgenti?

2 SENATOR ZANE: Um, I want to --

3 SENATOR GORMLEY: Oh, I'm sorry.

4 SENATOR ZANE: I want to talk to --

5 SENATOR GORMLEY: Oh, I'm sorry.

6 SENATOR ZANE: Just one second.

7 Mr. Fahy, you're currently in the Grand Jury  
8 section of the Attorney General's Office?

9 MR. FAHY: Yes, sir.

10 SENATOR ZANE: Did I understand you earlier  
11 in your testimony in answer to the questions to Mr.  
12 Chertoff that you made a comment to the Attorney  
13 General in regard to some information he was  
14 requesting, oh, you found me. Do you recall making  
15 that comment?

16 MR. FAHY: Yes, I don't know if it was those  
17 exact words, sir, but when -- just before Legal Affairs  
18 broke-up, when Debbie Poritz decided to do away with  
19 Legal Affairs, I had been litigating heavily on nights  
20 and weekends for seven years. And I strongly requested  
21 of Alex Waugh that I be permitted to transfer and an  
22 opportunity came up in the Division of Criminal  
23 Justice.

24 Not because profiling wasn't an important  
25 issue, but after seven years of litigating it, it's

1 nice to get some -- someone else to carry that load and  
2 some new ideas maybe.

3 So, that was on my request that I be  
4 transferred.

5 SENATOR ZANE: So, the answer is, yes, you  
6 made some statement similar to that to the Attorney  
7 General himself.

8 MR. FAHY: I don't know, something -- I can't  
9 remember exact words. Something like that, like, oh,  
10 back on the issue of racial profiling, I guess he found  
11 some people who were working on the issue.

12 SENATOR ZANE: What did he do, come out to  
13 see you wherever you were?

14 MR. FAHY: No, no. I think it -- the best  
15 recollection I have of ever meeting of Peter Verniero  
16 was in December of '96. And I think what prompted it  
17 was the Justice Department -- I think some information  
18 that our office received that there would be a Justice  
19 Department inquiry.

20 SENATOR ZANE: Would I be incorrect if I  
21 thought that you were somewhat suspect, especially  
22 early on, regarding the analysis done by Sergeant  
23 Gilbert? Not that he was fudging, but just -- you  
24 lacked confidence in it?

25 MR. FAHY: I didn't realize that it had

1 gotten to that point where they would have had those  
2 kind of detailed numbers coming out. And I also -- if  
3 I thought that they were going to be doing analytical  
4 studies, I would have preferred that we retain a firm  
5 and help them with it.

6 SENATOR ZANE: Now, is that your way of  
7 answering my question yes, I lacked confidence? Is  
8 that what you just said?

9 MR. FAHY: (No verbal response.)

10 SENATOR ZANE: I mean you gave -- you gave me  
11 some other answer about something else. Did you  
12 understand my question?

13 MR. FAHY: (No verbal response.)

14 SENATOR ZANE: I'm asking you, did you  
15 understand it?

16 MR. FAHY: I think I did. And if I --

17 SENATOR ZANE: Well, would you answer it then  
18 if you did?

19 MR. FAHY: Please repeat it.

20 SENATOR ZANE: I said, did you lack  
21 confidence in the report or the documentation of  
22 Gilbert early on in this matter?

23 And you just answered that you would have  
24 preferred having somebody else, is that your way of  
25 saying yes, I lacked confidence in Sergeant Gilbert's

1 documentation?

2 MR. FAHY: No, sir. But that's presuming I  
3 know what the information is. And I don't know what  
4 the information is except the general sense that he's  
5 looking at numbers.

6 If I saw documents --

7 SENATOR ZANE: You didn't ask him either, did  
8 you?

9 MR. FAHY: No, I didn't ask him for the  
10 document --

11 SENATOR ZANE: You didn't want --

12 MR. FAHY: -- at that time.

13 SENATOR ZANE: You didn't want to know from  
14 him?

15 MR. FAHY: At that time, sir, I was thinking  
16 that in the future, there might be some reports done.  
17 But, you know, you have to understand in the cycle that  
18 I'm dealing with, in the way I'm litigating it, I'm  
19 using experts who are picking 30 random days out of a  
20 year. We're not through a cycle yet. I don't know how  
21 many days he's looking at. Statistics don't mean  
22 anything unless it's covering a sufficient time period,  
23 they're relevant. And I'm sorry if -- that's what was  
24 conveyed to me by experts that I consulted and through  
25 the case law.

1                   Coming up with the appropriate database to  
2 judge issues of similarly situated is not only a  
3 concept in statistics, but under the law. And I would  
4 have preferred to have someone other than Tom Gilbert  
5 do it if that's -- if they were seriously going to get  
6 involved in doing things like that.

7                   That's the best I can answer. I'm not trying  
8 to be difficult, sir.

9                   SENATOR ZANE: But you then set-up a meeting  
10 with the Maryland State Police here in New Jersey at  
11 the Moorestown barracks, isn't that correct?

12                  MR. FAHY: That happened months before I knew  
13 about Tom Gilbert's statistics. And that was --

14                  SENATOR ZANE: Just a second. Let me ask the  
15 question. But you took Tom Gilbert with you, didn't  
16 you?

17                  MR. FAHY: Yes.

18                  SENATOR ZANE: Well, why would you have taken  
19 him? He was a sergeant.

20                  MR. FAHY: I took him because he was the  
21 lowest level person, I wasn't going to ask somebody  
22 higher up to go.

23                  SENATOR ZANE: And did you -- what, did you  
24 take him to drive you there?

25                  MR. FAHY: No, sir.

1                   SENATOR ZANE: Well, why did you take him?

2                   MR. FAHY: Because he was the lowest level  
3 person on the Committee. I guess I could have called a  
4 Captain or a Major, I just thought that he'd be the one  
5 who would come with me.

6                   SENATOR ZANE: Tell me something, why was he  
7 on the Committee?

8                   MR. FAHY: I have no idea why he was on the  
9 Committee.

10                  SENATOR ZANE: How many meetings did you  
11 attend where he was present?

12                  MR. FAHY: Three, months before, in May,  
13 June.

14                  SENATOR ZANE: Did he participate in those  
15 meetings?

16                  MR. FAHY: I don't recall him saying much.  
17 He may have been writing down notes.

18                  SENATOR ZANE: So, you took him because he  
19 was the lowest level?

20                  MR. FAHY: Yeah. And Val Littles also said  
21 if you need any assistance from the Committee for  
22 anything, you can call Tommy. But I didn't -- I didn't  
23 know that he'd be doing the studies or -- at that  
24 point.

25                  SENATOR ZANE: You did not take him then

1 because of his -- of the studies he had already done?

2 MR. FAHY: I didn't know he had done studies  
3 then.

4 SENATOR ZANE: When did you find out that he  
5 did?

6 MR. FAHY: Um, much later. Years later.  
7 There as -- and I don't know -- his studies, I wasn't  
8 really familiar -- when I look at stuff that Paul  
9 Zoubek showed me. There was a Sergeant Hinkle who did  
10 a study. There was another Gilbert, it wasn't -- there  
11 was a Commander Gilbert --

12 SENATOR ZANE: Lieutenant Gilbert.

13 MR. FAHY: But I didn't see those in '96.

14 SENATOR ZANE: You indicated in your  
15 testimony earlier that Alex Waugh said to you, and you  
16 even spoke about it, to prepare a brief for Verniero,  
17 do you recall saying that?

18 MR. FAHY: (No verbal response.)

19 SENATOR ZANE: About racial profiling.

20 MR. FAHY: I did that in December of '96,  
21 sir.

22 SENATOR ZANE: December of 1996. Was it a  
23 thorough analysis, in your opinion?

24 MR. FAHY: Sir, you can judge that. There  
25 are many of my memos in the file. I did the best I

1 could.

2 SENATOR ZANE: I have my opinion. I'm asking  
3 yours. Was it a thorough analysis?

4 MR. FAHY: In my mind -- in my mind, it  
5 introduced Peter Verniero to the subject. I wasn't  
6 going to give him the whole education on selective  
7 enforcement law. I could have given him briefs that we  
8 had written on that.

9 SENATOR ZANE: Did you have an occasion to  
10 discuss with him your report?

11 MR. FAHY: (No verbal response.)

12 SENATOR ZANE: Him being Peter Verniero.

13 MR. FAHY: I'm sure I provided him with an  
14 oral summary of the litigation history. The fact that  
15 there as a Committee that had met. Things like that.  
16 But you -- I don't want to be difficult, but I can't  
17 remember what exactly was said in a meeting in 1996  
18 five years later, sir.

19 SENATOR ZANE: Sir, I can remember about two  
20 years ago asking the Attorney General Peter Verniero  
21 questions and he couldn't remember them either.

22 In that briefing of Attorney General  
23 Verniero, was it only the two of them together when you  
24 briefed him from your report?

25 MR. FAHY: No. The Division of Law Director,



1 Jaynee LaVecchia, now on the Supreme Court, was there.  
2 Alex P. Waugh was there. There may have been other  
3 people there.

4 SENATOR ZANE: Did he have any questions when  
5 you were finished briefing him?

6 MR. FAHY: I'm sure he had some questions.

7 SENATOR ZANE: Did he have any questions of  
8 you when you were finished briefing him?

9 MR. FAHY: Sure -- I'm sure that he asked a  
10 question or he commented. He talked at the meeting.

11 SENATOR ZANE: Did you allow him to ask you  
12 and did you answer every question he had?

13 MR. FAHY: Certainly. I had nothing to hide.  
14 He was my boss.

15 SENATOR ZANE: And did you feel, by the time  
16 you were finished, that he had a good understanding of  
17 racial profiling as it exists here in this State?

18 MR. FAHY: He had a history of the issue.  
19 How much the man -- I don't know if Mr. Verniero ever  
20 practiced criminal law either at that point. Whether a  
21 one short hour briefing meeting he can comprehend all  
22 of the issues and legal nuances of racial profiling,  
23 that's too much for me to have to answer.

24 SENATOR ZANE: Do you think you --

25 MR. FAHY: He had the litigation history.

1 SENATOR ZANE: Do you think you need a law  
2 degree specializing in criminal law to understand one  
3 of your memos?

4 MR. FAHY: No.

5 SENATOR ZANE: Isn't that what you --

6 MR. FAHY: Well, it depends --

7 SENATOR ZANE: -- just suggested?

8 MR. FAHY: It depends on the memo. If it's a  
9 legal memo, yeah, it would help.

10 SENATOR ZANE: When did you do that briefing  
11 of the Attorney General?

12 MR. FAHY: Um, it was -- I think Mr. Chertoff  
13 said earlier it was December 9th versus December 12th.  
14 But somewhere in that time period, December 9th, 12th,  
15 1996.

16 SENATOR ZANE: And you attended other  
17 meetings after that with Attorney General Verniero?

18 MR. FAHY: Not many.

19 SENATOR ZANE: But you attended other  
20 meeting, correct?

21 MR. FAHY: Yes.

22 SENATOR ZANE: Did the invite the Human  
23 Resource Division within the Attorney General's Office?

24 MR. FAHY: There was a Human -- what -- do  
25 you mean --

1 SENATOR ZANE: They have a Human Resource --  
2 MR. FAHY: -- the Department of Personnel?  
3 SENATOR ZANE: -- like Personnel within the  
4 Attorney General's Office?  
5 MR. FAHY: Yes.  
6 SENATOR ZANE: Do they have a sensitivity  
7 group?  
8 MR. FAHY: Yes, we did a lot of work over the  
9 years on providing sensitivity training --  
10 SENATOR ZANE: You never took it, did you?  
11 MR. FAHY: Yes, sir, I did take it.  
12 SENATOR ZANE: Amazing. The meetings you had  
13 with the Attorney General, did you, again, review  
14 racial profiling?  
15 MR. FAHY: The meetings on the issue of  
16 racial profiling, I did discuss issues of racial  
17 profiling.  
18 SENATOR ZANE: And did you get -- did you get  
19 -- what were those other meetings you're talking about  
20 with the Attorney General present?  
21 MR. FAHY: They would have been a meeting in  
22 December 24th --  
23 SENATOR ZANE: Of 1996?  
24 MR. FAHY: 1996, in which -- I believe that  
25 was a meeting in which Attorney General Verniero called

1 over Colonel Williams and advised him of what had taken  
2 place --  
3 SENATOR ZANE: Excuse me one second. That  
4 meeting was also after you had briefed him --  
5 MR. FAHY: Yes.  
6 SENATOR ZANE: -- on racial profiling?  
7 MR. FAHY: Yes.  
8 SENATOR ZANE: Was his level of understanding  
9 of racial profiling in this State better at that point  
10 as a result of your briefing?  
11 MR. FAHY: I can't get into his mind, sir, I  
12 --  
13 SENATOR ZANE: Did you have an opinion?  
14 MR. FAHY: No, I didn't have an opinion.  
15 SENATOR ZANE: Do you feel that you were  
16 talking to someone who absolutely knew nothing at all  
17 about racial profiling?  
18 MR. FAHY: No, I wouldn't say that either. I  
19 think -- I don't know what he knew before he got  
20 briefed, but he obviously was intelligent enough to  
21 hear what I said and I assume comprehend some of it.  
22 Ii mean --  
23 SENATOR ZANE: You have indicated that  
24 information that you have, and others have testified to  
25 the same, is that notwithstanding whatever discussions

1 have taken place, whatever programs have been  
2 suggested, that racial profiling today in New Jersey is  
3 essentially the same as it was before, is that correct?  
4 The statistics, the numbers still the same?

5 MR. FAHY: No, that's what I read in here.  
6 They're about the same in South Jersey.

7 SENATOR ZANE: Do you have an opinion as to  
8 what could be done or what should be done to change  
9 that, in light of your experience in dealing with the  
10 subject?

11 MR. FAHY: That's difficult. We thought in  
12 the nineties when we had the training that that would  
13 help.

14 We thought the S.O.P.'s would help. And  
15 maybe they have.

16 I think a real study should be done in South  
17 Jersey to say why are those numbers still 35 percent.

18 Consent to searches, I have to say, I never  
19 did any study on. Maybe you'd want to look at consent  
20 to searches and do a study on that.

21 And if you had sufficient evidence that a  
22 particular trooper was engaged in racial profiling,  
23 then I would say absolutely discipline the person.

24 But that's not so easy, sir, either because -  
25 - I also participate in State Police Discipline at

1 times. To bring charges against a trooper because they  
2 have a stop rate of 35 percent, I don't -- I don't know  
3 what -- I don't think we could sustain that. That's my  
4 legal opinion. If you wanted to terminate somebody.

5 If we had absolute evidence in a report,  
6 admissions made by a trooper that they were engaging in  
7 racial profiling, absolutely charges should be brought  
8 against them. And maybe they should be indicted for  
9 official misconduct if that's the evidence.

10 But that was never -- that kind of detail was  
11 never presented to us.

12 SENATOR ZANE: If consent to search in this  
13 State became a thing of the past, what impact do you  
14 think it would have on racial profiling?

15 MR. FAHY: If they -- if State Police were  
16 not allowed to use consent to search?

17 SENATOR ZANE: Nobody was allowed to use it.

18 MR. FAHY: It may diminish it.

19 SENATOR ZANE: I have no further questions.

20 SENATOR GIRGENTI: I know the Chairman had  
21 called on me, so I'll just take up -- I have just a few  
22 questions that I have. Most of the stuff has been  
23 covered already.

24 But to Mr. Fahy, now you testified that you  
25 first discussed the profiling issue with Attorney

1 General Verniero at the meeting regarding the D.O.J.  
2 inquiry, was that the first time that you had met with  
3 him and discussed it?

4 MR. FAHY: That's the first I recall. I mean  
5 he may have -- he -- he may have seen something in a  
6 briefing memo and called earlier. But I have no  
7 recollection of it until December of '96.

8 SENATOR GIRGENTI: And you said at the  
9 meeting, the Attorney General wanted to know if New  
10 Jersey's the worst state, you used that as -- in  
11 regards to racial profiling. Did you respond to that  
12 or was that just -- how was that --

13 MR. FAHY: That was kind of rhetorical on his  
14 part. I had no information about that.

15 SENATOR GIRGENTI: Did anyone else comment on  
16 it at the meeting or was that just a --

17 MR. FAHY: No.

18 SENATOR GIRGENTI: It was an aside really?  
19 It was --

20 MR. FAHY: It was like a rhetorical  
21 statement, like why are we being looked at. That's  
22 what I took it as.

23 SENATOR GIRGENTI: All right. In your  
24 deposition, I was looking through it, there was a great  
25 deal of -- a portion on training materials that you

1 were involved with in terms of -- over the course of  
2 your involvement with the Soto case. You examined  
3 State Police training materials. Had you done any work  
4 on that in terms of examining them?

5 MR. FAHY: I think we all did it during the  
6 Soto case, sir. So, you can understand, an order was  
7 entered on the first day of the Soto case to provide  
8 some training materials. And I had to call the Academy  
9 at the State Police and we started -- everyone started  
10 getting them together, the defense, me, the judge.

11 SENATOR GIRGENTI: All right. Did any of  
12 those materials discuss and outline racial or ethnic  
13 profiles of potential violators in the training that  
14 was given out? Was that part of --

15 MR. FAHY: Do you have something to refresh  
16 my recollection? That's not ringing a bell right now.

17  
18 SENATOR GIRGENTI: The deposition that was  
19 given -- all right. Mr. Chertoff was asking you, it  
20 says, "The purpose of this memorandum is to alert you  
21 to the release of some discovery in the case involving  
22 State Police, which has the potential for generating  
23 adverse publicity."

24 And then it says, "SDAG Jack Fahy is handling  
25 the case as it relates to this issue. There's been a

1 request for diversity training materials which contain  
2 derogatory things about minorities, correct?"

3 MR. FAHY: Oh, I think what you're talking  
4 about.

5 SENATOR GIRGENTI: Okay.

6 MR. FAHY: During the course of the materials  
7 that were sent over, there was a very offensive outline  
8 of some training material. It referred to many  
9 minority groups, Irish -- all kinds of groups. And I  
10 immediately brought that to the attention of Deborah  
11 Poritz because I knew I had an obligation to turn it  
12 over in discovery.

13 And we had to review it and check with the  
14 State Police whether that was still in use. And the  
15 best recollection I have is we were told it hadn't been  
16 used for a long time and it was archaic.

17 SENATOR GIRGENTI: Okay. So, these materials  
18 were not -- they were not in use at the point in time  
19 when you were having this discussion?

20 MR. FAHY: As far as --

21 SENATOR GIRGENTI: Going back --

22 MR. FAHY: As far as I was led to believe,  
23 yes.

24 SENATOR GIRGENTI: Do you know -- do you have  
25 any idea when they ceased using them?

1 MR. FAHY: Not really. I don't recall now.  
2 I may have back then had --

3 SENATOR GIRGENTI: And were they brought out  
4 in the Soto case? Was that part of --

5 MR. FAHY: No, you know, I always wondered  
6 why they didn't use those materials in the Soto case,  
7 but they never came up as an exhibit.

8 SENATOR GIRGENTI: And did you examine the  
9 similar materials that were used in other states? Were  
10 we similar to other states?

11 MR. FAHY: I never looked at the materials in  
12 other states.

13 SENATOR GIRGENTI: Okay. And when you were  
14 part of the Littles -- the -- when you were part of the  
15 Littles Committee, Lieutenant Colonel Littles, you  
16 said you made three out of the four meetings?

17 MR. FAHY: Yeah, I made three of the four  
18 meetings. That's --

19 SENATOR GIRGENTI: Was that ever discussed in  
20 there in terms of training materials?

21 MR. FAHY: That particular document?

22 SENATOR GIRGENTI: No, any -- in training  
23 materials in general with the State Police?

24 MR. FAHY: Well, I think that's where they  
25 talked about -- when we came back after Soto, we wanted

1 to have some positive reaction to the case. We may be  
2 in court again some day, and I viewed the Committee  
3 very positively.

4 So, with regard to training, they were saying  
5 what else can we do for training. Let's talk about  
6 having Ron Susswein, Search and Seizure Committee, and  
7 there was some talk about maybe we need better  
8 supervisor training to alert them to the issues.

9 SENATOR GIRGENTI: Has there been changes  
10 since that time?

11 MR. FAHY: Well, I know there was some  
12 courses that were --

13 SENATOR GIRGENTI: Implemented?

14 MR. FAHY: -- implemented, yes.

15 SENATOR GIRGENTI: Okay. And then just  
16 finally, you were the lead attorney on the Soto case,  
17 right? And you were involved in this, I guess, you  
18 said like around seven years?

19 MR. FAHY: Oh --

20 SENATOR GIRGENTI: Not just the Soto case, in  
21 racial profiling?

22 MR. FAHY: Yeah, from 1989 when the first  
23 motion came in and Jane Grall and I received it until  
24 the Soto case, I was the lead attorney on the  
25 litigation aspects of this issue.

1 SENATOR GIRGENTI: And why do -- don't you  
2 think as a resource that you were -- you would not have  
3 more input into this interim report?

4 MR. FAHY: You're asking the wrong person,  
5 sir.

6 SENATOR GIRGENTI: Were you ever -- were you  
7 ever approached?

8 MR. FAHY: I thought maybe they wanted new  
9 blood. Look at the issue a fresh way, I don't know.

10 SENATOR GIRGENTI: All right. And then just  
11 to -- DAG Rover, just one question to you.

12 Yesterday Detective Gilbert went through his  
13 whole process of his communication with you in terms of  
14 memos and so forth that was discussed before. Was it  
15 standard procedure for you not to take memos, for  
16 instance, on certain topics? I remember him saying  
17 that he would phone you and he would phone -- tell you  
18 the statistics over the phone. Were you supposed to --  
19 do you have that kind of memory that you would memorize  
20 them or -- why would you not want that in document  
21 form?

22 MR. ROVER: As I said -- as I testified  
23 earlier, I did not ask for those documents. I wasn't  
24 asked to ask for those documents. But it was -- it was  
25 no policy or procedure.

1 SENATOR GIRGENTI: Wouldn't that --  
2 MR. ROVER: There as no practices.  
3 SENATOR GIRGENTI: Wouldn't that have made  
4 life easier for you to have --  
5 MR. ROVER: Yeah.  
6 SENATOR GIRGENTI: -- memos and documents?  
7 MR. ROVER: Yeah.  
8 SENATOR GIRGENTI: You know --  
9 MR. ROVER: Yes.  
10 SENATOR GIRGENTI: Because obviously at one  
11 point, he said he was giving you statistics over the  
12 phone and he said he felt that you knew them. But I  
13 don't think you could stand here and recite the  
14 statistics to us.  
15 MR. ROVER: Yeah --  
16 SENATOR GIRGENTI: So, how could you take  
17 that information and transfer it to someone else?  
18 MR. ROVER: I couldn't. And if I had a memo,  
19 I could have transferred it.  
20 SENATOR GIRGENTI: So, -- all right. Thank  
21 you very much.  
22 SENATOR O'CONNOR: Well, just to follow-up on  
23 that, Mr. Rover, did you report to Mr. Waugh the  
24 information that had been reported to you by Detective  
25 Gilbert?

1 MR. ROVER: Yes. And --  
2 SENATOR O'CONNOR: Was that something that  
3 you reported each and every time that he got to you  
4 with additional analysis --  
5 MR. ROVER: What --  
6 SENATOR O'CONNOR: -- and statistics?  
7 MR. ROVER: What I recall him telling me, in  
8 particular the early discussions on the Maryland issue,  
9 yes.  
10 SENATOR O'CONNOR: Well, what about the  
11 continuing reporting that Detective Gilbert made to  
12 you? Is that something that you report when you heard  
13 it to your immediate supervisor, Mr. Waugh?  
14 MR. ROVER: My testimony has been I do not  
15 recall hearing Sergeant Gilbert give me that  
16 information. I think Mr. Chertoff asked me the  
17 question.  
18 SENATOR O'CONNOR: What was your reaction  
19 then when you heard the allegation that the State  
20 Police had withheld certain information?  
21 MR. ROVER: I didn't -- I really didn't pick  
22 that up. I don't know if it didn't get over to me. I  
23 was over on 140 East Front Street. I never really  
24 picked up on that whole issue.  
25 SENATOR O'CONNOR: But you're -- I believe

1 your testimony today was that he never withheld any  
2 information from you, Detective Gilbert.

3 MR. ROVER: Well, I assume he didn't. I  
4 think the question was would he withhold information.  
5 I said I assume that he wouldn't.

6 SENATOR O'CONNOR: All right. Up on this  
7 chart here are various dates that were written down  
8 yesterday during the course of testimony. And I  
9 believe only two of those dates are dates that the  
10 Attorney General was involved a meeting. But we know  
11 now that Mr. Fahy briefed the Attorney General on the  
12 racial profiling issue on either December 9th or  
13 December 12th, 1996.

14 So, would it be fair to say then there were  
15 at least three dates that the Attorney General was  
16 involved, either in meeting with either of you  
17 individuals or with a larger group?

18 MR. ROVER: Who are you --

19 SENATOR O'CONNOR: Mr. Rover.

20 MR. ROVER: Well, all I can testify to is May  
21 20th personally.

22 SENATOR O'CONNOR: All right. Mr. Fahy, then  
23 you're familiar, since you testified to it, that there  
24 was a meeting on December 9th or 12th. And you also  
25 participated in the December 24th, 1996 meeting,

1 correct?

2 MR. FAHY: Yes, sir.

3 SENATOR O'CONNOR: Now, the May 20th, Mr.  
4 Rover, 1997 meeting, that was a large meeting, correct?

5 MR. FAHY: Yes.

6 SENATOR O'CONNOR: No, I -- I asked Mr.  
7 Rover. But -- okay.

8 MR. FAHY: The Colonel was there, Detective  
9 Gilbert, Alex Waugh, myself, George Rover, yes.

10 SENATOR O'CONNOR: And these were  
11 essentially all the critical players at that time on  
12 the racial profiling issue, correct?

13 MR. FAHY: Pretty much.

14 SENATOR O'CONNOR: All the critical players  
15 both from the Attorney General's Office and the State  
16 Police.

17 MR. FAHY: I would say yes. I mean some  
18 members of the Committee could have come, but yeah.

19 SENATOR O'CONNOR: Okay. Mr. Fahy, you would  
20 characterize that as an important meeting, right?

21 MR. FAHY: Yeah, I -- I viewed it more as a  
22 meeting that they were kind of a pitch from the State  
23 Police. They didn't want the Attorney General to sign  
24 a consent decree. He said he wasn't signing on it.

25 SENATOR O'CONNOR: Okay. It was an important



1 meeting --  
2 MR. FAHY: Sure.  
3 SENATOR O'CONNOR: -- though, to answer the  
4 question?  
5 MR. FAHY: Sure.  
6 SENATOR O'CONNOR: Mr. Rover, you agree with  
7 that?  
8 MR. ROVER: I would say any meeting where you  
9 have the Attorney General, the Colonel and the  
10 Executive Assistant Attorney General, that's --  
11 SENATOR O'CONNOR: And the meeting was --  
12 okay, it was an important meeting you said.  
13 MR. ROVER: Yes.  
14 SENATOR O'CONNOR: The meeting was one that  
15 was preceded by the issuance of an agenda?  
16 MR. ROVER: Who's the question to?  
17 SENATOR O'CONNOR: Mr. Rover. I'm sorry.  
18 MR. ROVER: I was hoping you wouldn't pick  
19 me.  
20 (Laughter)  
21 MR. ROVER: Yes.  
22 SENATOR O'CONNOR: And, in fact, that was an  
23 agenda you had seen beforehand and written some notes  
24 on.  
25 MR. ROVER: That's correct.

1 SENATOR O'CONNOR: And that was a meeting  
2 that followed the issuance of your memorandum that went  
3 to Mr. Waugh and you believe went to the Attorney  
4 General?  
5 MR. FAHY: I have since learned it did go to  
6 the Attorney General.  
7 SENATOR O'CONNOR: Would that not be almost  
8 like a summit type meeting? I mean that important with  
9 all these players there?  
10 MR. ROVER: If you could just define what you  
11 mean by summit?  
12 SENATOR O'CONNOR: Well, common parlance.  
13 Very important meeting.  
14 MR. ROVER: If you could just select -- if  
15 you mean a very important meeting? Is that --  
16 SENATOR O'CONNOR: Okay. Very important  
17 meeting.  
18 MR. ROVER: Okay. I'm not trying to quibble,  
19 I just want to make sure I understand.  
20 Again, just as a basic principle, when you  
21 have a meeting with the Attorney General, the Executive  
22 Assistant Attorney General and the Colonel, right off  
23 the bat, they don't have too many meetings like that  
24 that -- where the issues aren't important. Their time  
25 is very valuable.

1                   And I would also think that given the  
2 existence of the April 22nd memo and some of the  
3 questions posed in there that it was a meeting -- an  
4 important meeting.

5                   SENATOR O'CONNOR: I would agree with you.  
6 And what amazes me about this whole thing is that both  
7 of you have very, very limited recollection of what  
8 went on at that meeting. And I would think that a  
9 meeting of that importance, of that significance would  
10 be something that you would have a pretty clear  
11 recollection of what happened.

12                   But having said that, Detective Gilbert and  
13 Captain Blaker both testified yesterday that at that  
14 meeting, Mr. Rover, you were the one that did most of  
15 the talking. Now, I know you disagree with that  
16 because I have your deposition and you were asked about  
17 that and, again, you said that that was not the case.  
18 Is that still your testimony today?

19                   MR. ROVER: Well, I do not have a  
20 recollection of being -- of doing a lot of talking. I  
21 have testified that I did some talking that I can  
22 recall. And if someone said maybe you did a little  
23 more talking, I couldn't -- I wouldn't quarrel with  
24 that, particularly since I wrote the April memo.

25                   However, counterbalancing that, when you have

1 a meeting with the Executive Assistant, the Colonel and  
2 the Attorney General, someone at my level, in many  
3 cases, doesn't do a lot of talking.

4 I know -- that's the best I can do for you.

5                   SENATOR O'CONNOR: Okay. I understand that.  
6 But I also understand that the Attorney General was to  
7 be briefed on this issue, among other agenda items that  
8 were there. So, I wouldn't expect that he would have  
9 been doing the talking.

10                   MR. ROVER: Well --

11                   SENATOR O'CONNOR: Is that --

12                   MR. ROVER: I think generally, that might  
13 hold true. But there was a memo that laid out some of  
14 these issues. So, it wasn't a cold meeting for the  
15 Attorney General.

16                   SENATOR O'CONNOR: Okay. But someone at that  
17 meeting did pick-up the ball and did brief the Attorney  
18 General on the racial profiling issue, correct?

19                   MR. ROVER: Could you be specific when you  
20 say racial profiling issue? I -- my testimony -- I'm  
21 not -- you know, you have to understand, I want to be  
22 precise here. My testimony is -- my recollection is  
23 that when I left the meeting, I believe that the issues  
24 on the agenda, some more than others, had been covered.

25                   SENATOR O'CONNOR: All right.

1 MR. ROVER: I don't know if that --

2 SENATOR O'CONNOR: All right.

3 MR. ROVER: Because in a lot of cases, I  
4 didn't have a specific recollection of a discussion  
5 about a particular area.

6 SENATOR O'CONNOR: Was there any -- any other  
7 issue that you addressed at that meeting, other than  
8 racial profiling, other than the -- strike that.

9 Did you, at that meeting, discuss the  
10 comparison to -- of the numbers to the Maryland  
11 numbers?

12 MR. ROVER: I don't have any recollection of  
13 that, but I -- I will not sit here and say I definitely  
14 didn't.

15 What my testimony was is that when someone  
16 testifies that I talked a lot, that doesn't necessarily  
17 ring --

18 SENATOR O'CONNOR: Well, did --

19 MR. ROVER: According to my recollection.

20 SENATOR O'CONNOR: Did Detective Gilbert  
21 address that issue at that meeting?

22 MR. ROVER: I think my recollection is is  
23 that Sergeant Gilbert started talking about the  
24 Maryland case, I think, because he knew the most about  
25 it.

1 SENATOR O'CONNOR: Did anyone else address  
2 that issue than Sergeant Gilbert?

3 MR. ROVER: I don't specifically recall, but  
4 I'm sure they did.

5 SENATOR O'CONNOR: And, Mr. Fahy, you  
6 testified earlier today that your recollection of that  
7 meeting coincided with Mr. Rover's.

8 MR. FAHY: Basically, yes.

9 SENATOR O'CONNOR: Okay. So, is it fair to  
10 say then that you two, who are members of the Attorney  
11 General's Office, have one recollection of what the  
12 meeting was generally versus what the recollection of  
13 Detective or Sergeant Gilbert and Captain Blaker was?

14 MR. FAHY: Not necessarily. And this is why  
15 I say that, I viewed the meeting as a meeting in which  
16 the State Police were trying to make some type of pitch  
17 to the Attorney General. And the Attorney General  
18 agreed that he did not want to sign a consent decree.

19 With regard to consent to search issues, it  
20 might have come up, but I don't know what he testified  
21 to yesterday, but in looking at Tommy Gilbert's prior  
22 deposition, Colonel Williams' prior deposition, the  
23 depositions of Alex P. Waugh, George Rover and myself,  
24 all of us said that there wasn't much discussion of  
25 numbers and figures. And I just don't know that that

1 would be necessarily a disagreement among us.

2 SENATOR O'CONNOR: Okay. To quote Senator  
3 Zane then, quoting another person, do you have any  
4 doubt in your mind that as of May the 20th, 1997 the  
5 issue of racial profiling had crystalized in the  
6 Attorney General's mind?

7 MR. FAHY: Sir, I don't know what the word  
8 crystalized means. I know that he had to certainly be  
9 aware of the issue of racial profiling. We went to  
10 Washington, for God's sake.

11 SENATOR O'CONNOR: Okay. All right, you  
12 answered the question.

13 Thank you.

14 SENATOR GORMLEY: Senator Lynch?

15 SENATOR LYNCH: Just a couple questions I  
16 forgot.

17 MR. Rover, you were transferred to the  
18 Division of Gaming Enforcement in January, 1999?

19 MR. ROVER: That's correct.

20 SENATOR LYNCH: Did you ask for that  
21 transfer?

22 MR. ROVER: No.

23 SENATOR LYNCH: Was it a promotion?

24 MR. ROVER: Yes.

25 SENATOR LYNCH: And -- and I'm asking you a

1 question about -- it's not designed to make you look  
2 bad in terms of your knowledge of the law because I  
3 have a great deal of empathy for the position you were  
4 put into to be a buffer and conduit for information  
5 flow to the Department of Justice, and at the same time  
6 to insulate information to the hierarchy of the  
7 Attorney General's Office, as well as the Division of  
8 Criminal Justice for potentially discovery issues and  
9 others.

10 But in that regard, as you -- you testified  
11 before, you had no background in criminal law or search  
12 issues or discrimination law issues.

13 MR. ROVER: That's correct.

14 SENATOR LYNCH: And yet here, you're having  
15 to deal with some of the terminology and definitions of  
16 information that you're looking to -- and categories of  
17 information you're looking to retrieve from the State  
18 Police to pass along to the Department of Justice,  
19 correct?

20 MR. ROVER: That's correct.

21 SENATOR LYNCH: And referring specifically to  
22 R-20 -- can I have someone provide that to the witness?  
23 Which -- we'll deliver you a copy. But it's a memo  
24 from you -- a letter from you dated November 5, 1997 to  
25 Mark Posner, Esquire, the Civil Rights Division of the

1 U.S. Department of Justice.  
2 MR. ROVER: I may have it here, sir. I do.  
3 SENATOR LYNCH: You're now in this roll --  
4 MR. ROVER: I have R-20. Is that --  
5 SENATOR LYNCH: R-20. November 5, 1997.  
6 MR. ROVER: Yes.  
7 SENATOR LYNCH: You're now in this roll of  
8 November 5, 1997 as conduit, buffer, whatever you want  
9 to describe it, for some ten months, correct?  
10 MR. ROVER: That's correct.  
11 SENATOR LYNCH: And the purpose of this  
12 letter is what?  
13 MR. ROVER: To transfer consent to search  
14 documents to the Department of Justice.  
15 SENATOR LYNCH: Okay. And clearly, the  
16 second paragraph intends to set forth what you believe  
17 a consent to search is, correct?  
18 MR. ROVER: Yes.  
19 SENATOR LYNCH: Now, let me read it to you.  
20 "New Jersey consensual motor vehicle searches must be  
21 based upon a written consent executed by the motorists  
22 before this search of his or her vehicle. Such  
23 requests are only obtained after a motorist has been  
24 stopped and only if the law enforcement officer  
25 thereafter determines that there is probable cause to

1 believe that there may be contraband in the vehicle."  
2 Is that correct?  
3 MR. ROVER: That's what it says.  
4 SENATOR LYNCH: That's what it says. And you  
5 now know that that's not an accurate definition of a  
6 consent search, is it?  
7 MR. ROVER: Yes, you have made me look bad.  
8 Yes.  
9 SENATOR LYNCH: But --  
10 MR. ROVER: I know that wasn't your  
11 intention, I'm joking.  
12 SENATOR LYNCH: But the point is -- the point  
13 is that in November of 1997 in this most significant --  
14 in this significant position that you were put into,  
15 you still didn't know the correct definition of a  
16 consent search.  
17 MR. ROVER: Yes. And that memo went through  
18 two other people also.  
19 SENATOR LYNCH: And who did the memo go  
20 through?  
21 MR. ROVER: It was reviewed by Alex Waugh and  
22 I believe the Attorney General.  
23 SENATOR LYNCH: And how do you know that?  
24 MR. ROVER: I think there are documents in  
25 the file that demonstrate that.

1 SENATOR LYNCH: This document also -- on the  
2 bottom it's noted that it has a State Police file  
3 number to it, 107511 and 512. It -- which means to us  
4 here that somebody in the State Police had a copy of  
5 this document, correct?

6 MR. ROVER: I accept your representation.

7 SENATOR LYNCH: But there's no indication of  
8 CC's on this document to anyone.

9 MR. ROVER: No, there isn't.

10 SENATOR LYNCH: Would you regularly send  
11 copies of what you were sending to the Department of  
12 Justice, two blind copies to the -- to the State Police  
13 or to Waugh, Hesper, Verniero?

14 MR. ROVER: My only -- my only explanation  
15 would be that since this document went through Alex and  
16 the Attorney General, in the editing process, for some  
17 reason, they were just not CC'd on it.

18 SENATOR LYNCH: Let me -- let me repeat the  
19 question.

20 MR. ROVER: Okay.

21 SENATOR LYNCH: Did you regularly or did you  
22 ever send blind copies of memos you were sending to the  
23 Department of Justice with attachments to the Division  
24 of State Police or do the Attorney General or his  
25 Assistant?

1 MR. ROVER: No, I did not use BCC's.

2 SENATOR LYNCH: But in this case, a copy  
3 wound-up at the State Police. Do you know how that  
4 happened?

5 MR. ROVER: No, I don't.

6 SENATOR LYNCH: And you -- and this document  
7 was reviewed by both Verniero and Waugh, to your  
8 knowledge?

9 MR. ROVER: I'm almost certain it was  
10 reviewed by both.

11 SENATOR LYNCH: No further questions.

12 SENATOR GORMLEY: Go ahead. Senator  
13 Robertson?

14 SENATOR ROBERTSON: Just one last little area  
15 for Mr. Fahy.

16 Senator Zane asked you why didn't you inquire  
17 of Sergeant Gilbert and ask him to give you whatever  
18 written information that he had. Isn't it a fact that  
19 at least at some point and for some period of time you  
20 were being instructed by Mr. Waugh not to contact the  
21 State Police?

22 MR. FAHY: No, that's not -- Mr. Waugh never  
23 told me not to contact the State Police.

24 SENATOR ROBERTSON: Okay. Do you remember in  
25 December of 1996 receiving an outline of what the

1 Justice Department normally asks for? It's a blank --

2 MR. FAHY: When we went to Washington in  
3 December, they gave us that blank copy.

4 SENATOR ROBERTSON: Right. Well, Mr. Waugh  
5 also sent you a copy of that, right?

6 MR. FAHY: Afterwards, he followed up and  
7 told me to start working on it, and that's probably  
8 when we had more intense discussions about I didn't  
9 want to get involved in this aspect, it was because I  
10 was doing to a new job.

11 SENATOR ROBERTSON: Okay. Well, I draw your  
12 attention to a memorandum from Mr. Waugh to you dated  
13 December 20, 1996. It's marked W-4 as an exhibit, OAG-  
14 577. I think you've been shown this already today, but  
15 it's a two-sentence cover memo to the information  
16 request from the Department of Justice. The two  
17 sentences from Mr. Waugh to yourself are as follows:

18 "Attached is a copy of the type of  
19 documentation requested by the U.S. Department of  
20 Justice in profiling investigations. Without at this  
21 point contacting the State Police, please let me know  
22 what you have and what you know to be available."

23 So, I'll ask you again, did Mr. Waugh ever  
24 instruct you not to contact the State Police with  
25 respect to some of these studies and statistics?

1 MR. FAHY: Yes, but I think I know why.  
2 Because I think he wanted to personally talk to the  
3 Colonel, and that was the meeting on December 24th. He  
4 didn't want me just sending this memo over to the State  
5 Police, getting them all roiled-up without an  
6 opportunity for the Colonel to come over and meet with  
7 the Attorney General.

8 SENATOR ROBERTSON: And did he express that  
9 to you verbally?

10 MR. FAHY: No, but that's -- that's my  
11 reaction from being around the Department for a long  
12 time, that if something could maybe upset a client  
13 agency that the Attorney General might want to do this  
14 in person. That's the way I'm interpreting this, sir.

15 SENATOR ROBERTSON: Okay. Now -- but how is  
16 it that you could fulfill his request when some of the  
17 information being requested by D.O.J. or typically  
18 being requested from D.O.J. is information on traffic  
19 stops and law enforcement activities pursuant to  
20 traffic stops, including analyses, assessment, studies  
21 and reports undertaken by the State Police and other  
22 State officials from 1990 to the present if, in fact,  
23 you haven't, on your own, asked to see what, in fact,  
24 is being compiled. And you're being instructed by Mr.  
25 Waugh not to ask.

1 How can you actually fulfill --

2 MR. FAHY: I --

3 SENATOR ROBERTSON: -- what you're being  
4 asked to do?

5 MR. FAHY: I probably can't answer everything  
6 that's on this list. But from being involved in the  
7 litigation and knowing some of the documents that the  
8 State Police have, I could maybe give them some initial  
9 impressions as to what would be difficult or not  
10 difficult to obtain.

11 SENATOR ROBERTSON: And how, in fact, did you  
12 respond to this memorandum?

13 MR. FAHY: I sent the memo and the file -- I  
14 think Mr. Chertoff went over with it -- me with it in  
15 my deposition, my response to this.

16 SENATOR ROBERTSON: All right. You --

17 MR. FAHY: I did -- I did a --

18 SENATOR ROBERTSON: -- issued a written  
19 response to this.

20 MR. FAHY: I did a written memo back to Mr.  
21 Waugh about my assessment of what would be easy to get,  
22 what may take longer to get.

23 SENATOR ROBERTSON: Were you ever -- other  
24 than this particular instance, and especially looking  
25 to the period preceding December, '96, were you ever

1 instructed formally or informally or because of  
2 whatever motives you might ascribe because of instinct,  
3 were you ever instructed not to deal with the State  
4 Police or not to request certain information?

5 MR. FAHY: No.

6 SENATOR ROBERTSON: Because sometimes that  
7 happens in law --

8 MR. FAHY: No.

9 SENATOR ROBERTSON: -- when you don't want  
10 something in writing, did that happen here?

11 MR. FAHY: No, in the 22 years I've been  
12 there, no one's ever told me -- no one's ever told me  
13 to destroy anything, not put something in writing.  
14 Never, sir.

15 SENATOR ROBERTSON: No further questions.

16 SENATOR FURNARI: Mr. Rover, everybody, I  
17 think in this room, and certainly here, understands the  
18 difficult positions that you were put in before and  
19 unfortunately today, as well.

20 But just for clarifications, when you were in  
21 that position, you still had other functions at the  
22 Alcohol Beverage Control, is that right?

23 MR. ROVER: I had significant duties.

24 SENATOR FURNARI: Okay. That included all  
25 of the normal things --



1 MR. ROVER: I was --

2 SENATOR FURNARI: Do you want to just tell  
3 us about that?

4 MR. ROVER: Generally, I was the special  
5 assistant to the Director. And I had a director who  
6 relied on me quite a bit, and so I was involved in  
7 fiscal, admin, assisting on licensing matters. We had  
8 a statewide underage drinking initiative that came --  
9 probably came the best in the United States called Cops  
10 and Chops (phonetic), and there was a lot to do.

11 SENATOR FURNARI: So, this other duty was an  
12 additional function that was placed on you.

13 MR. ROVER: Yes, it was.

14 SENATOR FURNARI: Thank you.

15 SENATOR GORMLEY: Final question, Mr.  
16 Chertoff.

17 MR. CHERTOFF: I just have a question, Mr.  
18 Fahy, in response to your -- in an answer you gave to  
19 Senator O'Connor earlier when you were characterizing a  
20 meeting on May 20th as it relates to consent, the  
21 discussion about consent searches, and I think you  
22 said, well, everybody kind of agreed that there as a  
23 little discussion about it. And let me tell you what I  
24 don't understand, and maybe you can help us with this,  
25 in all of my experience dealing with people who are

1 being investigated or companies or whoever, Government  
2 agencies, the first thing you do when you get asked for  
3 information or an investigation begins, you try to  
4 figure out if there's an area that's vulnerable or  
5 there's a potential problem.

6 I mean I can't think of any instance in which  
7 I have seen an investigation with people being the  
8 first to look themselves to see do we have a problem.  
9 Is there something that we have to be sensitive about  
10 and be aware about.

11 I don't know if your experience is any  
12 different. You have to agree with me, at this point,  
13 as of May, there is a serious and potentially very  
14 embarrassing inquiry underway from the Civil Rights  
15 Division, you'd agree with that, right?

16 MR. FAHY: It could be, yes.

17 MR. CHERTOFF: And --

18 MR. FAHY: It could be embarrassing if the  
19 records don't turn out the right way.

20 MR. CHERTOFF: Well, embarrassing enough that  
21 the Attorney General's first objective in December when  
22 this thing surfaced was to try to avoid getting a  
23 letter sent that would characterize it as an  
24 investigation so that there wouldn't be anything on the  
25 record that would make it an investigation as opposed

1 to a review.

2 So, you knew there was a sensitivity about  
3 it, correct?

4 MR. FAHY: Yes.

5 MR. CHERTOFF: And it was compounded because  
6 going into this thing, there was already a judge,  
7 rightly or wrongly, who had found against the State on  
8 this issue, correct?

9 MR. FAHY: I knew that.

10 MR. CHERTOFF: Now you're coming into a  
11 meeting, there's a memo that had been prepared in  
12 advance identifying the consent to search issue as a  
13 hot issue to be considered, correct?

14 MR. FAHY: It was on the agenda.

15 MR. CHERTOFF: And you also saw the memo that  
16 Mr. Rover prepared because you got a copy of it, right?  
17 And it talked about two issues and one of them was  
18 consent to search, right?

19 MR. FAHY: I'm not recalling that now, it's  
20 late in the day. But if you say there's a memo he gave  
21 me then yes.

22 MR. CHERTOFF: It was addressed to you, it  
23 was the April 22nd memo which, I think we looked at  
24 earlier.

25 So, you're going into the meeting. This is

1 an issue that's pinpointed on the agenda. It is an  
2 issue which there's a memo about. And it has to do  
3 with a meeting in which there's a decision -- decisions  
4 are being made about how to deal with a potentially and  
5 very sensitive and embarrassing inquiry from outside  
6 agencies.

7 Now, the subject of consent to searches come  
8 up. I think you agree, and everybody agrees, that at a  
9 minimum, someone said in the meeting that our numbers  
10 are on a par or in the same ballpark or equal to or  
11 about the same as a set of numbers that had led to a  
12 very bad result for the State of Maryland, right?

13 MR. FAHY: Yes, that could have been said,  
14 yes.

15 MR. CHERTOFF: All right. Now, under those  
16 circumstances, are you really telling us that nobody  
17 asked any questions about it? Nobody -- I mean there's  
18 only two possibilities. Either everybody knew about it  
19 and, therefore, it didn't need to be discussed. Or  
20 people didn't know about it, in which case they would  
21 ask questions. Or, I guess, the third is that they  
22 were utterly indifferent to a major issue with respect  
23 to a significant investigation.

24 Which one of those three choices -- which one  
25 of those three options is the one that you recall being

1 what happened at the meeting?

2 MR. FAHY: I don't recall, sir. But whatever  
3 they were, the numbers were the numbers. And if  
4 Justice got them, yeah, maybe we should have done more  
5 of a heads up. But the numbers weren't going to  
6 change.

7 If you gave them to Justice and they were bad  
8 numbers, we'd have to deal with that issue down the  
9 line.

10 SENATOR GORMLEY: Excuse me. A, B or C or  
11 none of the above. Let's try it. Which one of the  
12 choices or none of the above?

13 MR. FAHY: Can you repeat A, B and C?

14 MR. CHERTOFF: Yeah, A is everybody  
15 understands the issue, so you don't need to talk about  
16 it very much. They all indicate they know basically  
17 what's going on, so it doesn't need to be laid out,  
18 that's one.

19 Option number two is people don't know and  
20 they ask questions and it's discussed and everybody's  
21 informed.

22 Or option number three is people say we don't  
23 know about it, but we don't really care, so let's move  
24 on to something else. Which one of the three is your  
25 sense of what happened?

1 MR. FAHY: I don't think it has to be those  
2 three options. I think it can be we don't know about  
3 it, but our cooperative effort with Justice is going to  
4 show us what the numbers are, too.

5 MR. CHERTOFF: Well, are you telling us --

6 MR. FAHY: That's four.

7 MR. CHERTOFF: -- that the tenor of the  
8 meeting was we don't know what's going on so let's  
9 enter into a cooperative partnership with the  
10 Department of Justice where we're going to just share  
11 everything with them and maybe they'll come and tell us  
12 whether we have a problem. Was that the tenor of the  
13 meeting?

14 MR. FAHY: Sir, it may seem naive on my part,  
15 but in the 21 years there, when an Attorney General  
16 tells me that they want to cooperate with the Justice  
17 Department as he did in December of '96 and this is  
18 maybe only the second meeting I've been with them at, I  
19 assume good faith on his part.

20 MR. CHERTOFF: That's not my question.

21 MR. FAHY: I thought that's --

22 MR. CHERTOFF: My question --

23 MR. FAHY: -- what we were going to do,  
24 cooperate.

25 MR. CHERTOFF: My question is the tenor of

1 the meeting -- was the tenor of the discussion about  
2 consent to search documents? We don't know what's  
3 going on, let's turn it over to the Federal Government  
4 and they'll tell us what -- what the story is? Is that  
5 what you're telling us --

6 MR. FAHY: I can't --

7 MR. CHERTOFF: -- the tenor of the meeting  
8 was?

9 MR. FAHY: I can't recall the specifics, sir,  
10 that way.

11 MR. CHERTOFF: I mean was -- was there a  
12 point to this meeting? Or did you have the sense that  
13 you had just been invited in for some kind of aimless  
14 rambling about an issue and then going on your merry  
15 way?

16 MR. FAHY: No, I think -- no. I think the  
17 point that I thought of the meeting -- the number one  
18 point I got from it was that the State Police wanted to  
19 make clear that they didn't want a consent to search --  
20 strike that. -- a consent order entered. And that the  
21 Attorney General was assuring them that he wasn't going  
22 to do that.

23 Now, further on in the meeting, they may have  
24 said something about we have numbers, our consent to  
25 search figures --

1 MR. CHERTOFF: Well, you yourself told -- you  
2 told us maybe in the last couple of hours, you yourself  
3 agreed that in the meeting the State Police indicated  
4 they had concern about the consent to search numbers.

5 Now, it's a very simple question. Did  
6 somebody say what's the concern? What do you mean?  
7 What's the problem? Or was the attitude like, well,  
8 okay, we don't really care, let's move on to something  
9 else?

10 MR. FAHY: No, I think that if people said  
11 the numbers are in the ballpark in Maryland, then that  
12 might be a problem some day, sure.

13 MR. CHERTOFF: So, then what was the follow-  
14 up to that? Somebody says that we've got numbers and  
15 there might be a problem. What happens? What is the  
16 next question or statement that comes up in the  
17 meeting?

18 MR. FAHY: I don't recall, sir.

19 MR. CHERTOFF: Putting aside specific words,  
20 is there any reaction to that along the lines of well,  
21 let's find out whether we have a problem?

22 MR. FAHY: I don't recall, sir.

23 MR. CHERTOFF: Is there any reaction along  
24 the lines of can you come back to us and give us  
25 further enlightenment about whether it's a problem or

1 not?

2 MR. FAHY: I don't recall that being a  
3 directive either, sir.

4 MR. CHERTOFF: Did anybody say, let's -- if  
5 we're not sure if the numbers are meaningful, let's go  
6 look at the underlying files to find out what the  
7 answer is?

8 MR. FAHY: I don't recall that being said,  
9 sir.

10 MR. CHERTOFF: Has -- so, all you can tell us  
11 about the discussion of consent to search was the  
12 subject of a memo before the meeting, an agenda item on  
13 the meeting and a significant issue with respect to  
14 Maryland. All you can tell us is that there was a  
15 conversation saying that the numbers in New Jersey and  
16 Maryland were in the same ballpark or on a par with  
17 each other. And an understanding that in Maryland,  
18 those numbers are led to a consent decree, and an  
19 understanding that the State Police were worried about  
20 a consent decree in New Jersey based on those numbers.  
21 And the Attorney General would say well, I'm not going  
22 to agree to a consent decree. That's all you can  
23 remember about the meeting?

24 MR. FAHY: Yes.

25 SENATOR GORMLEY: We're going to take a ten-

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1 minute break.

2 (Recess)

3 SENATOR GORMLEY: The next witness will be  
4 Colonel Carl Williams. Just please stand, Colonel,  
5 while I recite the oath to you. Would you raise right  
6 hand, please?

7 COLONEL WILLIAMS: I can't hear you, sir?

8 SENATOR GORMLEY: We're going to ask you to  
9 take the oath at this time. Would you raise your right  
10 hand, please.

11 C A R L W I L L I A M S, SWORN

12 SENATOR GORMLEY: Mr. Chertoff.

13 MR. CHERTOFF: Colonel Williams, good morning  
14 -- good afternoon. Good evening. Whatever.

15 (Laughter)

16 MR. CHERTOFF: How long were you with the  
17 State Police?

18 THE WITNESS: Thirty-five years.

19 MR. CHERTOFF: And when did you leave?

20 THE WITNESS: I was terminated in February  
21 28th, 1999.

22 MR. CHERTOFF: When did you become  
23 Superintendent?

24 THE WITNESS: I became Superintendent in --  
25 Acting Superintendent in March of 1994 and I was sworn

1 in as the Superintendent in June of 1994.

2 MR. CHERTOFF: Now, you -- you brought  
3 representation -- legal representation with you for  
4 purposes of the hearing?

5 THE WITNESS: Uh?

6 MR. CHERTOFF: Have you brought legal  
7 representation with you for purposes of the hearing?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: Can you identify through the  
10 record who your lawyers are?

11 THE WITNESS: Okay. They're seated behind  
12 me. Mr. Clifford VanSyoc and Mr. George Fisher.

13 MR. CHERTOFF: Now, let me ask you, at the  
14 time that you came on board as Superintendent, were you  
15 familiar with what the prevailing policy was with  
16 respect to drug interdiction on the Turnpike?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Okay. And did you understand  
19 that policy to have a certain emphasis on interdiction  
20 versus being mindful of issues of profiling?

21 THE WITNESS: We were taking part in the DEA  
22 Operation PIPELINE, Drug Interdiction Program, yes,  
23 sir.

24 MR. CHERTOFF: Were you familiar with the  
25 policies of your prior -- your predecessor, Colonel

1 Dintino, concerning the issue of racial profiling in a  
2 way which interdiction was conducted on the Turnpike?

3 THE WITNESS: I know he had -- he had some  
4 concerns about it and he had changed some S.O.P.'s,  
5 yes, sir.

6 MR. CHERTOFF: Okay. And did you familiarize  
7 yourself with that during the course of the transition?

8 THE WITNESS: Well, I knew about it from  
9 being in the State Police.

10 MR. CHERTOFF: Did you make any decision or,  
11 to your knowledge, was any decision made by the State  
12 Police to make a change in an emphasis on drug  
13 interdiction on the Turnpike after you became  
14 Superintendent?

15 THE WITNESS: I wouldn't say there was an  
16 emphasis change. I think there was a change in the  
17 troopers would be active in the drug enforcement area  
18 as requested by the DEA and the Governor, Attorney  
19 General, everybody else in the State of New Jersey

20 MR. CHERTOFF: Was there a change? Do you  
21 remember there being a specific decision to change the  
22 emphasis in the way drug interdiction was conducted on  
23 the Turnpike when you came on board?

24 THE WITNESS: Not that I recall, no, sir.

25 MR. CHERTOFF: So, you don't remember any

1 particular point in which a decision was made, we're  
2 going to step-up drug interdiction or we're going to  
3 step-up our focus on stops of individual automobiles?

4 THE WITNESS: There was no directive to go  
5 out. The only directive that went out was that the  
6 troopers were to do their job and when they saw a  
7 violation and a criminal violation, they were to take  
8 whatever action was necessary.

9 MR. CHERTOFF: Now, in March of 1996, did you  
10 become aware of a decision by a Judge Frances in a case  
11 called Soto?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: And you understood that  
14 decision was a finding at least, a preliminary finding  
15 that there was a basis to go forward on claims of  
16 selective enforcement in stops at the southern end of  
17 the Turnpike?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: What was your reaction to  
20 that?

21 THE WITNESS: Well, after consultation with  
22 the -- my staff and the Attorney General's Office, we  
23 determined that there was some disagreement with Judge  
24 Frances' decision. And we were going to look into  
25 appealing it.

1 MR. CHERTOFF: Now, did you also take steps  
2 to form a Committee to deal with the aftermath of that  
3 decision?

4 THE WITNESS: Yes, I did, sir.

5 MR. CHERTOFF: And that was chaired by  
6 Lieutenant Colonel Littles?

7 THE WITNESS: Lieutenant Colonel Val Littles,  
8 yes.

9 MR. CHERTOFF: And it also included, among  
10 other people, Sergeant Gilbert, Captain Brennan,  
11 Captain Touw and representatives from the Office of the  
12 Attorney General?

13 THE WITNESS: That's correct, sir.

14 MR. CHERTOFF: What was the purpose of the  
15 Committee?

16 THE WITNESS: To look into the policies and  
17 procedures that the State Police was operating under at  
18 that time with regards to the traffic stops.

19 MR. CHERTOFF: And what was the reason you  
20 wanted to have that looked into?

21 THE WITNESS: Well, we wanted to get the  
22 statistics or feel for, you know, what was going on out  
23 there and what was the -- you know, the ramifications  
24 from Judge Frances' ruling.

25 MR. CHERTOFF: Were you made aware -- did you

1 receive reports about the activities of the Committee  
2 that were generated by Sergeant Gilbert and went up the  
3 chain of command?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: And did those reports make it  
6 clear to you that there was going to be, within the  
7 State Police, the effort to look at some of the  
8 statistics in terms of issues such as stops?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: I'm going to show you a few  
11 documents, I'm going to try to move this quickly.  
12 There's a document called CW-6, which is by the  
13 Superintendent's Action memo 5/24/96. And it's got GC-  
14 3983, I'm going to give that to you. Do you remember  
15 this document?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: Okay. Now, underneath the top  
18 page, there's a report to you from Detective Gilbert  
19 regarding the May 16th Committee meeting --

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: -- correct?

22 THE WITNESS: Yes, sir.

23 MR. CHERTOFF: And at the end of the report  
24 on Page 3, it indicates that the records and  
25 identification section as prepared in analysis of

1 arrest statistics from troopers who are -- whose cases  
2 are subject to the Gloucester County. And also a  
3 preliminary analysis of enforcement activity for  
4 Perryville for a year period from October, '94 to  
5 October, '95. Do you remember seeing that?

6 THE WITNESS: Where -- are you on Page 2?

7 MR. CHERTOFF: The last page.

8 THE WITNESS: Yes.

9 MR. CHERTOFF: The very last paragraph of the  
10 whole document, do you remember seeing that?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: Now, there were a series of  
13 recommendations made by the Committee regarding  
14 reconfiguration of patrol charts, retaining patrol  
15 charts and retaining radio logs, correct?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: And did you, on this top page,  
18 indicate your approval of that -- those changes and  
19 send it back down to Lieutenant Colonel Littles?

20 THE WITNESS: Yes, sir, I did.

21 MR. CHERTOFF: And was this your customary  
22 manner of approving recommendations?

23 THE WITNESS: Correct, sir.

24 MR. CHERTOFF: Why did you agree with these  
25 changes? Why did you approve these?



1 THE WITNESS: I --

2 MR. CHERTOFF: Why did you approve these  
3 recommendations?

4 THE WITNESS: Because I thought they were  
5 good recommendations.

6 MR. CHERTOFF: What was your objective?

7 THE WITNESS: To look into the operation of  
8 the organization and the activities of the trooper on  
9 patrol.

10 MR. CHERTOFF: Now, was there -- did you  
11 assign a particular person in the State Police to be in  
12 contact with the Office of the Attorney General with  
13 respect to this issue of racial profiling?

14 THE WITNESS: Well, at the time, I think I  
15 was assigned either -- then was Lieutenant, I think  
16 Lieutenant or Dave Blaker, who was a Sergeant. And  
17 they chose Detective, at that time, Tom Gilbert to act  
18 as the representative or the go-between, whatever word  
19 you want to use, between the Division of State Police  
20 and the Office of the Attorney General.

21 MR. CHERTOFF: And that was with respect to  
22 the Soto case, which was then underway, right?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: The appeal was underway.

25 THE WITNESS: The Soto case.

1 MR. CHERTOFF: Yeah, Soto case. Now, let me  
2 go to another document, CW-8, which is a document dated  
3 10/4/96, memorandum to Major Fedorko regarding patrol  
4 issues concerns in Moorestown.

5 THE WITNESS: Yes, sir.

6 MR. CHERTOFF: Again, do you remember seeing  
7 this --

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: -- document?

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: And this document indicates,  
12 again, that there were audits of Perryville, Washington  
13 and Moorestown to do up a racial monitoring program for  
14 motor vehicle stops.

15 THE WITNESS: Yes, sir.

16 MR. CHERTOFF: Did you agree with the fact  
17 that that program was put into place?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: Now, I'm just going to -- give  
20 me a moment, I want to find an attachment to this.

21 (Pause)

22 MR. CHERTOFF: I'm going to come back to  
23 that, let's move along. Did there come a point in time  
24 in late 1996 you learned that the Department of Justice  
25 was going to begin a review of racial profiling issues

1 in New Jersey?

2 THE WITNESS: I became aware that the  
3 Department of Justice was going to start a review  
4 within the State Police, yes, sir.

5 MR. CHERTOFF: And how did you learn about  
6 that?

7 THE WITNESS: I think I was made aware  
8 through the Attorney General's Office, if I remember  
9 correctly.

10 MR. CHERTOFF: Did there come a time you  
11 attended a meeting early December?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: And who attended -- who was at  
14 the meeting?

15 THE WITNESS: Is this the December 24th  
16 meeting?

17 MR. CHERTOFF: December 9th.

18 THE WITNESS: December 9th?

19 MR. CHERTOFF: This was before there was a  
20 trip down to meet with the Department of Justice. Did  
21 you attend a meeting on December 9th?

22 THE WITNESS: Yes, sir. To the best of my  
23 recollection I think it was the Attorney General,  
24 myself, Alex Waugh -- I don't know -- I think Jack Fahy  
25 might have been there. I don't know -- I don't know if

1 I took Colonel Littles from the Division or not, you  
2 know, exactly who I took from the Division Headquarters  
3 with me.

4 MR. CHERTOFF: What was the purpose of the  
5 meeting?

6 THE WITNESS: It's my understanding, I think  
7 that the Attorney General is advising me about the  
8 Justice Department and what they were about to do with  
9 regards to starting this review/inquiry into the State  
10 Police.

11 MR. CHERTOFF: What was your reaction to  
12 that?

13 THE WITNESS: Oh, I wasn't -- you know, I  
14 wasn't upset, nor was I too happy about it either. I  
15 was wondering what they were out looking for.

16 I -- but I made it known that, you know,  
17 whatever they wanted, we'd cooperate with whatever  
18 request the Attorney General and/or the Justice  
19 Department would ask us.

20 MR. CHERTOFF: Now, did you -- were you made  
21 aware in that meeting that there was going to be a trip  
22 down to the Department of Justice by the Attorney  
23 General?

24 THE WITNESS: Yes, sir, I was.

25 MR. CHERTOFF: And did you actually go on

1 that trip?

2 THE WITNESS: No, sir, I did not.

3 MR. CHERTOFF: Okay. At the end of the  
4 meeting on December 9th, were you left with anything in  
5 particular to do?

6 THE WITNESS: I can't remember specifically,  
7 sir, whether I was instructed to start gathering  
8 reports or what, you know, what I was told to do. I  
9 can't remember specifically, sir, no.

10 MR. CHERTOFF: Now, as of this point in time,  
11 as we have seen through the documents we looked at a  
12 few moments ago, you were aware that components within  
13 the State Police were beginning the process of  
14 accumulating information about stops at Moorestown and  
15 at Perryville, right?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: Did you, in the wake of that  
18 meeting on December 9th, ask for any information or ask  
19 to have that collected in connection with having to  
20 turn it over to the Department of Justice?

21 THE WITNESS: Well, I told him, you know,  
22 that we would cooperate and do anything they -- you  
23 know, whatever they wanted. You know, you tell us, so  
24 to speak, what you want and we'll provide the reports  
25 for you.

1 MR. CHERTOFF: Did there come a time you were  
2 told about the results of the meeting in Washington?

3 THE WITNESS: The Attorney General had in  
4 Washington?

5 MR. CHERTOFF: Yes, sir. And how did that  
6 come about?

7 THE WITNESS: I think that was at a  
8 subsequent meeting. Maybe that was the meeting on the  
9 24th of December where I think at that time I was given  
10 a -- like a direction as to what -- what was expected  
11 of the State Police to provide initially for the  
12 Justice Department.

13 MR. CHERTOFF: And you went to that meeting  
14 with Detective Gilbert, Thomas Gilbert?

15 THE WITNESS: Yes, sir.

16 MR. CHERTOFF: Why did you bring him along?

17 THE WITNESS: As I said, he was the person  
18 who was, you know, -- we as a -- as a staff felt was  
19 the most qualified person to represent the State Police  
20 to gather this information. You know, to disburse it.  
21 And, you know, that the job would be done right and  
22 done. That I could trust him.

23 MR. CHERTOFF: You know, I'm going to just  
24 jump back a little bit. There's a -- I want to show  
25 you an Exhibit G-7B, which is a memo to you dated

1 October 11, 1996 from Detective Gilbert, Search and  
2 Seizures Meeting of October 4th, 1996.

3 If you turn to the page on the bottom marked  
4 OAG 4233, you see a copy of that memo we talked about a  
5 moment ago to Major Fedorko in October, '96 regarding  
6 recommendations to the patrol issues, concerns at  
7 Moorestown Station?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: Now, you remember what this  
10 issue in Moorestown was, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: And there were complaints by  
13 certain troopers that they believed there was profiling  
14 going on.

15 THE WITNESS: That is correct, sir.

16 MR. CHERTOFF: And I take it that would be a  
17 fairly serious issue in the -- in light of the fact  
18 that there was already a case underway in the courts  
19 relating to Moorestown Station.

20 THE WITNESS: That is correct, sir.

21 MR. CHERTOFF: So, is it fair to say that you  
22 were concerned about it?

23 THE WITNESS: Yes, sir.

24 MR. CHERTOFF: And was it your understanding  
25 that this set of issues about complaints in Moorestown

1 was one of the topics discussed at these Committee  
2 meetings that were chaired by Lieutenant Colonel  
3 Littles?

4 COLONEL WILLIAMS: It was brought to my  
5 attention, yes, sir.

6 MR. CHERTOFF: Now on this document here  
7 we've got in front of us, OAG-4233, there are various  
8 suggestions that are made.

9 COLONEL WILLIAMS: Yes, sir.

10 MR. CHERTOFF: And there's handwriting. Is  
11 that your handwriting?

12 COLONEL WILLIAMS: It's my printing, yes,  
13 sir.

14 MR. CHERTOFF: All right. And was this your  
15 reaction to those suggestions?

16 COLONEL WILLIAMS: It was my reaction to the  
17 suggestion about the periodic evaluation reports that  
18 the troopers' racial tabulation should be put on there  
19 and I said no.

20 MR. CHERTOFF: Why did you say no to that?

21 COLONEL WILLIAMS: I didn't think that that  
22 was an appropriate place for it. The evaluation report  
23 is a -- is a twice a year report on the -- I guess you  
24 could call it what the trooper does in the  
25 organization, his evaluation. It's personnel issue.

1 It stays in their personnel file from the first one  
2 that's done on you in the Division until the day you  
3 get out of the organization. I also thought that there  
4 might be a problem with the bargaining units with  
5 regards to a substance change in the evaluation report,  
6 that we'd have to -- we'd have a problem there. And  
7 thirdly I thought that it was a responsibility of the  
8 station commander who's responsible for these troopers  
9 at that station that he should be -- he or she should  
10 be the person that's aware of what's going on at the  
11 station and make that evaluation, not on an evaluation  
12 report. Those are the three reasons why I -- I said  
13 no.

14 MR. CHERTOFF: Okay. Now on the next page  
15 there's some other recommendations that r made. One  
16 was to include in the trooper criminal investigation  
17 officer's inspection a review of three to five  
18 investigations to insure investigations were conducted  
19 properly.

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: What was -- what was your  
22 reaction to that?

23 COLONEL WILLIAMS: I wanted the -- I wanted  
24 the criminal investigation officer, in other words  
25 they're the Lieutenant in charge at each troop that's

1 basically responsible for the entire Criminal  
2 Investigation Section in a particular trooper, and I  
3 wanted them to be aware of what was going on at the  
4 various stations. I wanted them to check the reports  
5 to make sure that they were -- they were complete, what  
6 the -- you know, what the circumstances were leading up  
7 to the arrest, how the arrest was made, what contraband  
8 was confiscated, if any, you know, what type of arrest  
9 it was, so that they would be -- take more of an active  
10 part in the running of the Criminal Investigation  
11 Section within -- within each one of the troops.

12 MR. CHERTOFF: Was there also a  
13 recommendation to have review of all warrantless  
14 arrests by the -- at the station level in the trooper  
15 bureau level?

16 COLONEL WILLIAMS: That is correct. Again, I  
17 wanted the station commander and assistant station  
18 commander and the criminal investigation officers in  
19 the troops to become more aware and active and know  
20 what's going on in their troops and to oversee to make  
21 sure everything was running according to the SOPs.

22 MR. CHERTOFF: Now were these recommendations  
23 you had to run by the Office of the Attorney General or  
24 did you have the authority to put these into effect  
25 yourself?

1 COLONEL WILLIAMS: I think I put these out on  
2 my own, sir.

3 MR. CHERTOFF: Okay. Let's get back to  
4 December 24th. You go to these meeting on Christmas  
5 Eve with Sergeant Gilbert and what is the -- what does  
6 the Attorney General tell you happened in Washington a  
7 couple weeks earlier?

8 COLONEL WILLIAMS: Well, to the best of my  
9 recollection and this can't be verbatim, but it was a  
10 meeting in Washington with the Attorney General and I  
11 don't know, it was upper echelon of the Department of  
12 Justice and they had made certain requests of what I'll  
13 call the State of New Jersey State Police. And the --  
14 to the best of my recollection, the Attorney General  
15 came back and informed me as to what transpired at this  
16 time, what was expected of the State Police and, you  
17 know, what we were going to do, what my marching orders  
18 were.

19 MR. CHERTOFF: What if anything did the  
20 Attorney General or anybody else say to you at the  
21 meeting about whether they had been able to avoid  
22 having a letter, an actual letter sent or formal  
23 investigation?

24 COLONEL WILLIAMS: It was my understanding at  
25 that time that as a result of the meeting with the

1 Attorney General and the individuals in Washington,  
2 D.C. at Justice, that that had been back burnered, for  
3 the want of a better word, at this time and that they  
4 would try to work together and work something out, you  
5 know, a cooperative type exchange of information as  
6 time went on.

7 MR. CHERTOFF: Now after the first of the  
8 year, in January, on January 10th, 1997, did you have a  
9 further conversation with the Attorney General and with  
10 Assistant Attorney General Waugh regarding the data  
11 that was requested by the Justice Department?

12 COLONEL WILLIAMS: That was January 10th.

13 MR. CHERTOFF: '97?

14 COLONEL WILLIAMS: Yes, sir.

15 MR. CHERTOFF: Okay. And to help you out,  
16 I'm going to show you G-12, 0AG-6164. It's a memo  
17 1/9/97 from Sergeant Gilbert to you with a handwritten  
18 notation signed by you. Do you recognize this?

19 COLONEL WILLIAMS: Yes, sir.

20 MR. CHERTOFF: Now how did you come to have  
21 this meeting with the Attorney General or this  
22 conversation with the Attorney General?

23 COLONEL WILLIAMS: I -- again, it's an  
24 assumption on my part, I -- most likely it was either a  
25 phone call made from the Attorney General's Office

1 telling me to -- you know, to come down to his office  
2 and/or a phone call to my secretary from his secretary  
3 saying the Attorney General wants you down in his  
4 office, you know, on this date, such and such a time.

5 MR. CHERTOFF: And it says here that at this  
6 time same will be restricted to the Turnpike stations  
7 of Cranbury and Moorestown. What was the discussion  
8 you had with the Attorney General at this meeting?

9 COLONEL WILLIAMS: It was -- to the best of  
10 my recollection, the Justice Department had -- had  
11 agreed to -- to narrow the scope of the request for  
12 documents from the State Police instead of a Division -  
13 - instead of a Division wide document request, that it  
14 would be zeroed in to those two stations on the -- on  
15 the Turnpike.

16 MR. CHERTOFF: What was the significance of  
17 that?

18 COLONEL WILLIAMS: Well the significance of  
19 it was that it was a -- you know, it would have been a  
20 monumental task as far as just gathering records for  
21 the entire of State of New Jersey for all the troops  
22 out there, the various troop stations and, you know, it  
23 was a less of a burden on the -- on everybody involved.

24 MR. CHERTOFF: Now in this period of time  
25 after January of 1997, did you become aware that

1 Sergeant Gilbert had done an analysis, first of all, of  
2 the arrests by the troopers who were the subject of the  
3 Soto case, and secondly, the consent to search  
4 statistics in New Jersey as they compared to consent to  
5 search statistics for the Maryland State Police?

6 COLONEL WILLIAMS: Yes, sir.

7 MR. CHERTOFF: How did you -- do you know how  
8 he came to undertake that analysis?

9 COLONEL WILLIAMS: How did I become aware of  
10 it?

11 MR. CHERTOFF: Well how did -- do you know  
12 how he came to start -- to conduct that analysis, why  
13 he started to conduct it?

14 COLONEL WILLIAMS: He was -- he was ordered  
15 to do it.

16 MR. CHERTOFF: By who?

17 COLONEL WILLIAMS: I think it was either  
18 myself or, you know, maybe Lieutenant Colonel Littles  
19 or somebody like that. But it was an order from, you  
20 know, like I say, either myself or one of the other  
21 staff officers.

22 MR. CHERTOFF: Well what was he ordered to  
23 do?

24 COLONEL WILLIAMS: Was to compile the  
25 statistics at the -- at the stations to find out, you

1 know, what's going on out there.

2 MR. CHERTOFF: And why was that important to  
3 you at this point?

4 COLONEL WILLIAMS: Well again, I needed to  
5 know, you know, what was happening out in the -- out in  
6 the field with regards to what was being requested by  
7 the Attorney General and the Department of Justice.

8 MR. CHERTOFF: Now let me show you G-13, an  
9 undated memo to you from Sergeant Gilbert re Justice  
10 Department inquiry. It's OAG-6225. I bet you  
11 recognize this?

12 COLONEL WILLIAMS: Yes, sir, I do.

13 MR. CHERTOFF: Did you get this?

14 COLONEL WILLIAMS: Yes, sir, I did.

15 MR. CHERTOFF: Approximately in February of  
16 1997?

17 COLONEL WILLIAMS: I won't argue with. I --  
18 there's no date on there, sir, so I would -- I would  
19 assume so. But again I can't say yes, I can't say no.

20 MR. CHERTOFF: Did you read it when you got  
21 it?

22 COLONEL WILLIAMS: Yes, sir.

23 MR. CHERTOFF: Did you understand it was  
24 significant?

25 COLONEL WILLIAMS: Yes, sir, I did.

1 MR. CHERTOFF: Now were you aware at this  
2 point in time that there was a consent decree involving  
3 the Maryland State Police?

4 COLONEL WILLIAMS: Yes, sir, I was.

5 MR. CHERTOFF: How did you become aware of  
6 that, do you remember?

7 COLONEL WILLIAMS: Well it was common  
8 knowledge with regards to the -- we have an  
9 International Association of Chiefs of Police and also  
10 a part of that -- that organization is the State and  
11 Provincial wing of the IACP. And we would have -- not  
12 only were there meetings with the full body of the  
13 IACP, but there was also -- we would usually have one  
14 or two what we call a national meeting a year and then  
15 we would also have the -- or the United States was  
16 broken up into four districts and what we consider the  
17 northeast would encompass West Virginia north to  
18 Pennsylvania east. We would also have regional -- what  
19 we call regional meetings and that was one of the  
20 subjects of conversation at the -- at one of those  
21 meetings, well it's actually several of those meetings  
22 what had transpired in Maryland.

23 MR. CHERTOFF: Did you regard the possibility  
24 of the consent decree as a serious concern?

25 COLONEL WILLIAMS: It was -- it was a serious



1 concern, yes, sir.

2 MR. CHERTOFF: And when you read this memo,  
3 let me take you through it. I mean did you see that  
4 the consent to search -- you understood what consent to  
5 search figures were as distinct from stop figures,  
6 right?

7 COLONEL WILLIAMS: Yes, sir.

8 MR. CHERTOFF: Did you understand the consent  
9 to search figures for New Jersey as being comparable to  
10 if not slightly worse than those in Maryland that had  
11 led to the consent decree in Maryland?

12 COLONEL WILLIAMS: From the statistics I had  
13 received with regards to the State of Maryland and what  
14 I received here, they were approximately the same or  
15 like you say, a little better.

16 MR. CHERTOFF: Did you also understand that  
17 from the analysis that Sergeant Gilbert had done with  
18 respect to the troopers in Moorestown and Cranbury,  
19 that the statistics with respect to arrests -- I'm  
20 sorry, searches there were also very high as compared  
21 to or at least on a par with those generated in  
22 Maryland?

23 COLONEL WILLIAMS: Yes, sir.

24 MR. CHERTOFF: Did you understand what the  
25 significance of that was?

1 COLONEL WILLIAMS: I understood that they  
2 were significant, yes, sir.

3 MR. CHERTOFF: Now he says on page three, "At  
4 this point we are in a very bad spot. Through the  
5 Gloucester case, the Illinois State Police  
6 investigation and the Maryland State Police study  
7 settlement, the Justice Department has a very good  
8 understanding of how we operate and what types of  
9 numbers they can get their hands to prove their  
10 position." Did you agree with that statement?

11 COLONEL WILLIAMS: Yes, sir.

12 MR. CHERTOFF: Now there are a series of  
13 suggestions that are made at the bottom where Sergeant  
14 Gilbert says, "Please consider the following. We could  
15 attempt to forestall being forced into an agreement if  
16 we proactively set up a database on our search activity  
17 and then reformulate and declare a policy against  
18 racial profiling and keep the data." Did you agree  
19 with that suggestion?

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: Did you mandate that that be  
22 done?

23 COLONEL WILLIAMS: To the best of my  
24 recollection, I did.

25 MR. CHERTOFF: And how did you make that

1 mandate?

2 COLONEL WILLIAMS: I think it was either  
3 announced at a staff meeting or through the chain of  
4 command down from the Lieutenant Colonels down to Field  
5 Operations Section.

6 MR. CHERTOFF: In the next paragraph he says,  
7 "We should computerize the data." Did you agree with  
8 that?

9 COLONEL WILLIAMS: Yes, sir, I did.

10 MR. CHERTOFF: Did you order that to be done?

11 COLONEL WILLIAMS: Well to the best of our  
12 ability because of budget constraints, et cetera, et  
13 cetera, we were -- the New Jersey State Police was in  
14 the dark ages at that time as far as computerization is  
15 concerned.

16 MR. CHERTOFF: Did you make any efforts to  
17 get that moving?

18 COLONEL WILLIAMS: I made an effort to get it  
19 moving, yes, sir.

20 MR. CHERTOFF: Did that eventually get  
21 implemented, some kind of computerized --

22 COLONEL WILLIAMS: Eventually it got -- it  
23 got moving with what, I think, ultimately ended up as  
24 the CAD system.

25 MR. CHERTOFF: That's computer assisted

1 dispatch?

2 COLONEL WILLIAMS: Computer assisted  
3 dispatch.

4 MR. CHERTOFF: It goes on further in five it  
5 says, "We should distribute the Maryland State Police  
6 study and settlement agreement in conjunction with the  
7 next IAB bulletin." Was that done do you know?

8 COLONEL WILLIAMS: To the best of my  
9 recollection, I think there was a bulletin that did go  
10 out incorporating that and to make all the road  
11 troopers aware of what had taken place in Maryland.

12 MR. CHERTOFF: Now at this point in time in  
13 '97, who was Sergeant Gilbert's contact at the Office  
14 of the Attorney General as it related to this  
15 Department of Justice inquiry?

16 COLONEL WILLIAMS: Deputy Attorney General  
17 George Rover.

18 MR. CHERTOFF: And did you give Sergeant  
19 Gilbert any direction with respect to this research he  
20 had done on consents to search after you received it  
21 and reviewed it?

22 COLONEL WILLIAMS: Other than he was to share  
23 the information with the Attorney General's Office.

24 MR. CHERTOFF: Did you specifically tell him  
25 you should share this with -- with Deputy Attorney

1 General Rover?

2 COLONEL WILLIAMS: Did I say to him, you  
3 share this with DAG Rover? I don't think so. But did  
4 I say it -- did I tell him to share it with the  
5 Attorney General's Office, yes, sir.

6 MR. CHERTOFF: And did you give him that  
7 direction in clear and certain terms?

8 COLONEL WILLIAMS: Detective Gilbert being a  
9 trooper, he understood exactly what I was saying, sir.

10 MR. CHERTOFF: Did you have a standing -- in  
11 fact a standing instruction to share any significant or  
12 material information with the Office of the Attorney  
13 General?

14 COLONEL WILLIAMS: Yes, sir.

15 MR. CHERTOFF: Now was it your understanding  
16 that he did that?

17 COLONEL WILLIAMS: It's my understanding that  
18 he did it, sir, yes, sir.

19 MR. CHERTOFF: Were you ever -- did you ever  
20 receive any information to the contrary?

21 COLONEL WILLIAMS: No, sir.

22 MR. CHERTOFF: Before 1999?

23 COLONEL WILLIAMS: Before 1999, no, sir.

24 MR. CHERTOFF: Now let me ask you, did there  
25 come a point in time -- I'm going to show you CW-11

1 which is a memo to you from Captain Roberson, March 27,  
2 1997, GC-2094.

3 COLONEL WILLIAMS: Yes, sir.

4 MR. CHERTOFF: Do you recognize this  
5 document?

6 COLONEL WILLIAMS: Yes, I do, sir.

7 MR. CHERTOFF: What does this relate to?

8 COLONEL WILLIAMS: At that time Captain  
9 Roberson, who was the Trooper Commander of Troop D  
10 expressed a concern that we were discriminating against  
11 the two stations that we were gathering the information  
12 from, Cranbury and Moorestown, and he didn't think it  
13 was -- he didn't think, first of all, that we would get  
14 statistics that were adequate and secondly, you know,  
15 for the want of a better word, I guess he felt that we  
16 were being discriminating towards his Troop, especially  
17 those two -- two road stations.

18 MR. CHERTOFF: Did this have to do with the  
19 gathering of information in connection with this  
20 Department of Justice examination?

21 COLONEL WILLIAMS: Yes, sir.

22 MR. CHERTOFF: And there's an undated memo  
23 from Sergeant Gilbert to you a couple pages into that  
24 that talks about this issue, correct?

25 COLONEL WILLIAMS: Yes, sir.

1 MR. CHERTOFF: And in this memo did Sergeant  
2 Gilbert indicate that one of the reasons it would be a  
3 good idea to limit the collection of material to these  
4 two stations was that if you started to look at other  
5 stations, there was no upside because basically either  
6 the numbers would be as bad as the ones in Moorestown  
7 and Cranbury and they'd be better which would make  
8 Moorestown and Cranbury look worse?

9 COLONEL WILLIAMS: He goes over that in here,  
10 yes, sir.

11 MR. CHERTOFF: And did you agree with that?

12 COLONEL WILLIAMS: Well I guess I did because  
13 I came out and said that we were going to collect the  
14 data from Cranbury and Moorestown and that was the way  
15 it was going to be.

16 MR. CHERTOFF: Now did there come a time in  
17 May that you had a meeting at the Attorney General's  
18 Office concerning the issue of consent to search data?

19 COLONEL WILLIAMS: May of?

20 MR. CHERTOFF: May of 1997.

21 COLONEL WILLIAMS: Yes, sir.

22 MR. CHERTOFF: Did you get an agenda  
23 beforehand indicating that one of the subjects was  
24 going to be the Maryland consent to search data?

25 COLONEL WILLIAMS: Yes, sir, I did.

1 MR. CHERTOFF: As you went -- before you went  
2 to the meeting, you understood the significance of that  
3 data, right?

4 COLONEL WILLIAMS: Yes, sir.

5 MR. CHERTOFF: You understood that the data -  
6 - the statistics for New Jersey were on a par with  
7 those in Maryland?

8 COLONEL WILLIAMS: Yes, sir.

9 MR. CHERTOFF: You understood that in  
10 Maryland those statistics had led to a consent decree?

11 COLONEL WILLIAMS: That is correct, sir.

12 MR. CHERTOFF: You did not want a consent  
13 decree in New Jersey?

14 COLONEL WILLIAMS: No, sir.

15 MR. CHERTOFF: In going to the meeting, was  
16 one of your purposes to discuss with the Attorney  
17 General his view about the consent to search data and  
18 his view about entering into a consent decree?

19 COLONEL WILLIAMS: To the best of my  
20 recollection it was a part of the agenda and that was -  
21 - it was going to be discussed, yes, sir.

22 MR. CHERTOFF: Had you ever discussed this  
23 issue with anybody from the Office of the Attorney  
24 General before May 20th personally?

25 COLONEL WILLIAMS: Well I discussed it with -

1 - to the best of my recollection, with George Rover,  
2 with Jack Fahy, not that specific memo but, you know,  
3 the overall issue of the Maryland situation and the --  
4 and the consent decree.

5 MR. CHERTOFF: Would that have been a  
6 discussion in March of 1997?

7 COLONEL WILLIAMS: Possible.

8 MR. CHERTOFF: Did you have a meeting with  
9 Mr. Rover and Mr. Fahy in March of 1997?

10 COLONEL WILLIAMS: Yes, sir, I did.

11 MR. CHERTOFF: And was the subject of that  
12 meeting the consent to search issue and the Maryland --  
13 effect of the Maryland or a comparison to a numbers?

14 COLONEL WILLIAMS: I did. To the best of my  
15 recollection it was -- you know, there could have been  
16 other things discussed, but I think that was also  
17 discussed.

18 MR. CHERTOFF: What was the general nature of  
19 the discussion you had in March with Mr. Rover and Mr.  
20 Fahy about the Maryland numbers and the New Jersey  
21 numbers on consent to search?

22 COLONEL WILLIAMS: Well again that they were,  
23 you know, comparable, but that again if we could avoid  
24 any type of consent decree here in New Jersey it would  
25 be the benefit of the State Police. You know, maybe

1 there's more behind it that we could look into as far  
2 as statistic gathering, et cetera, et cetera, the whys,  
3 the wherefore, how come.

4 MR. CHERTOFF: Did they say anything in the  
5 meeting?

6 COLONEL WILLIAMS: To the best of my  
7 recollection, every -- you know, everything was affable  
8 and agreeable. You know, nobody said well we're not  
9 going to do that or we're not going to, you know, go  
10 with your suggestions.

11 MR. CHERTOFF: Did you have -- did you have a  
12 doubt in your mind that they understood the  
13 significance of the consent to search information, that  
14 it was a significant issue for the State Police?

15 COLONEL WILLIAMS: No, sir.

16 MR. CHERTOFF: I'm sorry, maybe the question  
17 was a little poorly framed. When you no, sir, am I  
18 correct that they indicated in the meeting that they  
19 understood that the consent to search issue was  
20 significant for the State Police?

21 COLONEL WILLIAMS: I don't know if they  
22 specifically used words to that effect, but they seemed  
23 to be agreeable that it was a significant issue to the  
24 State Police, yes, sir.

25 MR. CHERTOFF: Now were you -- did you ever

1 in this meeting raise the possibility of trying to  
2 either limit the consent to search data being turned  
3 over or at least to try to minimize the way that  
4 information would be used by the Justice Department?

5 COLONEL WILLIAMS: No, sir.

6 MR. CHERTOFF: Let's go to the May 20th  
7 meeting. How did you come to go to that meeting? How  
8 -- were you invited or did you ask for it?

9 COLONEL WILLIAMS: To the best of my  
10 recollection, it was a -- I was invited to the meeting.  
11 I was -- again, it was either a contact from the  
12 Attorney General's Office most likely to my secretary  
13 scheduled on the -- you know, such and such a date,  
14 such and such a time, which happened to be May 20th and  
15 then they -- subsequent to that I received a copy of  
16 the agenda that would be discussed at that -- at that  
17 particular time.

18 MR. CHERTOFF: Who did you attend with?

19 COLONEL WILLIAMS: From Division  
20 Headquarters?

21 MR. CHERTOFF: Yeah.

22 COLONEL WILLIAMS: I took I think then  
23 Lieutenant Blaker and Sergeant Gilbert.

24 MR. CHERTOFF: Why did you take them?

25 COLONEL WILLIAMS: Well I took Sergeant

1 Gilbert because he was the -- he was the most  
2 knowledgeable person in the -- in the Division with  
3 regards to some of the issues that were laid out on the  
4 agenda that we were going to be discussing at the  
5 meeting with the Attorney General. I took Captain  
6 Blaker because he was his supervisor and he was also  
7 somewhat knowledgeable of the issues that were going to  
8 be discussed according to the agenda that I had  
9 received.

10 MR. CHERTOFF: Where did the meeting take  
11 place?

12 COLONEL WILLIAMS: To the best of my  
13 recollection, it was in the -- in the Attorney  
14 General's Office. He had a -- in his office, it was a  
15 rather large office, and he had a conference table in  
16 there that would seat about maybe eight or 10 people,  
17 and to the best of my recollection we all sat around  
18 the table in his office.

19 MR. CHERTOFF: Now the Attorney General was  
20 there with Mr. Waugh?

21 COLONEL WILLIAMS: Yes, sir.

22 MR. CHERTOFF: Was Mr. Fahy there?

23 COLONEL WILLIAMS: Yes, sir.

24 MR. CHERTOFF: Was Mr. Rover there?

25 COLONEL WILLIAMS: Yes, sir.

1 MR. CHERTOFF: And then you and Captain  
2 Blaker and Sergeant Gilbert?  
3 COLONEL WILLIAMS: Yes, sir.  
4 MR. CHERTOFF: Who did most of the talking?  
5 COLONEL WILLIAMS: I would say it was  
6 generally split up. You know, everybody did some  
7 talking. Who did most of the talking? You know, it  
8 was the Attorney General's meaning, I mean, so he -- he  
9 more or less started it and set the tone I would say  
10 and then as questions were asked or comments were made,  
11 different people would chime in with thoughts,  
12 opinions, ideas.  
13 MR. CHERTOFF: Now at some point the  
14 conversation gets around to the issue of the Maryland  
15 consent decree and the numbers as they compared to New  
16 Jersey, correct?  
17 COLONEL WILLIAMS: That is correct, sir.  
18 MR. CHERTOFF: And who presented the facts or  
19 presented the kind of circumstances on that topic?  
20 COLONEL WILLIAMS: To the best of my  
21 recollection, I think it was Sergeant Gilbert and  
22 possibly assisted by DAG Rover.  
23 MR. CHERTOFF: And what was said about the  
24 Maryland numbers and Maryland consent decree and the  
25 New Jersey numbers?

1 COLONEL WILLIAMS: Well, again, you know, it  
2 was a very similar situation, comparable and, you know,  
3 it was -- it could be a linchpin for the Justice  
4 Department to start movement on a consent decree  
5 against the New Jersey State Police.  
6 MR. CHERTOFF: Did you or anyone from the  
7 State Police express concern about those numbers on  
8 consent to searches because you were afraid it could  
9 lead to a consent decree?  
10 COLONEL WILLIAMS: Well I didn't want to -- I  
11 didn't want a consent decree, yes, sir.  
12 MR. CHERTOFF: Did you express concern that  
13 the numbers, the consent to search numbers in New  
14 Jersey were such that because of the comparison to  
15 Maryland you were concerned it might lead to a consent  
16 decree?  
17 COLONEL WILLIAMS: Yes, sir.  
18 MR. CHERTOFF: And did you make that concern  
19 known at the meeting?  
20 COLONEL WILLIAMS: Yes, sir.  
21 MR. CHERTOFF: What was the response to that  
22 by others at the meeting?  
23 COLONEL WILLIAMS: Well it was my -- when I  
24 left the meeting, the others had said that, you know,  
25 we'll do everything we can to avoid that happening with

1 the New Jersey State Police.

2 MR. CHERTOFF: Now I want to just get more  
3 specifically into this. Did Sergeant Gilbert actually  
4 -- did he take the memo out, the undated memo out and  
5 actually use it to refer to or pass it around to the  
6 people at the meeting?

7 COLONEL WILLIAMS: I -- I can't answer -- I  
8 don't recall that, sir. I don't know if he -- if there  
9 was a piece of paper passed around, you know, or papers  
10 passed around or not. I don't recall that.

11 MR. CHERTOFF: Did you -- did he make  
12 reference to the actual percentages or numbers in  
13 Maryland and in the various stations in Troop D?

14 COLONEL WILLIAMS: To best of my  
15 recollection, yes.

16 MR. CHERTOFF: And did he make it clear that  
17 the numbers in New Jersey were on a par or equivalent  
18 to the numbers in Maryland?

19 COLONEL WILLIAMS: To the best of my  
20 recollection, that was brought forward, yes, sir.

21 MR. CHERTOFF: And did Sergeant Gilbert  
22 and/or Deputy Attorney General Rover make it clear that  
23 it was that particular set of numbers in Maryland which  
24 had led to the consent decree?

25 COLONEL WILLIAMS: Well that was -- that was

1 what the topic of the conversation was. You know, this  
2 is what Maryland has, this is what happened to Maryland  
3 and, you know, this is what New Jersey has. We really  
4 don't want that to happen in New Jersey.

5 MR. CHERTOFF: Were there questions from  
6 anybody about this information?

7 COLONEL WILLIAMS: I -- I can't recall that  
8 right off, sir. I don't -- I'm sure there were, but I  
9 can't recall, you know, did so and so ask a specific  
10 question, I don't recall.

11 MR. CHERTOFF: Well did the people in the  
12 Attorney General's Office seemed baffled or puzzled or  
13 surprised about this?

14 COLONEL WILLIAMS: I don't think they were  
15 baffled or puzzled or surprised. I thought they, you  
16 know, were aware of the contents.

17 MR. CHERTOFF: Was there discussion about the  
18 significance of consent to search information? Did  
19 anybody say it's meaningful, it's not meaningful, it  
20 tells us something or it doesn't tell us something?

21 COLONEL WILLIAMS: Well there was discussion  
22 that it didn't bode well for the New Jersey State  
23 Police.

24 MR. CHERTOFF: Did anybody suggest that  
25 someone look at the underlying cases or files to dig



1 deeper to see whether the numbers, you know, were as  
2 bad as they seemed?

3 COLONEL WILLIAMS: I think I had previously  
4 made that recommendation.

5 MR. CHERTOFF: To who?

6 COLONEL WILLIAMS: To the IAB and people that  
7 were, you know, Tommy Gilbert, the people that were  
8 gathering the statistics.

9 MR. CHERTOFF: That they should actually look  
10 at the individual cases to see what the reasons for the  
11 troopers asking to search the cars?

12 COLONEL WILLIAMS: What the underlying reason  
13 was, to the best of my recollection.

14 MR. CHERTOFF: Did that come up at the  
15 meeting on May 20th?

16 COLONEL WILLIAMS: Again I don't -- I don't  
17 specifically recall that being a part of the  
18 conversation, no, sir.

19 MR. CHERTOFF: What was said about the issue  
20 of New Jersey entering into a consent decree?

21 COLONEL WILLIAMS: Well again, there was  
22 consensus that the Attorney General and the State  
23 Police would do everything they could to -- to avoid  
24 having to sign a consent decree with the Justice  
25 Department, similar to the one that had been brought

1 upon the Maryland State Police.

2 MR. CHERTOFF: What was your reaction to  
3 that?

4 COLONEL WILLIAMS: I was happy.

5 MR. CHERTOFF: Were you relieved?

6 COLONEL WILLIAMS: Appreciated, relieved that  
7 the -- we were getting the support from the Attorney  
8 General's Office that I thought that the troopers  
9 deserved.

10 MR. CHERTOFF: Was there any discussion at  
11 the meeting about somebody talking to the -- to  
12 Attorney General Reno?

13 COLONEL WILLIAMS: I don't know if there was  
14 a discussion about a prior talk with Attorney General  
15 Reno or there would be a subsequent talk with Attorney  
16 General Reno after this meeting, you know, either the -  
17 - I think it was either the Attorney General said, you  
18 know, I have talked to the Attorney General Reno or I  
19 will go in the future to Washington and talk to  
20 Attorney General Reno.

21 MR. CHERTOFF: What was your reaction to  
22 that?

23 COLONEL WILLIAMS: Again I was pleased.

24 MR. CHERTOFF: Now let me just kind of try to  
25 put this in context. I mean is it fair to say this

1 issue of having the Justice Department sticking itself  
2 into the State Police was not something that you were  
3 happy with?

4 COLONEL WILLIAMS: No, sir.

5 MR. CHERTOFF: And you certainly didn't want  
6 to have a consent decree, right?

7 COLONEL WILLIAMS: No, sir.

8 MR. CHERTOFF: I take it in your interactions  
9 with police officials from Maryland they made it clear  
10 to you that having a consent decree to work under was  
11 not a wonderful fun thing, right?

12 COLONEL WILLIAMS: Well not only Maryland,  
13 but every other -- every other State Police agency in  
14 the -- you know, especially this northeast region and  
15 New Mexico, Texas. It's my recollection that nobody  
16 was real happy with, you know, these goings on.

17 MR. CHERTOFF: So now the time comes to have  
18 a meeting with the Attorney General to discuss the  
19 implications of the consent to search --

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: -- information. You  
22 understood that the consent to search information was  
23 the point of vulnerability for Maryland, right?

24 COLONEL WILLIAMS: Yes, sir.

25 MR. CHERTOFF: It wasn't hard to figure out

1 that the people in the Justice Department would look at  
2 Maryland, would figure out the consent to search that  
3 was helpful to the plaintiffs in Maryland and would  
4 look for the same stuff in New Jersey, right?

5 COLONEL WILLIAMS: No doubt in my mind, sir.

6 MR. CHERTOFF: It was easy to figure out that  
7 the Department of Justice would do that, right?

8 COLONEL WILLIAMS: Yes, sir.

9 MR. CHERTOFF: So -- and then, of course, you  
10 knew that if they looked at the numbers in New Jersey,  
11 those numbers would look about as bad as the ones in  
12 Maryland, right?

13 COLONEL WILLIAMS: Yes, sir.

14 MR. CHERTOFF: So is it fair to say that one  
15 of the reasons you were looking -- one of the things  
16 you were looking to accomplish in the meeting with the  
17 Attorney General was to find out how supportive the  
18 Attorney General will be of the State Police in light  
19 of these facts that were coming out about the  
20 statistics in New Jersey as they compared to the  
21 statistics in Maryland, right?

22 COLONEL WILLIAMS: Yes, sir.

23 MR. CHERTOFF: You wanted to find out in  
24 effect is the Attorney General going throw the towel in  
25 and consent to something or is he going to fight it

1 out?  
2 COLONEL WILLIAMS: That's correct, sir.  
3 MR. CHERTOFF: And he basically said I'm  
4 going to fight it out?  
5 COLONEL WILLIAMS: Yes, he did, sir.  
6 MR. CHERTOFF: And you were happy about that?  
7 COLONEL WILLIAMS: Yes, sir.  
8 MR. CHERTOFF: And that was important to you  
9 to find that out?  
10 COLONEL WILLIAMS: Yes, sir.  
11 MR. CHERTOFF: And I'm sure you made it clear  
12 to the Attorney General that it was important to you in  
13 that meeting?  
14 COLONEL WILLIAMS: Certainly did, sir.  
15 MR. CHERTOFF: And is it fair to say that the  
16 importance of it was unmistakable to the participants  
17 at the meeting?  
18 COLONEL WILLIAMS: I -- you know, I can't be  
19 in everybody's mind, but in my mind, yes, sir.  
20 MR. CHERTOFF: You certainly made it as clear  
21 as you could?  
22 COLONEL WILLIAMS: Yes, sir.  
23 MR. CHERTOFF: Now at some point in this  
24 discussion though, putting aside the question is there  
25 going to be a consent decree, there's not going to be a

1 consent decree and the litigation, did anybody actually  
2 turn to you and say in substance, first of all, is  
3 their racial profiling?  
4 COLONEL WILLIAMS: Not that I -- that never  
5 happened, sir.  
6 MR. CHERTOFF: Did anybody turn to you and  
7 say, Colonel, are you doing some kind of analysis with  
8 these numbers to determine by looking at the actual  
9 cases whether we could explain why these searches are  
10 going on?  
11 COLONEL WILLIAMS: I -- I don't recall that  
12 specific question being asked of me, no, sir.  
13 MR. CHERTOFF: In any of the meetings you had  
14 with the Attorney General or anybody from the Attorney  
15 General's Office up through this meeting in May of  
16 1997, was there discussion in which the Attorney  
17 General's Office indicated an interest in what the  
18 State Police were doing to find out if there was  
19 inappropriate profiling and to correct it if it  
20 existed?  
21 COLONEL WILLIAMS: Well I'm sure that, you  
22 know, they were aware of the statistics and the records  
23 that we were gathering with regards to the request from  
24 Justice Department and the other materials that were  
25 being turned over to -- to DAG Rover. But

1 specifically, I don't recall that happening.

2 MR. CHERTOFF: I mean I -- because I want to  
3 make sure. I'm asking a little different question.  
4 I'm not asking whether they're aware of things that are  
5 being collected. I'm asking in the face-to-face --  
6 either face-to-face meetings you had with the Attorney  
7 General's Office in December, January and May, and have  
8 I covered all those meetings you had in the Attorney  
9 General's Office? There were two in December, one in  
10 January and one in May, right?

11 COLONEL WILLIAMS: To the best of my -- with  
12 regards to --

13 MR. CHERTOFF: Profiling.

14 COLONEL WILLIAMS: -- this issue.

15 MR. CHERTOFF: Was there a discussion -- did  
16 somebody turn to you from the Office of the Attorney  
17 General at some point and say in substance, Colonel, do  
18 we actually have a problem and how do we find out if we  
19 do and what are you doing to fix it?

20 COLONEL WILLIAMS: Not to the best of my  
21 recollection, no, sir.

22 MR. CHERTOFF: Did you expect anybody to ask  
23 you that?

24 COLONEL WILLIAMS: Well I more or less did,  
25 yes. But as I said, you know, we had already started

1 some -- some preliminary I guess you would call  
2 activity within the organization to look at it, you  
3 know, on our own and to -- to gather this information.

4 MR. CHERTOFF: Now did you -- after this  
5 meeting on May 20th, you left, you felt happy with the  
6 Attorney General's decision about a consent decree,  
7 right?

8 COLONEL WILLIAMS: That is correct.

9 MR. CHERTOFF: Did you leave with any  
10 direction or order to do something with respect to  
11 addressing the issue of racial profiling after you left  
12 -- exited from that meeting?

13 COLONEL WILLIAMS: Not that I recall, no,  
14 sir.

15 MR. CHERTOFF: Did anybody say, get back to  
16 me by or, get back to us by X period of time, let us  
17 know how we're doing the next six months, and let us  
18 know what your statistics have shown?

19 COLONEL WILLIAMS: No, sir.

20 MR. CHERTOFF: Now, did you yourself after  
21 the May 20th meeting yourself ask to get updates on  
22 statistics with respect to profiling and other  
23 information that would show whether profiling was going  
24 on or not?

25 COLONEL WILLIAMS: Yes, sir.

1 MR. CHERTOFF: Who did you ask to do that?

2 COLONEL WILLIAMS: Again, to the best of my  
3 recollection it was either one of the lieutenant  
4 colonels, I don't know if it was still Littles at the  
5 time or if it was Roberson who had taken his place, and  
6 then down through the chain of command with Tommy  
7 Gilbert, Sergeant Gilbert being the collection point or  
8 the linchpin, so to speak.

9 MR. CHERTOFF: And after May of 1997 did you  
10 receive periodic reports indicating that in fact there  
11 was -- you were getting statistics after May of 1997  
12 about those stops and consents to search?

13 COLONEL WILLIAMS: Yes, sir.

14 MR. CHERTOFF: Now, I'm going to show you G-  
15 25 for identification. It's a memo to you from  
16 Sergeant Gilbert dated July 10, '97, GC-2172.

17 COLONEL WILLIAMS: Yes, sir.

18 MR. CHERTOFF: You recognize that?

19 COLONEL WILLIAMS: Yes, sir.

20 MR. CHERTOFF: And you got this through  
21 Lieutenant Blaker from Sergeant Gilbert, right?

22 COLONEL WILLIAMS: Yes, sir.

23 MR. CHERTOFF: And this had to do with the  
24 30 dates in '95 and '96 that the Department of Justice  
25 had requested information about, right?

1 COLONEL WILLIAMS: That is correct, sir.

2 MR. CHERTOFF: And it showed that the  
3 proportion of consent searches for minorities was quite  
4 high, is that fair to say?

5 COLONEL WILLIAMS: Yes, sir.

6 MR. CHERTOFF: And did that concern you?

7 COLONEL WILLIAMS: It concerned me, yes, sir,  
8 to the degree that we had to do -- and again, you know,  
9 I'm not trying to avoid your question, but we had to do  
10 more and look into this, and also to -- it concerned me  
11 because these stations, Moorestown and Cranbury,  
12 historically the Turnpike was known as Cocaine Alley,  
13 and that's where the drugs were run north into the  
14 northeast area. And, you know, we had to do a, I guess  
15 you would call it, a review as to what each one of  
16 those stops was, why it happened, how it happened, and  
17 what the -- what the end results were.

18 MR. CHERTOFF: Did you direct that that be  
19 done, that there be a review of each of the stops?

20 COLONEL WILLIAMS: To the best of my  
21 recollection, yes, sir.

22 MR. CHERTOFF: And each of the services?

23 COLONEL WILLIAMS: And -- well, I don't know  
24 about the searches. I would assume that, you know,  
25 they would have done a combination when they -- they

1 would be synonymous.

2 MR. CHERTOFF: Well, do you know if that was  
3 ever done?

4 COLONEL WILLIAMS: I was under the impression  
5 that it was.

6 MR. CHERTOFF: Did you ever see a report  
7 about it?

8 COLONEL WILLIAMS: No, sir, I didn't.

9 MR. CHERTOFF: Did you ever get asked about  
10 what was going on on these -- with respect to this  
11 analysis by anybody in the Office of the Attorney  
12 General?

13 COLONEL WILLIAMS: Not to the best of my  
14 recollection, no, sir.

15 MR. CHERTOFF: Was it your understand that  
16 the -- that the content of this document was conveyed  
17 to the Office of the Attorney General by somebody?

18 COLONEL WILLIAMS: I was under that  
19 impression, yes.

20 MR. CHERTOFF: And what was the basis for  
21 that impression?

22 COLONEL WILLIAMS: Again, it was a document  
23 generated by Lieutenant -- Sergeant Gilbert, who was  
24 instructed to share all information with the Office of  
25 the Attorney General.

1 MR. CHERTOFF: Did you hear anything back  
2 about this particular document or set of figures from  
3 anybody in the Office of the Attorney General?

4 COLONEL WILLIAMS: Not that I can recall,  
5 sir.

6 MR. CHERTOFF: Okay. Let me show you a  
7 couple of other documents. There's CW-20, CW-15 and  
8 CW-22, and I'll tell you what they are. And there's --  
9 CW-20 is a document dated sometime in, I think it's  
10 February, 1998, from Major Sparano to you, six-month  
11 assessment of enforcement activity, Cranbury,  
12 Moorestown Stations. It's probably -- you signed off  
13 on it in March 5th, 1998. Then there's another  
14 document, CW-15 is a memo to you from Lieutenant  
15 Faranello, radio log synopsis and consent to search and  
16 probable cause, for the month of May, '97 for Cranbury  
17 and Moorestown Station. And then the last one is a  
18 1998 document that covers -- it's to  
19 -- it's to you from Captain Cartwright. It's the six-  
20 month assessment of enforcement activity at Cranbury  
21 and Moorestown Station. You have those three  
22 documents?

23 COLONEL WILLIAMS: Yes, sir.

24 MR. CHERTOFF: Okay. Let's be chronological  
25 about it. First of all, you have the document that's

1 June 6th, 1997. This is a radio log synopsis and  
2 consent to search and probable cause synopsis for May,  
3 1997. Now, you had ordered these reports going  
4 forward, right?

5 COLONEL WILLIAMS: Yes, sir.

6 MR. CHERTOFF: And the purpose of this was to  
7 show composition with respect to stops and with respect  
8 to searches, right?

9 COLONEL WILLIAMS: Yes, sir.

10 MR. CHERTOFF: And this was recorded here --  
11 this document was recorded for the month of May, 1997,  
12 right?

13 COLONEL WILLIAMS: Yes, sir.

14 MR. CHERTOFF: Okay. Now, the next document,  
15 which is CW-20, is a six-month snapshot, right?

16 COLONEL WILLIAMS: Yes, sir.

17 MR. CHERTOFF: Now the radio log shows who's  
18 stopped, right? The radio long synopsis shows the  
19 stops?

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: And the consent to search  
22 synopsis shows the consents to search, right? Correct?

23 COLONEL WILLIAMS: Yes, sir.

24 MR. CHERTOFF: Okay. Let's go to the first  
25 page -- or second page of the document. This is the

1 consent searches at Cranbury Station and Moorestown  
2 Station, right?

3 COLONEL WILLIAMS: Yes, sir.

4 MR. CHERTOFF: Now, would you agree with me  
5 that the six-month percentages for Cranbury Station  
6 during this six-month was approximately slightly under  
7 30 percent white for consent searches?

8 COLONEL WILLIAMS: Yes, sir.

9 MR. CHERTOFF: And then the combined -- for  
10 black it would be 45.6 percent consent searches, and  
11 for Hispanic, 23.4 consent searches, right?

12 COLONEL WILLIAMS: Yes, sir.

13 MR. CHERTOFF: So it'd be fair to say that  
14 essentially it's about 70 percent minority consent  
15 searches and 30 percent white, right?

16 COLONEL WILLIAMS: Yes, sir.

17 MR. CHERTOFF: And with respect to Moorestown  
18 it's somewhat even more striking, it's about 21 percent  
19 whites being searched, right?

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: And approximately 77 or 78  
22 percent minorities being searched, right?

23 COLONEL WILLIAMS: Yes, sir.

24 MR. CHERTOFF: Now, let's move to the next  
25 document. That is the document that covers this issue

1 of consents to search, again, for the same six-month  
2 period but now in 1998, right? Is that right?

3 COLONEL WILLIAMS: Where are you?

4 MR. CHERTOFF: We're on document CW-22, OAG-  
5 2152. It shows consent searches at Moorestown and  
6 Cranbury.

7 COLONEL WILLIAMS: Okay. So you went to the  
8 next one?

9 MR. CHERTOFF: Right, we're on the next --  
10 but keep the first one open because I want to do some  
11 comparisons.

12 COLONEL WILLIAMS: 2156, correct?

13 MR. CHERTOFF: 2152 is the page number.

14 COLONEL WILLIAMS: 2152?

15 MR. CHERTOFF: Right. And I want you to have  
16 that page open and 2313 open. And tell me if you agree  
17 with me that page 2313 shows the six-month period of  
18 April through September for '97, and 2152 shows the  
19 same period for '98, right?

20 COLONEL WILLIAMS: Yes, sir.

21 MR. CHERTOFF: Now, let's go -- let's  
22 compare. If you look at Cranbury in '98 and Cranbury  
23 in '97, '97 Cranbury showed, I think we concluded,  
24 about 70 percent minorities being searched, right, in  
25 '97?

1 COLONEL WILLIAMS: Yes, sir.

2 MR. CHERTOFF: And if you look at the same  
3 period of time for the same station for 1998, the  
4 number of minorities being searched has now gone to  
5 about 76 or 77 percent, right?

6 COLONEL WILLIAMS: Yes, sir.

7 MR. CHERTOFF: So it's actually gone up,  
8 correct?

9 COLONEL WILLIAMS: Excuse me?

10 MR. CHERTOFF: It's actually increased?

11 COLONEL WILLIAMS: It's an increase, yes,  
12 sir.

13 MR. CHERTOFF: All right. And then let's go  
14 to Moorestown. Moorestown again shows in 1997 is  
15 approximately 76 or 78 percent minorities being  
16 searched?

17 COLONEL WILLIAMS: Yes, sir.

18 MR. CHERTOFF: And then with respect to  
19 Moorestown in '98 it's approximately 75 percent being  
20 searched, right?

21 COLONEL WILLIAMS: Yes, sir.

22 MR. CHERTOFF: So it's approximately the  
23 same, right?

24 COLONEL WILLIAMS: Yes, sir.

25 MR. CHERTOFF: And those figures are not



1           terribly lower than the figures you'd been told about  
2 going back to '95 and '96 when you got your original  
3 report from Sergeant Gilbert, correct?

4           COLONEL WILLIAMS: That's correct, sir.

5           MR. CHERTOFF: So -- to the extent you're  
6 monitoring numbers it's telling you the numbers aren't  
7 getting -- aren't changing very much, right?

8           COLONEL WILLIAMS: No, sir.

9           MR. CHERTOFF: Did this concern you?

10          COLONEL WILLIAMS: Well, again, it concerned  
11 me, but also, as I stated before, you have to take into  
12 consideration that the Turnpike was a prime mover of  
13 drugs north through the State of New Jersey for further  
14 distribution in the -- in the drug culture.

15          MR. CHERTOFF: Well, we'll get to that in a  
16 second, but I want to ask you this question. To the  
17 extent you were -- first of all, was it your  
18 understanding these numbers were being communicated to  
19 the Office of the Attorney General?

20          COLONEL WILLIAMS: Again, it was my  
21 understanding that they were.

22          MR. CHERTOFF: You certainly saw them, right?

23          COLONEL WILLIAMS: I saw them, yes, sir.

24          MR. CHERTOFF: And you certainly ordered that  
25 these numbers be kept, right?

1           COLONEL WILLIAMS: Yes, sir.

2           MR. CHERTOFF: And they're being kept for a  
3 purpose, right?

4           COLONEL WILLIAMS: Yes, sir.

5           MR. CHERTOFF: Because even though the  
6 numbers don't prove that there's racial profiling they  
7 certainly raise a big red flag, right?

8           COLONEL WILLIAMS: It showed that there's a  
9 flag out there, yes, sir.

10          MR. CHERTOFF: Right. So now you have this  
11 red flag up in '95 and '96 and continues through '97,  
12 it continues in '98. My question to you is, did you do  
13 something further to investigate or examine why the  
14 numbers were continuing to remain at the same level  
15 with respect to consents to searches even though you  
16 were implementing new policies and sending out memos  
17 and doing things of that sort?

18          COLONEL WILLIAMS: Again, you know, as you  
19 said, I did the -- set up those policies, those  
20 directives. You know, the only thing I can say, to  
21 repeat myself, is that, you know, this was a prime  
22 route for the movement of drugs in the State of New  
23 Jersey.

24          MR. CHERTOFF: What does that have to do with  
25 the percentage of minorities who were searched or as

1 opposed to -- what does that have to do with the fact  
2 that there's a lot of drugs?

3 COLONEL WILLIAMS: Well the -- you know, the  
4 statistics that -- that's why we were gathering these  
5 statistics to find out, you know, what that reason was.

6 MR. CHERTOFF: Well did you find it out?

7 COLONEL WILLIAMS: According to these  
8 statistics, one would take that the -- you know, that's  
9 who were moving the drugs up the -- all these -- and I  
10 don't know if these arrests were all for drugs or what  
11 they were for, you know, what the arrest was for.

12 MR. CHERTOFF: Well these are searches, not  
13 arrests.

14 COLONEL WILLIAMS: These were searches.

15 MR. CHERTOFF: Right. Did you do any  
16 analysis to --

17 COLONEL WILLIAMS: Well, again, I don't know  
18 if they became arrests or not further into -- into the  
19 investigation.

20 MR. CHERTOFF: Well you say -- was there an  
21 investigation about why these numbers were continuing  
22 to be high?

23 COLONEL WILLIAMS: Was there an  
24 investigation?

25 MR. CHERTOFF: Yeah. Did you have someone

1 investigate why the numbers were continuing to be high  
2 with respect to minorities being searched?

3 COLONEL WILLIAMS: Not at that time, no, sir.

4 MR. CHERTOFF: So in -- well you have this  
5 meeting about consents to search on May 20th, 1997.  
6 Now a year and a half later, when the numbers are still  
7 high, my question to you is, what if anything as far as  
8 you know was being done to figure out if there is a  
9 problem, a racial profiling problem with respect to  
10 these numbers?

11 COLONEL WILLIAMS: Well we were starting to  
12 look at individual troopers to see, you know, what  
13 their activity was, were they high in one specific  
14 area, things like that.

15 MR. CHERTOFF: Well when -- when did you  
16 start to look at those underlying issues?

17 COLONEL WILLIAMS: Well I think it was an  
18 ongoing process within the State Police, you know, from  
19 years gone back.

20 MR. CHERTOFF: Well was there an end point to  
21 the process? Did you set a deadline, I want to know by  
22 a certain time, I want a report back as to what -- what  
23 the facts are underlying these cases?

24 COLONEL WILLIAMS: No. I didn't have a  
25 chance to set that deadline.

1 MR. CHERTOFF: Well you say from 1997 to 1999  
2 you didn't have a chance to set a deadline to get a  
3 report back to be told this is why these searches were  
4 done?

5 COLONEL WILLIAMS: Right.

6 MR. CHERTOFF: You couldn't set a deadline in  
7 those two years?

8 COLONEL WILLIAMS: I didn't set a deadline,  
9 sir.

10 MR. CHERTOFF: Why not?

11 COLONEL WILLIAMS: I was still in the -- in  
12 the fact-finding mode to find out what was going on.

13 MR. CHERTOFF: Well how many years did you  
14 envision were going to go by in fact-finding mode  
15 before you finally said to somebody, I want to get the  
16 facts you found?

17 COLONEL WILLIAMS: Well they were providing  
18 me with the facts through these reports.

19 MR. CHERTOFF: But they weren't --

20 COLONEL WILLIAMS: We wanted to find out  
21 where the problem was in the organization.

22 MR. CHERTOFF: And did anybody come up with  
23 an answer that they gave you?

24 COLONEL WILLIAMS: Not to my recollection.

25 MR. CHERTOFF: Did you push anybody for it?

1 COLONEL WILLIAMS: Did I push anybody? Other  
2 than to continue what we were doing, no, sir.

3 MR. CHERTOFF: Did you feel any pressure from  
4 the Office of the Attorney General to come up with some  
5 answers about how things are going with respect to  
6 consent to searches? Did you feel pressure to do that?

7 COLONEL WILLIAMS: Not until maybe 19 -- May  
8 of 1999.

9 MR. CHERTOFF: Well actually you left in  
10 February of 1999.

11 COLONEL WILLIAMS: Right. Excuse me, '98.

12 MR. CHERTOFF: In May of '98 you started to  
13 feel that pressure?

14 COLONEL WILLIAMS: Right.

15 MR. CHERTOFF: And that was after the Hogan  
16 and Kenna shooting on the Turnpike?

17 COLONEL WILLIAMS: That is correct.

18 MR. CHERTOFF: In your dealing with these  
19 statistics that you kept getting on these reports in  
20 '97 and '98, is it fair to say that -- well you've  
21 indicated to us you didn't set a deadline for a report  
22 about the underlying facts. Is it fair to say you  
23 believed you had the support of the Office of the  
24 Attorney General in the way you were conducting and  
25 handling the issue of racial profiling?

1 COLONEL WILLIAMS: Yes, sir.

2 MR. CHERTOFF: Was that the message you left  
3 with on May 20th, 1997, that they were okay and  
4 supportive of the State Police?

5 COLONEL WILLIAMS: Yes, sir.

6 MR. CHERTOFF: And based on that, did you  
7 feel that the way you were handling the review of this  
8 information going forward was acceptable to everybody  
9 in the Department of Law and Public Safety?

10 COLONEL WILLIAMS: Yes, sir.

11 MR. CHERTOFF: Nobody really lit a fire under  
12 you to get -- come to grips with this until 1998, is  
13 that fair to say?

14 COLONEL WILLIAMS: That's correct.

15 MR. CHERTOFF: And then in 1998 the Troop D  
16 audit was started, right?

17 COLONEL WILLIAMS: Yes, sir.

18 MR. CHERTOFF: But that had to do with  
19 falsification, right?

20 COLONEL WILLIAMS: Falsification of records.

21 MR. CHERTOFF: It was not a general -- it was  
22 still not a general understanding of the proportions  
23 with respect to consent to search, right?

24 COLONEL WILLIAMS: It was the first step in a  
25 broadening after that, yes, sir.

1 MR. CHERTOFF: Now in connection with --  
2 again, certainly before 1998, before May 1998, in  
3 connection with these reports you were getting about  
4 the statistics on the Turnpike, did anybody ever put  
5 together a work plan or some kind of a program for what  
6 investigation would be undertaken to get behind the  
7 numbers or see whether the numbers really showed that  
8 there was profiling?

9 COLONEL WILLIAMS: I think eventually Colonel  
10 Dunlop got together and started some type of -- with a  
11 work plan and a direction.

12 MR. CHERTOFF: That was the Troop D audit?

13 COLONEL WILLIAMS: Yes, sir.

14 MR. CHERTOFF: Having to do with  
15 falsification?

16 COLONEL WILLIAMS: Yes, sir.

17 MR. CHERTOFF: But not having to do generally  
18 with the statistics, right?

19 COLONEL WILLIAMS: Well like I say, that was  
20 going to be the initial thrust and then go from there.

21 MR. CHERTOFF: Now -- and that was Colonel  
22 Dunlop's idea?

23 COLONEL WILLIAMS: To the best of my  
24 recollection, yes, sir.

25 MR. CHERTOFF: Now let me ask you this. Did

1 you ever order anybody in the State Police to withhold  
2 any information from the Office of the Attorney General  
3 or the Department of Justice regarding racial  
4 profiling?

5 COLONEL WILLIAMS: Absolutely not, sir.

6 MR. CHERTOFF: To your knowledge, did anybody  
7 in the State Police ever make a decision to withhold  
8 information about racial profiling from the Office of  
9 the Attorney General or the Department of Justice in  
10 Washington?

11 COLONEL WILLIAMS: Absolutely not, sir.

12 MR. CHERTOFF: Did you ever refuse a request  
13 or tell someone to refuse a request from the Office of  
14 the Attorney General for information about racial  
15 profiling?

16 COLONEL WILLIAMS: Absolutely not, sir.

17 MR. CHERTOFF: Did there come a point in time  
18 that you became aware of an interim report that was  
19 published from the State Police Review Team?

20 COLONEL WILLIAMS: That was after I was gone.

21 MR. CHERTOFF: Right. You became aware of it  
22 after you were gone? Well how'd you find out about the  
23 State Police Review Team that was announced on February  
24 10th, how did you find out that was going to happen?

25 COLONEL WILLIAMS: I was brought down to the

1 -- I was called down to the Attorney General's Office  
2 and I think I took Colonel Dunlop and Colonel Fedorko  
3 and I was told that this is what's going to happen.

4 MR. CHERTOFF: Namely what?

5 COLONEL WILLIAMS: There's going to be a  
6 State Police Review Team and they're going to start  
7 looking at the total State Police and DAG and I guess  
8 he was Director, Paul Zoubek was going to be in charge  
9 of it, you work with him.

10 MR. CHERTOFF: Were you consulted about it  
11 beforehand?

12 COLONEL WILLIAMS: No, sir.

13 MR. CHERTOFF: How was it actually presented  
14 to you? How did you actually -- tell us exactly how  
15 you learned about it? You come into the office, what  
16 happens?

17 COLONEL WILLIAMS: Well that's -- I was told  
18 in the office just what I just related to you, that  
19 there's going to be a Review Team set up at the State  
20 Police. There's going to be -- the Attorney General's  
21 going to be in charge of it. You'll provide the  
22 resources necessary, cooperate and that was basically  
23 it.

24 MR. CHERTOFF: When -- when was it announced?

25 COLONEL WILLIAMS: When?

1 MR. CHERTOFF: Publicly, yeah. How soon  
2 after you were told about it was it announced?

3 COLONEL WILLIAMS: I think it was announced  
4 in a press release, I don't know, within a day or  
5 whatever. I don't remember a specific date.

6 MR. CHERTOFF: Now did you have any  
7 involvement with the State Police Review Team from the  
8 time it was announced on about February 10th until you  
9 left on February 28th?

10 COLONEL WILLIAMS: No, sir, not much.

11 MR. CHERTOFF: Now as far as you know, was  
12 there information available about statistics as it  
13 relates to stops, arrests and consents to search in  
14 1999 that was significantly different than what was  
15 available in 1997, except obviously for the fact that  
16 things that occurred in '98 had not yet occurred in  
17 1997? But was there a significant difference in what  
18 was known in '99 from what you knew in '97 about the  
19 general statistical pattern?

20 COLONEL WILLIAMS: If I remember correctly, I  
21 think the statistical pattern -- and we're talking  
22 about the two stations still?

23 MR. CHERTOFF: Yeah.

24 COLONEL WILLIAMS: Had basically stayed the  
25 same if I remember correctly.

1 MR. CHERTOFF: Did anyone ever tell you why  
2 in '99 -- why there was a perception in '99 -- let me  
3 withdraw the question. In your mind, was your  
4 perception of the existence or the evidence of racial  
5 profiling in '99 different than it was in '97?

6 COLONEL WILLIAMS: No, sir.

7 MR. CHERTOFF: You thought it was the same,  
8 '97 and '99?

9 COLONEL WILLIAMS: Yes, sir.

10 MR. CHERTOFF: And the numbers were basically  
11 the same?

12 COLONEL WILLIAMS: Numbers were basically the  
13 same, yes.

14 MR. CHERTOFF: Now there is a portion of a  
15 draft report which was not -- which was ultimately  
16 deleted or watered down which I've read to others, but  
17 I want to give you an opportunity to comment on it. It  
18 said, "We feel constrained to comment that some of the  
19 statistical information we relied upon including  
20 particularly revealing data concerning consent searches  
21 were only recently disclosed by the State Police to the  
22 Office of the Attorney General." Based on your memory  
23 of the May 1997 meeting, do you agree with that  
24 statement?

25 COLONEL WILLIAMS: Absolutely not.

1 MR. CHERTOFF: "Certain internal studies and  
2 audits prepared at the request of the Superintendent  
3 were not made known to the Deputy Attorney General who  
4 were representing the State in the Soto litigation."  
5 To your knowledge, was any such information not made  
6 known at your request?

7 COLONEL WILLIAMS: Not to my knowledge, sir.

8 MR. CHERTOFF: And you certainly didn't  
9 request that it not be made known?

10 COLONEL WILLIAMS: Absolutely not, sir.

11 MR. CHERTOFF: And it says, "This  
12 circumstance has seriously compromised the State's  
13 litigation posture and it also has needlessly delayed  
14 initiating appropriate remedies." Did you agree with  
15 that?

16 COLONEL WILLIAMS: Could you repeat that,  
17 sir? You kind of turned away from the microphone a  
18 little bit.

19 MR. CHERTOFF: I'm sorry. It says, "This  
20 circumstance has seriously compromised the State's  
21 litigation posture and it also has needlessly delayed  
22 initiating appropriate remedies and reforms." Did you  
23 agree that anything the State Police did compromised  
24 the State's litigation posture?

25 COLONEL WILLIAMS: Absolutely not, sir.

1 MR. CHERTOFF: Now I want to ask you this.  
2 Obviously this didn't appear in the final report, but  
3 at a point in time this reflected someone's opinion.  
4 Am I correct that if the State Police were to  
5 deliberately withhold information on a legal matter  
6 from the Office of Attorney General, it would be a very  
7 serious institutional problem with the Government of  
8 the State of New Jersey, right?

9 COLONEL WILLIAMS: Absolutely, sir.

10 MR. CHERTOFF: I mean the State Police is  
11 ultimately supposed to be under the control of the  
12 civilian Attorney General of the State, right?

13 COLONEL WILLIAMS: Absolutely, sir.

14 MR. CHERTOFF: And I assume what that means  
15 is that like it or not, the State Police have to give  
16 to the Attorney General's Office what the Attorney  
17 General's Office wants?

18 COLONEL WILLIAMS: And when they want it,  
19 sir.

20 MR. CHERTOFF: Now were you -- to your  
21 knowledge, as far as you were concerned, was there ever  
22 any kind of investigation or inquiry undertaken before  
23 we began this set of hearings to determine whether in  
24 fact the State Police had deliberately withheld, you  
25 know, material information from the Attorney General's

1 Office?  
2 COLONEL WILLIAMS: Not to my knowledge, sir.  
3 MR. CHERTOFF: Did anybody interview you  
4 about it or ask you questions about it back in 1999?  
5 COLONEL WILLIAMS: No, sir.  
6 MR. CHERTOFF: And again, I have to ask you  
7 because you were the Superintendent of the State  
8 Police. You had the ultimately responsibility. To  
9 your knowledge, whether at your direction or otherwise,  
10 did anybody in the State Police withhold or delay  
11 turning over material information or documents to the  
12 Office of the Attorney General in a timely fashion?  
13 COLONEL WILLIAMS: No, sir.  
14 MR. CHERTOFF: Was your direction to your  
15 subordinates at any time different than to simply obey  
16 what the Attorney General's Office wanted?  
17 COLONEL WILLIAMS: That is correct, sir.  
18 MR. CHERTOFF: Mr. Chairman, I don't think I  
19 have any further questions.  
20 SENATOR GORMLEY: Jo? Jo, do you have any  
21 questions?  
22 (Pause)  
23 SENATOR GORMLEY: One thing we've learned,  
24 nothing takes a second.  
25 (Pause)

1 MS. GLADING: Colonel Williams.  
2 COLONEL WILLIAMS: Yes, ma'am.  
3 MS. GLADING: Hi. Can you discuss the  
4 details around the interview that you had with the Star  
5 Ledger a couple of days before your firing or your  
6 discharge or your resignation?  
7 COLONEL WILLIAMS: In regards to what, ma'am?  
8 I mean I was --  
9 MS. GLADING: How was the meeting set up?  
10 COLONEL WILLIAMS: How was it set up?  
11 MS. GLADING: Um-hmm.  
12 COLONEL WILLIAMS: I was advised by my Public  
13 Information Bureau person, John Haggerty, that a --  
14 that a newspaper reporter from the Star Ledger had made  
15 a request to spend a day with me and follow me through  
16 a -- for want of a better word, a Superintendent's day  
17 or a Colonel's day and that, you know, it had been  
18 approved by the Attorney General's Office and that I  
19 think it was, if I remember correctly it was a Friday  
20 and that he would be -- you know, he'd meet me in the  
21 morning and we would go through the day. And during  
22 this period of time that I would be followed and then  
23 asked questions about, you know, what I do and also  
24 about other issues facing the New Jersey State Police.  
25 MS. GLADING: Okay. And is that how the day



1 went, he met you in the morning and spent the day with  
2 you?

3 COLONEL WILLIAMS: Again, ma'am, I --

4 MS. GLADING: Is that how the day went then,  
5 he met you in the morning and spent the day with you?

6 COLONEL WILLIAMS: Yes, ma'am. We went -- if  
7 I remember correctly, we started out, we went down  
8 before the SCI and testified down there about a matter  
9 that I can't recall right now. I don't know if we went  
10 another place down here in the State House Complex.  
11 Then we came back to Division Headquarters, went around  
12 and did, you know, like a tour and then he started  
13 interviewing me, asking me some questions.

14 MS. GLADING: Okay. So when he started  
15 interviewing you and asking questions, what -- just  
16 help me put me in the place at the time, was John  
17 Haggerty or Cosgrove with you at the time of the  
18 interview?

19 COLONEL WILLIAMS: I remember John Haggerty  
20 being there. I don't -- I can't recall Danny Cosgrove,  
21 Lieutenant Cosgrove, he might have been there, but I do  
22 not recall him, you know, basically being there all  
23 day. In other words, when we were back at Division  
24 Headquarters, he might have come in at that time.

25 MS. GLADING: Okay. When the interview was

1 being conducted at the end of the day you'd spent with  
2 -- was it Joe Donahue, do you recall?

3 COLONEL WILLIAMS: Yes, ma'am, Joe Donahue,  
4 yes, ma'am.

5 MS. GLADING: When the interview was being  
6 conducted, was it just you and he in the office or was  
7 there a press person there?

8 COLONEL WILLIAMS: To the best of my  
9 recollection, as I say, I know John Haggerty was there  
10 and I don't think -- I think it was just the three of  
11 us. I don't think Lieutenant Cosgrove was there.

12 MS. GLADING: Okay. And when Mr. Donahue  
13 began asking questions about your views about racial  
14 profiling and drug courier profiling --

15 COLONEL WILLIAMS: Yes, ma'am.

16 MS. GLADING: -- was there an interruption  
17 then in the interview?

18 COLONEL WILLIAMS: Not that I recall.

19 MS. GLADING: You stayed in the room the  
20 entire time? There was no break?

21 COLONEL WILLIAMS: You know, I mean there  
22 might have been a phone call or something like that,  
23 but did I ask Mr. Donahue to leave my presence, I don't  
24 think any of that happened, no, ma'am.

25 MS. GLADING: Okay. And did you have

1 briefing materials or background materials that you  
2 shared with him or read from or reviewed with Mr.  
3 Donahue that made the case that you had made about  
4 crime patterns and gang activities?

5 COLONEL WILLIAMS: I might have had the State  
6 Police annual reports from, you know, maybe a couple  
7 years back, you know, and my general knowledge of law  
8 enforcement.

9 MS. GLADING: Okay. And did you keep those  
10 reports in your office all the time so it would have  
11 been natural for you to have them?

12 COLONEL WILLIAMS: The -- the annual reports?  
13 Yes, ma'am, I did.

14 MS. GLADING: Okay. There were no other  
15 materials you were working off of that day?

16 COLONEL WILLIAMS: Not that I recall, no.

17 MS. GLADING: Okay. Can you tell me when the  
18 DI -- the Drug Interdiction Training Unit or I guess it  
19 ultimate -- it later became Operation R.O.A.D.S.I.D.E.,  
20 when --

21 COLONEL WILLIAMS: It started out as DI --  
22 Drug Interdiction Training Unit, yes, ma'am, and it did  
23 become -- I think it then evolved into R.O.A.D.S.I.D.E.

24 MS. GLADING: Can you tell me when you  
25 disbanded it?

1 COLONEL WILLIAMS: I -- I can't recall  
2 specifically, no.

3 MS. GLADING: It happened during your tenure,  
4 right?

5 COLONEL WILLIAMS: I'm pretty sure it did,  
6 but I can't -- you know, I can't give you a date. I'm  
7 sorry.

8 MS. GLADING: Who was the head of it when it  
9 -- when it was disbanded? Who was in it, do you  
10 recall?

11 COLONEL WILLIAMS: No, not really. I don't  
12 know if -- I don't know if Sergeant Brian Caffery was  
13 still -- still in charge of it then or not. But I  
14 can't -- sorry.

15 MS. GLADING: Okay. No, that's all I have.  
16 Thank you.

17 SENATOR ROBERTSON: Colonel, when you were  
18 asked some questions by Mr. Chertoff about Moorestown  
19 and Cranbury headquarters or stations -- you were asked  
20 some questions about the Moorestown and Cranbury  
21 stations, you referred to Cocaine Alley, was it?

22 COLONEL WILLIAMS: Yes, sir.

23 SENATOR ROBERTSON: Could you explain what  
24 that statement -- what that phrase refers to?

25 COLONEL WILLIAMS: Well that was a -- you

1 know, it was common that -- commonly known through the  
2 police community that the New Jersey Turnpike along  
3 with -- which was part of the 95 Corridor which extends  
4 from Florida all the way up into Maine, was a prime  
5 road that was used to transport illicit drugs from  
6 either port of entry down south or wherever, and it was  
7 also used to send the proceeds, the monies back down  
8 through, you know, into Florida or wherever they might  
9 -- Texas, wherever they might be taking it, Mexico.

10 SENATOR ROBERTSON: All right. So that some  
11 of these cars would obviously go through various states  
12 I guess then?

13 COLONEL WILLIAMS: Well they would go through  
14 numerous states, sir, yes.

15 SENATOR ROBERTSON: And as a matter of fact,  
16 the first of the various reports regarding statistics  
17 which talks about consent search indicates that 78  
18 percent of the consents that were requested, were  
19 requested of out-of-state vehicles. That doesn't  
20 surprise you then in light of that?

21 COLONEL WILLIAMS: No, sir, it does not.

22 SENATOR ROBERTSON: So it's sort of rule of  
23 thumb to keep your eye out for out-of-state plates or  
24 out-of-state --

25 COLONEL WILLIAMS: Well it was -- you know,

1 again it was information that was imparted to us from  
2 the Drug Enforcement Administration, the Office of  
3 Highway Traffic Safety. You know, every meeting, like  
4 I said, with the IACP, we'd go to the meetings and, you  
5 know, they'd clean the room out and the director of the  
6 DEA would get up and say, here's where the drugs  
7 originate, here's where they're going, these are the  
8 routes they're taking, this is how they're getting  
9 there, these are the people that are involved in it,  
10 the cartels, et cetera, et cetera, that are doing it.  
11 I mean it was -- you know, it was police knowledge.

12 SENATOR ROBERTSON: And so that as a trooper  
13 takes a look at the variety of, you know, indicators  
14 that might result in consent search, that might be one  
15 of them?

16 COLONEL WILLIAMS: Well it's -- you know, but  
17 to digress back, the trooper should -- there's no  
18 reason to stop anybody just because of their race. If  
19 the trooper had a legitimate stop, speeding, a motor  
20 vehicle violation, sometimes, you know, it would be a  
21 civil aid, you know, they get flat tires, et cetera, et  
22 cetera and if there was something that aroused that  
23 trooper's suspicion, you know, the thrust was to go  
24 beyond that ticket. In other words, don't write --  
25 just write a ticket, be a -- be a true law enforcement

1 officer and check out what's going on, try to rid the  
2 country, you know, of the drug scourge.

3 SENATOR ROBERTSON: But I take it that, you  
4 know, 78 percent out of 100 -- let's put it this way,  
5 that out-of-state drivers aren't necessarily shiftier  
6 looking than in-state drivers I take it?

7 COLONEL WILLIAMS: No, sir.

8 SENATOR ROBERTSON: Oh, okay. And yet 78  
9 percent of those consent searches were folks from out-  
10 of-state I take it in part because of the sensitivity  
11 to the interstate nature of drug travel?

12 COLONEL WILLIAMS: And not only that, but  
13 that's -- that's where the -- you know, the shipment  
14 would start, out-of-state.

15 SENATOR ROBERTSON: True.

16 COLONEL WILLIAMS: It wasn't the State of New  
17 Jersey wasn't normally an import state, it was a pass  
18 through state or, you know, a flow through state.

19 SENATOR ROBERTSON: And the reason I ask that  
20 and I guess this is the reason that this is such a  
21 sensitive issue is that for that same period of time,  
22 looking at the same sample, 82 percent of those were  
23 asked to consent to searches were minorities and there  
24 will be those who will say that the same informal rule  
25 of thumb, the same putting something in the back of

1 your mind, the same thing to look out for might apply  
2 in a case like that. How do we distinguish and explain  
3 to people numbers like that? Isn't that -- do you  
4 think minorities look shiftier than the other 12  
5 percent or excuse me, 18 percent?

6 COLONEL WILLIAMS: No, sir.

7 SENATOR ROBERTSON: And I don't say that  
8 facetiously. I say it --

9 COLONEL WILLIAMS: I know, sir. I --

10 SENATOR ROBERTSON: -- very similarly --

11 COLONEL WILLIAMS: I said it once and got  
12 fired, sir.

13 SENATOR ROBERTSON: No, I understand. But my  
14 point is, do you understand why these figures raise  
15 these questions?

16 COLONEL WILLIAMS: Yes, sir.

17 SENATOR ROBERTSON: Because we can speak  
18 dispassionately perhaps about out-of-state versus in-  
19 state drivers, but when we're talking about minorities  
20 versus non-minorities, we seem to shift the  
21 conversation perhaps a little more defensively or  
22 perhaps we fool ourselves about what's in our minds  
23 when we make these decisions on the road. How do you  
24 explain the numbers personally?

25 COLONEL WILLIAMS: It's a nation problem,

1 sir. It's not -- it's not a New Jersey problem, it's a  
2 nation problem and I -- I don't have the answer.

3 SENATOR ROBERTSON: And by it you mean what?

4 COLONEL WILLIAMS: Sir?

5 SENATOR ROBERTSON: When you say it's a  
6 nation -- national problem, by it you mean what?

7 COLONEL WILLIAMS: The problem with -- and  
8 we'll zero in, you mention the word Cocaine Alley, so I  
9 assume we're talking about drug transportation, that's  
10 a nation problem.

11 SENATOR ROBERTSON: Well --

12 COLONEL WILLIAMS: It's not only here in New  
13 Jersey, it's -- I mean you had the same thing through  
14 New Mexico, Illinois, all the -- that was one of the  
15 major concerns when we read these IACP state provincial  
16 meetings is, you know, we all have, collectively all  
17 State Police agencies have the same problem. And, you  
18 know, what's the answer, you know.

19 SENATOR ROBERTSON: Well I understand -- I  
20 understand that as it respects out-of-state cars and  
21 why that might even informally, even if it's not  
22 supposed to, sort of creep into at least subconsciously  
23 the decisions that you make as to whether or not to ask  
24 someone to consent to a search. And what I'm asking  
25 you is, since the percentage of minorities who are

1 asked is even higher than the percentage of out-of-  
2 state drivers, is that the same thing?

3 COLONEL WILLIAMS: I can't answer that  
4 question, sir.

5 SENATOR ROBERTSON: I have no other  
6 questions, Mr. Chairman. Thank you.

7 SENATOR GORMLEY: Senator Lynch first then  
8 Senator -- you had to ask first, that's the way we're  
9 doing it.

10 SENATOR LYNCH: Colonel, was it clear to you  
11 as testified to by Sergeant Gilbert and as evidenced by  
12 some of his audit information that the -- with regard  
13 to the consent searches that, you know, your yielding  
14 numbers in the 70 to 90 percent range fairly frequently  
15 in terms of minority consent to searches?

16 COLONEL WILLIAMS: Yes, sir.

17 SENATOR LYNCH: Is it also clear from the  
18 information that you received from Gilbert and others  
19 and from his testimony that in terms of the positive  
20 searches that occur in those two universes, minority  
21 versus non-minority, that the percentage of positive  
22 searches for minorities is not -- is not higher than  
23 that for the non-minority? Do you understand what I'm  
24 saying?

25 COLONEL WILLIAMS: No, sir, I don't. I'm

1 sorry.

2 SENATOR LYNCH: For example, if there's 80  
3 percent of the -- of the consent searches in Moorestown  
4 for the first six months of 1998 are roughly 80 percent  
5 say minority, 20 percent non-minority --

6 COLONEL WILLIAMS: Yes, sir.

7 SENATOR LYNCH: Yet out of those -- that  
8 universe of minorities that are searched, roughly 25  
9 percent of them have positive searches?

10 COLONEL WILLIAMS: In other words, there's an  
11 arrest made as a result of the -- yes, sir.

12 SENATOR LYNCH: That they find some  
13 contraband?

14 COLONEL WILLIAMS: There's -- there's a  
15 violation, a criminal violation.

16 SENATOR LYNCH: Yet the -- yet at the same  
17 time the statistics seem to show pretty clearly that  
18 the rate for the non-minority in terms of positive  
19 consent searches are at least as high as the minority?

20 COLONEL WILLIAMS: Yes, sir.

21 (Pause)

22 SENATOR LYNCH: At this May 20, 1997 meeting  
23 in the Attorney General's Office --

24 COLONEL WILLIAMS: Yes, sir.

25 SENATOR LYNCH: -- it was clear that the

1 Attorney General didn't want to sign a consent decree  
2 and you were uplifted by that. Was it also clear that  
3 the Attorney General didn't want the Department of  
4 Justice inquiry to be turned into an investigation?

5 COLONEL WILLIAMS: That is correct, sir.

6 SENATOR LYNCH: And he also made that clear?

7 COLONEL WILLIAMS: He made that very clear,  
8 sir.

9 SENATOR LYNCH: So now on the one hand we  
10 don't -- we're not going to sign a consent decree, we  
11 don't want to do that. On the other hand, we don't  
12 want this to turn into an investigation.

13 COLONEL WILLIAMS: Correct, sir.

14 SENATOR LYNCH: Was there a -- was there then  
15 a plan discussed or issues discussed as to how we can  
16 fend off this initiative by the Department of Justice  
17 since we don't want to sign a consent decree, we  
18 certainly don't want them filing a complaint and we  
19 also don't want this to be called an investigation? So  
20 how do we fend that off?

21 COLONEL WILLIAMS: Well to the best of my  
22 recollection, we wanted the Justice Department to  
23 explain to us on a understandable basis how you have  
24 one part of the Justice Department, the DEA, the Office  
25 of Highway Traffic Safety, et cetera, et cetera, the

1 other federal law enforcement agencies stressing that  
2 we should be very active in the eradication of drugs  
3 and other criminal activity, and on the other hand we  
4 have the Justice Department saying no, what you're  
5 doing is wrong. This was a, I guess for want of a  
6 better word, tell us what you want us to do. What do  
7 you want us to do as law enforcement and we'll do it?

8 SENATOR LYNCH: I understand the dilemma with  
9 regard to maybe some mixed signals you get from the --  
10 from the --

11 COLONEL WILLIAMS: A lot of mixed signals,  
12 sir.

13 SENATOR LYNCH: -- Department of Justice.

14 COLONEL WILLIAMS: Not just some.

15 SENATOR LYNCH: I understand that. But  
16 obviously Maryland had the same dilemma?

17 COLONEL WILLIAMS: Yes, sir.

18 SENATOR LYNCH: And did you embark on a plan  
19 then at that meeting to articulate all this to the  
20 Department of Justice to show you how the dilemma  
21 arrives and maybe -- arises and maybe therefore you  
22 have some justification what's going on here,  
23 particularly with your consent to search statistics?

24 COLONEL WILLIAMS: That was my -- my  
25 impression that that was going to be one of the roads

1 that we're going to go down.

2 SENATOR LYNCH: Who left you with that  
3 impression?

4 COLONEL WILLIAMS: Well at the meeting, you  
5 know.

6 SENATOR LYNCH: Did you hear any --

7 COLONEL WILLIAMS: I think it was agreed upon  
8 by everybody at the meeting.

9 SENATOR LYNCH: At any time in 1997 or 1998,  
10 did you -- did you hear a discussion or hear of any  
11 effort to utilize the services, for lack of a better  
12 term, of anyone outside of the Attorney General's  
13 Office to try to help ward off this inquiry at the  
14 Department of Justice from becoming an investigation or  
15 leading to the filing of a complaint?

16 COLONEL WILLIAMS: When you say outside the  
17 Attorney General's Office?

18 SENATOR LYNCH: Someone who was not a member  
19 of the Attorney General's Office or any one of its  
20 divisions being utilized to try to help ward off this  
21 being converted into an investigation or into a  
22 complaint?

23 COLONEL WILLIAMS: Well, you know, I know  
24 that the Attorney General had mentioned about going  
25 down and talking to Janet Reno.

1 SENATOR LYNCH: But other than the Attorney  
2 General or someone within the Department of Law, were  
3 you aware that anyone else was attempting to be helpful  
4 in that regard?

5 COLONEL WILLIAMS: Not that I can recall,  
6 sir.

7 (Pause)

8 SENATOR LYNCH: Do you have a conscious  
9 recollection of why SOPF 3 was not changed until near  
10 the end of 1998 after the shooting to require race on  
11 the patrol charts?

12 COLONEL WILLIAMS: No, sir.

13 SENATOR LYNCH: To the best of your  
14 knowledge, this was over two years since it was first  
15 recommended before it was implement?

16 COLONEL WILLIAMS: Yes, sir.

17 SENATOR LYNCH: Was there any -- were you  
18 aware of any conscious effort to delay that being a  
19 requirement on the patrol charts?

20 COLONEL WILLIAMS: No, sir.

21 SENATOR LYNCH: Were you under any pressure  
22 from the Attorney General's Office during that two-year  
23 period to have it carried out, to make sure that it  
24 would be on the charts?

25 COLONEL WILLIAMS: Not that I recall, sir.

1 SENATOR LYNCH: Thank you, sir.

2 COLONEL WILLIAMS: Yes, sir.

3  
4 SENATOR FURNARI: Thank you, Colonel. SOPF  
5 3, what does that mean? What's SOP mean?

6 COLONEL WILLIAMS: Standing operating  
7 procedure.

8 SENATOR FURNARI: And these -- this is a  
9 matter in which troopers are directed to do certain  
10 things?

11 COLONEL WILLIAMS: In other words, it's  
12 several volumes of -- of documents. It starts from how  
13 the organization is organized, not to double talk, all  
14 the way out to how you do an -- you know, fill out an  
15 investigation report, where reports go, et cetera, et  
16 cetera, what the troopers --

17 SENATOR FURNARI: So these are the general  
18 rules and regulations of the organization?

19 COLONEL WILLIAMS: Rules and regulations,  
20 yes, sir.

21 SENATOR FURNARI: And officers -- troopers  
22 are required --

23 COLONEL WILLIAMS: In fact -- excuse me, it's  
24 not -- but it's not a -- specifically with regard --  
25 you said rules and regulations. We also have a rules



1 and regulations with regards to your conduct. That's a  
2 separate document.

3 SENATOR FURNARI: Okay. So that the -- these  
4 rules -- could you distinguish between the two for me,  
5 just so I understand that?

6 COLONEL WILLIAMS: Well the SOPs are like I  
7 say, how the organization is structured, the troops, et  
8 cetera, et cetera, what each Major is responsible --  
9 what each Lieutenant Colonel is responsible for, each  
10 Major's responsible for, the authority for the section,  
11 what the sections do, what the units do, what the  
12 bureaus do, how the organization operates, et cetera,  
13 et cetera. The rules and regulations are, you know, if  
14 you don't come to work, you don't fill out your reports  
15 correctly, you get in trouble, you know, however that  
16 may be, a problem at home, you know, get in a bar fight  
17 or something like that, that's covered under rules and  
18 regulations.

19 SENATOR FURNARI: Okay. So if you -- so  
20 failing to -- let's see if I understand this. If you  
21 fail to adhere to SOP 3, you'd be punished under the  
22 rules and regulations?

23 COLONEL WILLIAMS: You'd be punished under  
24 the rules and regulations, and it would be -- in other  
25 words, the charges are -- whatever the violation would

1 be written up with an indication made that in violation  
2 of article so and so and you did not adhere to SOP  
3 whatever it may be.

4 SENATOR FURNARI: Now is the Attorney General  
5 involved in either the rules and regulations or the  
6 SOPs?

7 COLONEL WILLIAMS: Yes, sir. The Attorney  
8 General always looks at our SOPs before they go out.  
9 The Planning Bureau would do the rules and regulations  
10 and they go downtown and they'd be checked out with the  
11 -- with the Attorney General's Office. The rules and  
12 regulations, the last time they were changed might have  
13 been, geez, maybe back in the -- and I'm guessing,  
14 okay, but I think in the early '80s and they were taken  
15 down to the Attorney General's Office and, you know, at  
16 that time I think it was the Legal Affairs Unit and  
17 they went over it and, you know, crossed the Ts, dotted  
18 the Is, this isn't good, that isn't good, take this  
19 out, leave that in, et cetera, et cetera.

20 SENATOR FURNARI: Now not adhering or not  
21 following those rules and regulations could give rise  
22 to disciplinary action, that's correct?

23 COLONEL WILLIAMS: That is correct.

24 SENATOR FURNARI: And in a rare case, I  
25 guess, it can give rise to even a criminal indictment?

1 COLONEL WILLIAMS: Well the criminal  
2 indictment would be strictly -- that would be something  
3 else. In other words, the State Police would not --  
4 would not be -- and don't let -- let me explain, when I  
5 say not part, in other words we wouldn't -- we wouldn't  
6 be the -- you know, it would either be the Attorney  
7 General's Office who would put up the indictment and/or  
8 a County Prosecutor's Office, you know, maybe with the  
9 State Police investigation or something like that. You  
10 know, we wouldn't -- we wouldn't be involved in it as  
11 with a court martial or something like that where we  
12 would -- we would be the -- we would be the authority.

13 SENATOR FURNARI: Well periodically over the  
14 35 years you've been in the Department, have many  
15 officers ended up indictment for failing to properly  
16 keep their records, falsification of documents?

17 COLONEL WILLIAMS: I don't -- and again, I  
18 can't recall all the way back to 1921, but I don't  
19 recall that being --

20 SENATOR FURNARI: Of anyone ever?

21 COLONEL WILLIAMS: Well, again, I can't -- I  
22 can't answer your question because I can't go back to  
23 1921. I came in the State Police in 1964. So --

24 SENATOR FURNARI: Okay. Since 1964?

25 COLONEL WILLIAMS: I can't -- I don't recall

1 that being a frequent happening, let's put it that way.  
2 I'm not saying it didn't happen, but it's not a  
3 frequent happening.

4 SENATOR FURNARI: Now wouldn't -- it seems to  
5 me that if my failure to properly keep my records ever  
6 rises to the level of being something that there'd be a  
7 criminal Grand Jury or indictment, it would seem to me  
8 that this would be something that the AG's Office would  
9 work closely together with the State Police on?

10 COLONEL WILLIAMS: Yes.

11 SENATOR LYNCH: Does it make sense? I mean  
12 it seems to make sense to me that if you find out that  
13 somebody has been so egregious in not filling out their  
14 documents or for example not following SOPF 3, that  
15 before there'd be an indictment, there'd be some  
16 consultation with the State Police to see what they've  
17 been doing in the past, right?

18 COLONEL WILLIAMS: Yes, sir.

19 SENATOR LYNCH: Okay. That's really all I  
20 have. Thank you.

21 COLONEL WILLIAMS: Thank you. Yes, sir.

22 SENATOR ROBERTSON: Senator Zane?

23 SENATOR ZANE: Colonel, two questions, I  
24 think, regarding consent to search. Your first -- your  
25 thoughts on consent to search as a law enforcement tool

1 bearing in mind what has happened here in New Jersey?

2 COLONEL WILLIAMS: You want my opinion?

3 SENATOR ZANE: Yes.

4 COLONEL WILLIAMS: Okay. I think the consent  
5 to search is a good law enforcement tool. I think  
6 that, you know, we have to monitor it and make sure  
7 that it's being used in the -- for the reasons that it  
8 was initiated, you know, to not only help the trooper  
9 on the road, to a -- you know, with all the different  
10 court decisions that have come down, to show that the  
11 individual that's being searched did so willingly and  
12 knowledgeably. But it also on the hand it protects the  
13 individual that's being searched by allowing them to be  
14 aware of what the ramifications might be if in fact  
15 there is contraband of some type in that vehicle or  
16 where -- you know, I mean you can use a consent to  
17 search in a house. It doesn't have to be a vehicle.  
18 It can be, you know, a business or something like that.  
19 So it protects I think both sides of the -- not only  
20 law enforcement, but the community in general.

21 SENATOR ZANE: Colonel, last question. Let's  
22 stay strictly with a vehicle, what effect do you think  
23 consent to search has on the issue of racial profiling?  
24 Forget the law enforcement tool, what effect do you  
25 think it has? Do you think it's a major contributor?

1 Do you think it's something that from -- just looking  
2 at it from the civil rights standpoint, is it something  
3 we maybe shouldn't have? Your thoughts?

4 COLONEL WILLIAMS: I don't -- I don't think  
5 it's something that they shouldn't have. I don't think  
6 it has -- I don't -- you know, this is my personal  
7 opinion, I don't think the consent to search has a race  
8 to it. It's a piece of paper.

9 SENATOR ZANE: But in -- last question. But  
10 in light of what we have seen, are there other things  
11 that you should -- you feel possibly should be done to  
12 protect people's civil rights? Because obviously -- I  
13 mean it looks pretty clear to me that they're being  
14 violated.

15 COLONEL WILLIAMS: Well --

16 SENATOR ZANE: And if you don't think so I  
17 understand.

18 COLONEL WILLIAMS: I -- again, sir, I -- you  
19 know, I'll go back on my initial statement, that I  
20 think it's a document that protects both the police  
21 officer and the -- and the individual who is being  
22 searched.

23 SENATOR ZANE: Thank you.

24 SENATOR ROBERTSON: Senator Girgenti?

25 SENATOR GIRGENTI: Thank you. Colonel, just

1 a couple questions. I know the hour is getting late.  
2 One thing that I was interested in, the Trooper of the  
3 Year Program --

4 COLONEL WILLIAMS: Yes, sir.

5 SENATOR GIRGENTI: -- could you go into that  
6 a little bit in terms of explaining it. What was the  
7 criteria for receiving -- becoming the Trooper of the  
8 Year?

9 COLONEL WILLIAMS: Well the criteria was that  
10 -- and can I explain how the Trooper of the Year  
11 worked--

12 SENATOR GIRGENTI: Sure.

13 COLONEL WILLIAMS: -- before I --

14 SENATOR GIRGENTI: No, go ahead.

15 COLONEL WILLIAMS: You know, there would come  
16 a time where it'd be that time of year to begin a  
17 search for the Trooper of the Year. It would be  
18 incumbent upon the various troops and bureaus to  
19 initiate a recommendation through the chain of command  
20 for a individual, be it one trooper or two troopers who  
21 might have done an outstanding job or did something  
22 that, you know, that merits a recognition above the --  
23 above the norm. A Trooper of the Year recommendations  
24 then would go to the -- to a advisory board or a board  
25 of captains that we had in the State Police and they

1 would -- they would review the recommendations from the  
2 various bureaus, sections, and they then would make  
3 that recommendation and forward it through the chain,  
4 ultimately during my period of time to meet. And then  
5 I would make a -- I would look at the candidates and  
6 not only would I look at what they -- what they did as  
7 far as the -- that particular incident or incidents  
8 that they are being recommended for, but I would also  
9 look towards their -- their involvement, in the State  
10 Police, you know, what type of -- what type of person  
11 they were and their enthusiasm, et cetera, et cetera.

12 SENATOR GIRGENTI: All right. Again, the  
13 criteria in terms of selection now, there is a  
14 selection Committee that --

15 COLONEL WILLIAMS: Yes, sir.

16 SENATOR GIRGENTI: And it came up through  
17 that and you would make the final determination?

18 COLONEL WILLIAMS: That is correct sir.

19 SENATOR GIRGENTI: All right, and reading  
20 through in the back -- the background now, was this  
21 started under you? Or was this there before you?

22 COLONEL WILLIAMS: No. No, sir this --

23 SENATOR GIRGENTI: Did it for a long time?  
24 Because if it --

25 COLONEL WILLIAMS: I think he -- and again

1 don't hold me to this, but I think the -- the first  
2 troop of the year might have been back in the -- maybe  
3 1960's, late sixties. I think you know, I was a young  
4 trooper on the Turnpike at the time, I -- I think  
5 that's when it was started, under -- I think it was --  
6 I think it was Colonel Kelly, who started the Trooper  
7 of the Year.

8 SENATOR GIRGENTI: All right, so criteria  
9 would be in certain cases drug arrests? Aggressiveness  
10 -- you know what would be, would that be part of what  
11 went into it, were they looking for --

12 COLONEL WILLIAMS: Oh, it's -- again it

13 SENATOR GIRGENTI: -- numbers?

14 COLONEL WILLIAMS: -- you'd look at that, you  
15 know there was Trooper of the Year, and we're  
16 Detectives, you know who did outstanding jobs maybe in  
17 -- in arson investigation, stolen cars, or something  
18 like that. The -- there were Troopers of the Year that  
19 for -- organized crime.

20 SENATOR GIRGENTI: Okay, but there -- pardon  
21 me, during your tenure, during your tenure was there  
22 not a change in it, or because of the emphasis was -- I  
23 think there was an incident that occurred, one of the  
24 honorees or one of the persons that were going to be  
25 honored, it was switched at the end because of problems

1 that you found in the guy's background, in his record?  
2 Is that the case?

3 COLONEL WILLIAMS: I think that might have  
4 happened at one time with this.

5 SENATOR GIRGENTI: And would you attribute  
6 and this is no -- you know I know you came into this,  
7 it's been there for a long time, would you attribute  
8 that to the looking for this aggressiveness, a mind set  
9 that said you -- you know numbers are the answer, the  
10 more numbers we get, the better the trooper may be?

11 And in this case, it would lead to that type  
12 of atmosphere, that you would be very aggressive in  
13 terms to become the Trooper of the year, that's one of  
14 the things you would have to do?

15 COLONEL WILLIAMS: Well one of the things  
16 that you would have to do is be a -- be an aggressive  
17 trooper, now again that doesn't mean that you -- you  
18 know -- I take being aggressive means doing your job,  
19 the job that you're paid for by the citizens of New  
20 Jersey.

21 And you know going out and -- and giving a  
22 full day's work.

23 SENATOR GIRGENTI: But could that set the  
24 mind set to you know above all the numbers are most  
25 important?

1 COLONEL WILLIAMS: It could sir, and --

2 SENATOR GIRGENTI: And --

3 COLONEL WILLIAMS: -- I can't -- I can't  
4 speak for everybody's mind set, but it -- there's that  
5 possibility, yes sir.

6 SENATOR GIRGENTI: And do you believe that  
7 that may have happened in some cases, especially the  
8 one that you spoke, that I talked -- I mentioned  
9 earlier that --

10 COLONEL WILLIAMS: There's a -- there's a  
11 possibility sir, yes, sir.

12 SENATOR GIRGENTI: And has that program now  
13 changed? The emphasis while you were there, did they  
14 change the emphasis on it?

15 COLONEL WILLIAMS: Well, again I -- you know,  
16 I'm the person who picked the Troop of the Year, and I  
17 tried to -- I tried to do it -- a total overview that -  
18 - it wasn't just for being aggressive, making arrests,  
19 it -- you know there were other -- other indicators, or  
20 other areas that the -- the trooper was outstanding in,  
21 involved in the community, et cetera, et cetera.

22 And what's happening now I can't answer your  
23 question, sir.

24 SENATOR GIRGENTI: All right, during the Soto  
25 case, it came to light that some State Police training

1 materials, contained theories or at least references  
2 that are -- correlations between ethnicities as you  
3 mentioned before, and certain violations, are you  
4 familiar with such -- there was training manuals and I  
5 understand that were sent out from the -- even from  
6 Washington, was that something that you had to deal  
7 with, or was that prior to your -- your tenure as the  
8 Superintendent?

9 COLONEL WILLIAMS: Well that -- that was --  
10 that was prior to my being the Superintendent sir, but  
11 I was -- I mean I was -- I was aware of it that was  
12 part of the training from -- as you say the DEA, and  
13 other Federal agencies, that -- that's what they  
14 provided us.

15 SENATOR GIRGENTI: And that was all part of  
16 this drug interdiction, emphasis on operation --

17 COLONEL WILLIAMS: Pipeline.

18 SENATOR GIRGENTI: -- you said operation  
19 pipeline?

20 COLONEL WILLIAMS: Roadside. Whatever.

21 SENATOR GIRGENTI: And -- and the -- up until  
22 your -- obviously you can't speak for today, but at the  
23 end of your tenure there, was any of that materials  
24 still used or that was no longer part of any training  
25 program within the State Police?

1 COLONEL WILLIAMS: It was not used sir. When  
2 -- and when --  
3 SENATOR GIRGENTI: And --  
4 COLONEL WILLIAMS: -- I say not used, I'm  
5 talking about what you had -- which you had mentioned,  
6 absolutely not.  
7 SENATOR GIRGENTI: When -- when was that --  
8 when was that disbanded or eliminated in terms of the -  
9 - it was prior to your becoming the Superintendent as  
10 we said before?  
11 COLONEL WILLIAMS: I think so sir, yes.  
12 SENATOR GIRGENTI: Like the early nineties,  
13 or --  
14 COLONEL WILLIAMS: Yes, sir.  
15 SENATOR GIRGENTI: Okay and -- I guess the  
16 answer is obvious that why -- why did they cease to use  
17 those materials, because of the very problems that  
18 we're talking about?  
19 COLONEL WILLIAMS: Certainly.  
20 SENATOR GIRGENTI: And this was part of the  
21 training programs, that --  
22 COLONEL WILLIAMS: Certainly.  
23 SENATOR GIRGENTI: -- that were put forth?  
24 And all right, now -- because that -- that was  
25 something that I know I had read, and it stuck with me

1 for a long time, that this was really again there was a  
2 mind set, from the training, even the -- the idea of  
3 encouraging awards as I spoke to before?  
4 COLONEL WILLIAMS: Yes, sir.  
5 SENATOR GIRGENTI: And that could tend to  
6 become a serious problem, and I think that you had to  
7 deal with it to some extent, because of that.  
8 COLONEL WILLIAMS: It has to be monitored  
9 sir.  
10 SENATOR GIRGENTI: And -- you and I think  
11 that -- that could be part of the reason why the  
12 numbers were -- like they were in terms of the -- you  
13 know -- and that's unfortunate and -- I just know that  
14 -- I'm glad that that has been changed.  
15 And that no longer would be part of any kind  
16 of training, would not be -- it should not be that way,  
17 and it should not be the reason for someone getting an  
18 award for trooper of the year, as you said, there  
19 should be other criteria than -- aggressiveness in  
20 terms of just forget about what you're doing, just get  
21 the numbers. I think that's a problem.  
22 Thank you.  
23 COLONEL WILLIAMS: Yes, sir.  
24 SENATOR GORMLEY: Thank you Colonel for your  
25 testimony.

1 COLONEL WILLIAMS: Thank you sir.  
2 SENATOR GORMLEY: The next witness will be  
3 Lieutenant Albert Sacchetti.  
4 (Pause)  
5 SENATOR GORMLEY: Would you please stand.  
6 Raise your right hand.  
7 LIEUTENANT ALBERT SACCHETTI, WITNESS, SWORN  
8 SENATOR GORMLEY: Have a seat. Mr. Chertoff.  
9 MR. CHERTOFF: Lieutenant Sacchetti how long  
10 have you been with the State Police?  
11 LIEUTENANT SACCHETTI: 27 years.  
12 MR. CHERTOFF: And your current rank is what?  
13 LIEUTENANT SACCHETTI: Lieutenant.  
14 MR. CHERTOFF: Back in 1998, did there come a  
15 point in time you were assigned to do something called  
16 the Troop D audit?  
17 LIEUTENANT SACCHETTI: Yes, sir I was.  
18 MR. CHERTOFF: And what was that Troop D  
19 audit?  
20 LIEUTENANT SACCHETTI: In June of 1998 I was  
21 tasked to perform an audit to determine if  
22 falsification issues directly related to race was  
23 occurring on the New Jersey Turnpike.  
24 MR. CHERTOFF: Who ordered you to do that?  
25 LIEUTENANT SACCHETTI: Lieutenant Colonel

1 Robert Dunlap.  
2 MR. CHERTOFF: And did you start doing that  
3 first at Cranbury?  
4 LIEUTENANT SACCHETTI: Yes, sir, that is  
5 correct.  
6 MR. CHERTOFF: And then you moved to  
7 Moorestown?  
8 LIEUTENANT SACCHETTI: Yes, sir.  
9 MR. CHERTOFF: And then there came a point in  
10 time in March of 1999 that it was to be expanded to  
11 Newark as well?  
12 LIEUTENANT SACCHETTI: Yes, sir.  
13 MR. CHERTOFF: Now, I want to be clear that  
14 the focus here was falsification, not a more general  
15 statistical analysis right?  
16 LIEUTENANT SACCHETTI: That is correct.  
17 MR. CHERTOFF: Am I correct that there were  
18 really going to be three phases to this audit, phase  
19 one was going to be to look for discrepancies between  
20 various documents, phase two was to follow up with  
21 interviews where there are discrepancies, and then  
22 phase three which was more complicated was to try to  
23 put together a statistical way of sampling to see  
24 whether troopers were falsifying even if you didn't  
25 have discrepancies between the documents?



1 LIEUTENANT SACCHETTI: Yes, sir, but if I may  
2 add, in phase three we were also doing interviews also.

3 MR. CHERTOFF: Now. Now, when did you get  
4 started on this?

5 LIEUTENANT SACCHETTI: The actual planning of  
6 this audit began in June probably about June 15th, of  
7 1998. We actually began the actual audit July the 2nd.

8 MR. CHERTOFF: And -- in September did you  
9 have a meeting about the progress of the audit, upon  
10 completing Moorestown in terms of its impact on  
11 continuing the Soto appeal?

12 LIEUTENANT SACCHETTI: Yes, sir I did.

13 MR. CHERTOFF: Tell us about that?

14 LIEUTENANT SACCHETTI: At the time we were --  
15 as I have originally stated, and testified to we were  
16 tasked with doing an audit of Cranbury, at the time  
17 that it originally began, I was under the impression we  
18 would stick with Cranbury.

19 Around the time that you had spoken of, I was  
20 informed that we would then begin a phase one and phase  
21 two audit of the Moorestown Station, to determine if  
22 there were any problems there, and that decision would  
23 be used to determine if the Soto Decision was going to  
24 be appealed.

25 MR. CHERTOFF: Who told you that?

1 LIEUTENANT SACCHETTI: Lieutenant Colonel  
2 Dunlap.

3 MR. CHERTOFF: And did you have a meeting  
4 about the subject, around September 11th, about the  
5 effective -- what you had -- pulled together on the --  
6 on the Soto appeal issue?

7 LIEUTENANT SACCHETTI: I'm sorry sir?

8 MR. CHERTOFF: Did you have a meeting about  
9 the Soto appeal on September 11th?

10 LIEUTENANT SACCHETTI: I believe about that  
11 date sir, yes, sir.

12 MR. CHERTOFF: Who was at that meeting?

13 LIEUTENANT SACCHETTI: I would imagine  
14 Colonel Dunlap, myself, and I believe Colonel Fedorko.

15 MR. CHERTOFF: Can you remember what the  
16 discussion was?

17 LIEUTENANT SACCHETTI: No sir, just that we  
18 were going to be tasked to now begin this audit of the  
19 Moorestown Station also.

20 MR. CHERTOFF: Okay, and -- the purpose of  
21 the audit was going to be to see whether perhaps the  
22 Soto appeal ought to be retracted, or -- or suspended  
23 in some way?

24 LIEUTENANT SACCHETTI: That's what I was  
25 informed.

1 MR. CHERTOFF: Now, did you regularly inform  
2 Colonel Dunlap about what you were finding out in terms  
3 of discrepancies?

4 LIEUTENANT SACCHETTI: Colonel Dunlap and  
5 Colonel Fedorko.

6 MR. CHERTOFF: And did you also from time to  
7 time have meetings with people from the office of the  
8 Attorney General?

9 LIEUTENANT SACCHETTI: Yes sir I did.

10 MR. CHERTOFF: How many meetings do you  
11 remember having with representatives of the Office of  
12 the Attorney General?

13 LIEUTENANT SACCHETTI: I recall two.

14 MR. CHERTOFF: Okay, when were they?

15 LIEUTENANT SACCHETTI: One was October either  
16 the 27th, or the 29th of '98, and another one was  
17 February the 2nd of 1999.

18 MR. CHERTOFF: Okay, what was the October  
19 meeting, who was at the October meeting?

20 LIEUTENANT SACCHETTI: At the October meeting  
21 was Colonel Dunlap, myself I believe other  
22 representatives from Internal Affairs, and Debbie  
23 Stone, oh, and Prosecutor Jurow, and Chuck Burnell.

24 MR. CHERTOFF: And what was the subject of  
25 the meeting, what was discussed?

1 LIEUTENANT SACCHETTI: The main focus of the  
2 meeting was the shooting investigation, we had a  
3 shooting investigation and the side issue of the  
4 falsification for Hogan and Kenneth.

5 MR. CHERTOFF: Were you involved in that  
6 investigation as well as the falsification of Hogan and  
7 Kenneth?

8 LIEUTENANT SACCHETTI: Originally.

9 MR. CHERTOFF: But then you were taken off  
10 that and -- and assigned to Troop D?

11 LIEUTENANT SACCHETTI: Yes, sir.

12 MR. CHERTOFF: What was the discussion on  
13 that date, concerning the Troop D investigation?

14 LIEUTENANT SACCHETTI: Very brief, just what  
15 we had learned by that period of time, and so forth and  
16 so on. Where were we going with it.

17 MR. CHERTOFF: Was it your understanding that  
18 at some point as you uncovered discrepancies some of  
19 these would be referred to Internal Affairs for an  
20 administrative investigation about whether there was  
21 misconduct?

22 LIEUTENANT SACCHETTI: The Troop D audit?

23 MR. CHERTOFF: For -- for the Troop D audit?

24 LIEUTENANT SACCHETTI: Yes, sir.

25 MR. CHERTOFF: And in fact from time -- was

1 there a point in time at which instances of  
2 discrepancies were referred to Internal Affairs, for an  
3 individualized administrative investigation?

4 LIEUTENANT SACCHETTI: Yes, sir.

5 MR. CHERTOFF: Approximately when was that?

6 LIEUTENANT SACCHETTI: I would say -- I would  
7 say the fall of '98, maybe the beginning of early of  
8 '99.

9 MR. CHERTOFF: Now you said there was a  
10 second meeting with the Office of Attorney General in  
11 February '99? Who -- how did that meeting come about?

12 LIEUTENANT SACCHETTI: I was informed that  
13 there would be a meeting in the AG's office. And I  
14 would attend. And also that I would provide to  
15 Mr. Zubec, a synopsis of what the Troop D had revealed  
16 at that point.

17 MR. CHERTOFF: And did you provide that  
18 synopsis?

19 LIEUTENANT SACCHETTI: Yes, sir I did.

20 MR. CHERTOFF: I'm going to show you what --  
21 what's been previously marked as Z-3, I'm sorry Z-2,  
22 which is a document marked D-1 and ask you if this is a  
23 synopsis which you provided -- I'm sorry. Which is --  
24 is this a copy of the synopsis you provided to Mr.  
25 Zubec?

1 LIEUTENANT SACCHETTI: Yes, sir it is.

2 MR. CHERTOFF: Now, parts of it are redacted  
3 in terms of the individual identities of the troopers,  
4 but you went through -- essentially identifying a  
5 series of instances of discrepancies, with respect to  
6 particular troopers, correct?

7 LIEUTENANT SACCHETTI: Yes, sir.

8 MR. CHERTOFF: Now, what did Mr. Zubec say in  
9 response to this?

10 LIEUTENANT SACCHETTI: He -- what I recall of  
11 his response to this, was he was satisfied with the  
12 thoroughness of this audit, and that we would continue  
13 with it.

14 MR. CHERTOFF: And was it understood that yo  
15 were going to continue with the audits of the locations  
16 in progress, and then also now include the Newark  
17 Barracks?

18 LIEUTENANT SACCHETTI: I wasn't informed of  
19 that at that time, no sir.

20 MR. CHERTOFF: When were you informed that?

21 LIEUTENANT SACCHETTI: Later on in the month.

22 MR. CHERTOFF: And that would be late  
23 February or early March?

24 LIEUTENANT SACCHETTI: We actually -- I was  
25 actually assigned the additional personnel March 8th,

1 of 1999. So it probably was in the beginning of March.

2 MR. CHERTOFF: So as of -- as of March 8,  
3 1999 you had the green light to do an audit of all  
4 three barracks, and you had approximately 30 people  
5 working for you on that audit?

6 LIEUTENANT SACCHETTI: Yes, sir.

7 MR. CHERTOFF: Now, with respect to the  
8 synopsis of Troop D, you'd given to Mr. Zubec, where  
9 you identified troopers that had significant numbers in  
10 discrepancies, do you now whether some of those had  
11 been referred for administrative investigation by IAD?

12 LIEUTENANT SACCHETTI: We don't use that  
13 term.

14 MR. CHERTOFF: What do you use?

15 LIEUTENANT SACCHETTI: Internal  
16 investigation.

17 MR. CHERTOFF: Had some of them been referred  
18 for internal investigations?

19 LIEUTENANT SACCHETTI: Yes, sir.

20 MR. CHERTOFF: And do you know whether as of  
21 the spring of 1999 some of the troopers who were under  
22 internal investigation had been referred or about to be  
23 referred to the Division of Criminal Justice to go to a  
24 criminal investigation, which is the next step?

25 LIEUTENANT SACCHETTI: I'm sorry?

1 MR. CHERTOFF: Do you know whether some of  
2 the troopers?

3 LIEUTENANT SACCHETTI: No, sir I do not.

4 MR. CHERTOFF: You don't know -- or who was  
5 referred to the Criminal?

6 LIEUTENANT SACCHETTI: No sir. No sir.

7 MR. CHERTOFF: Okay, so it's now March 8, and  
8 you've got additional personnel, you've got a mandate  
9 from Mr. Zubec to go ahead and -- and complete your  
10 work, and also cover Newark, right?

11 LIEUTENANT SACCHETTI: Yes, sir.

12 MR. CHERTOFF: And that was part of the  
13 original plan, of the Troop D audit, right?

14 LIEUTENANT SACCHETTI: I didn't understand it  
15 to be as such, when it first began, like I said  
16 earlier, I just understood it to be Cranbury Station.

17 MR. CHERTOFF: But it expanded to include --

18 LIEUTENANT SACCHETTI: Yes, sir.

19 MR. CHERTOFF: -- Moorestown and Newark?

20 LIEUTENANT SACCHETTI: Yes, sir.

21 MR. CHERTOFF: And certainly as of March you  
22 understood that to be the case?

23 LIEUTENANT SACCHETTI: Yes, sir.

24 MR. CHERTOFF: And you had 30 people to help  
25 you deal with this?

1 LIEUTENANT SACCHETTI: That's correct.

2 MR. CHERTOFF: Then what happened?

3 LIEUTENANT SACCHETTI: I had completed phase  
4 one and phase two, of all three stations. We were  
5 approximately half completed of Cranbury Station, and  
6 about May of 1999 the responses that we were getting  
7 for these interview processes, both phase two Newark,  
8 and also phase three Cranbury, were coming in at a  
9 rather slow pace. We were getting maybe four or five  
10 responses a day.

11 MR. CHERTOFF: Responses from who?

12 LIEUTENANT SACCHETTI: From individuals that  
13 had been stopped and identified by way of oral audit.

14 MR. CHERTOFF: So, what did you do next?

15 LIEUTENANT SACCHETTI: I went to Colonel  
16 Fedorko, Colonel Dunlap and requested guidance, as to  
17 where the future of this audit would now proceed.

18 Whether we would go back and complete phase  
19 three of Cranbury, or whether or not the -- the detail  
20 would be terminated.

21 MR. CHERTOFF: Well why did you ask him about  
22 that, why was the fact that you were having difficulty  
23 getting responses, why did that cause you to go to  
24 Colonel Dunlap and Colonel Fedorko and ask them for  
25 further guidance, why didn't you just kind of plow

1 ahead?

2 LIEUTENANT SACCHETTI: Why didn't he sir?

3 MR. CHERTOFF: No, why didn't you plow ahead,  
4 what did you need for your guidance?

5 LIEUTENANT SACCHETTI: I at that time the  
6 calls were coming in like I say, at a rather slow rate,  
7 I wanted direction. Because what had happened was  
8 prior to this, we had detached all of the individuals  
9 that were doing phase three, for Cranbury and now put  
10 them onto Newark, so that we could get Newark  
11 completed.

12 So I had them still doing Newark, I wanted to  
13 know whether I should send them back to Cranbury, or  
14 what direction we would head.

15 MR. CHERTOFF: Well was there some question  
16 in your mind about whether you were going to complete  
17 this project?

18 LIEUTENANT SACCHETTI: Yes, sir.

19 MR. CHERTOFF: What caused you to have that  
20 question?

21 LIEUTENANT SACCHETTI: I don't know. And to  
22 be perfectly honest, I can't answer that now, I just  
23 had a feeling, that they perhaps this may be  
24 terminated.

25 MR. CHERTOFF: What gave you that feeling if

1 you remember?  
2 LIEUTENANT SACCHETTI: An interim report.  
3 MR. CHERTOFF: Pardon?  
4 LIEUTENANT SACCHETTI: Interim report had  
5 been published at that time, sir. And I felt that  
6 perhaps we maybe weren't going to continue along those  
7 lines where we were going.  
8 MR. CHERTOFF: So you went to Colonel Dunlap  
9 and Colonel Fedorko, and what did they tell you?  
10 LIEUTENANT SACCHETTI: They told me to just  
11 stand by and a decision would be made as to where we  
12 would head.  
13 MR. CHERTOFF: And did they tell you who  
14 would make the decision?  
15 LIEUTENANT SACCHETTI: In the Attorney  
16 General's office.  
17 MR. CHERTOFF: And did you stand by?  
18 LIEUTENANT SACCHETTI: Yes, sir I did.  
19 MR. CHERTOFF: How long did you stand by?  
20 LIEUTENANT SACCHETTI: About a month.  
21 MR. CHERTOFF: How long did the troopers  
22 working with you stand by ?  
23 LIEUTENANT SACCHETTI: About a month.  
24 MR. CHERTOFF: And then what happened?  
25 LIEUTENANT SACCHETTI: Detail was terminated.

1 MR. CHERTOFF: Who told you the detail was  
2 terminated?  
3 LIEUTENANT SACCHETTI: Colonel Fedorko.  
4 MR. CHERTOFF: And did he tell you whose  
5 decision it was?  
6 LIEUTENANT SACCHETTI: The AG's.  
7 MR. CHERTOFF: Did he explain why?  
8 LIEUTENANT SACCHETTI: No sir.  
9 MR. CHERTOFF: Now, at that point what was  
10 the status of your investigation? Of your Troop D  
11 audit?  
12 LIEUTENANT SACCHETTI: Like I said, I had  
13 completed phase one and two, of all three stations,  
14 Cranbury was approximately -- a little better than half  
15 completed.  
16 MR. CHERTOFF: Now, with respect to -- with  
17 respect to the work that was completed, did you write a  
18 final report?  
19 LIEUTENANT SACCHETTI: In October of last  
20 year, 2000 I was required to submit what I had up to  
21 that point, I wouldn't term that my final report. No.  
22 MR. CHERTOFF: So now is -- I think we lost a  
23 year in here, so I want to -- make sure I understand  
24 why.  
25 Approximately May or June of 1999 your work

1 is terminated, right?

2 LIEUTENANT SACCHETTI: Yes, sir.

3 MR. CHERTOFF: Okay. And at that point it's  
4 not -- you've completed phase one and two, but you're  
5 only part way into phase three, right?

6 LIEUTENANT SACCHETTI: Yes, sir. A little  
7 better than half.

8 MR. CHERTOFF: You -- you also have I believe  
9 -- if I'm correct, you've identified a number of  
10 troopers where there are discrepancies, it's not  
11 completely clear which of those are serious and which  
12 are not serious, right?

13 LIEUTENANT SACCHETTI: In whose estimation?

14 MR. CHERTOFF: In your estimation?

15 LIEUTENANT SACCHETTI: I think we had  
16 identified a number of troopers that had committed  
17 violations.

18 MR. CHERTOFF: Okay. So now let me ask you  
19 this, when this thing is terminated does anybody say to  
20 you write what you've done so far?

21 LIEUTENANT SACCHETTI: No sir.

22 MR. CHERTOFF: Did you ask whether you should  
23 write that?

24 LIEUTENANT SACCHETTI: Yes, sir I did.

25 MR. CHERTOFF: Who did you ask?

1 LIEUTENANT SACCHETTI: I asked both Colonel  
2 Fedorko and Colonel Dunlap.

3 MR. CHERTOFF: What did they tell you?

4 LIEUTENANT SACCHETTI: Just hold off on that.

5 MR. CHERTOFF: Did they tell you why?

6 LIEUTENANT SACCHETTI: I don't recall  
7 specifically, Colonel Fedorko's reasoning, but Colonel  
8 Dunlap's I do recall distinctly, was that it was an  
9 incomplete report, and as such there would be no need  
10 to complete it.

11 MR. CHERTOFF: And it was incomplete because  
12 you had been told to stop work?

13 LIEUTENANT SACCHETTI: Yes, sir.

14 MR. CHERTOFF: Okay. Now, did there come a  
15 point in time that you were told that the report should  
16 be prepared?

17 LIEUTENANT SACCHETTI: There came a point in  
18 time like I said, about October of 2000.

19 MR. CHERTOFF: And how did you come to get  
20 that instruction?

21 LIEUTENANT SACCHETTI: I received an e-mail  
22 from my Major at the time, Major Brennan advising me of  
23 a meeting that I would attend, with Major Brennan,  
24 Lieutenant Bill Metis from Internal Affairs, Chief Dorn  
25 from Internal Affairs, and several representatives from

1 the Attorney General's Office.

2 MR. CHERTOFF: And what happened?

3 LIEUTENANT SACCHETTI: I was ordered then to  
4 produce what I had up to that point, for the purpose of  
5 initiating internal investigations.

6 MR. CHERTOFF: Now, when you say for the  
7 purpose of generating internal investigations, in other  
8 words until you submitted this report, incomplete as it  
9 was, what you had discovered was not the subject of  
10 internal investigation?

11 LIEUTENANT SACCHETTI: That's correct.

12 MR. CHERTOFF: And I'm showing you JC -- SJC-  
13 2, is this the October 26th, 2000 incomplete report  
14 that you were ordered to prepare?

15 LIEUTENANT SACCHETTI: Yes, sir that looks  
16 like it.

17 MR. CHERTOFF: And it says basically that  
18 this is an unfinished product -- project that was never  
19 completed, but you were ordered to put this together,  
20 right?

21 LIEUTENANT SACCHETTI: That is correct.

22 MR. CHERTOFF: And did anybody ever explain  
23 to you why there was a delay of about 16 months between  
24 the time you stopped work and the time you were told to  
25 produce this?

1 LIEUTENANT SACCHETTI: No sir.

2 MR. CHERTOFF: Now, I want to focus on one  
3 issue in particular, am I correct that when you finally  
4 produced this report, in last year, it was intended to  
5 be an informational guide to determine possible future  
6 disciplinary action, with respect to some of the  
7 troopers who were named?

8 LIEUTENANT SACCHETTI: That's correct.

9 MR. CHERTOFF: And so there was a period of  
10 time from about December of 1999 until October of last  
11 year, that there was information in your possession  
12 about possible disciplinary infractions, whatever merit  
13 they might have, that was essentially not being acted  
14 upon?

15 LIEUTENANT SACCHETTI: That's correct.

16 MR. CHERTOFF: Did you ever express a concern  
17 to anybody that there was an element of unfairness  
18 because you had been ordered to hold up reporting on  
19 possible disciplinary infractions for certain troopers  
20 whereas other troopers were being disciplined based on  
21 information from other sources, for their own -- for  
22 their discrepancies?

23 LIEUTENANT SACCHETTI: Yes, sir I did.

24 MR. CHERTOFF: Who did you tell that to?

25 LIEUTENANT SACCHETTI: I explained that



1 several times in meetings with Colonel Fedorko, later  
2 on after Colonel Fedorko retired, also with Director  
3 Kronin, my captain at the time, Captain Roy Van  
4 Tassell, I was present at meetings at the Attorney  
5 General's Office, as a result of the interim and the  
6 final reports, I was placed on Committees to insure  
7 that the reforms were enacted, and at these meetings it  
8 was also brought up.

9 MR. CHERTOFF: And what would you bring up at  
10 the meetings? What would you say to the people at the  
11 meetings concerned you about the fact that you had this  
12 information but you had been told not to put it into --  
13 not to transmit it to anybody?

14 LIEUTENANT SACCHETTI: That really wasn't how  
15 it was brought up, it was brought up more or less that  
16 as I've testified in my deposition, I audited 169  
17 troopers. 159 of them had exhibited some type of  
18 administrative violation, due to the thoroughness of  
19 the audit.

20 And just as you characterized it, I didn't  
21 feel that it was fair, that individuals on a daily  
22 basis are receiving discipline for these types of  
23 violations and here we had these 159 individuals that  
24 we had identified that there wasn't any action being  
25 taken.

1 MR. CHERTOFF: Did anybody ever explain to  
2 you why it was that finally in October of 2000 a  
3 decision was made to have you take what you had, put it  
4 together and transmit it?

5 LIEUTENANT SACCHETTI: No sir.

6 MR. CHERTOFF: I don't have any further  
7 questions.

8 SENATOR GORMLEY: Okay, here's what we're --  
9 here's what we're going to do. We're going to -- put a  
10 mic on. Pardon? Oh, excuse me.

11 We're not going to be able to finish this  
12 witness at this time.

13 We're going to adjourn the Committee meeting  
14 until next Tuesday, to continue the hearing, and I'd  
15 ask the members to meet with us, to go over scheduling  
16 in the rear.

17 SENATOR LYNCH: For benefit of Lieutenant  
18 Sacchetti is he going to be the first witness on  
19 Tuesday.

20 SENATOR GORMLEY: Yes. Yes.

21 SENATOR LYNCH: For his benefit you know --

22 SENATOR GORMLEY: But -- we will notify him  
23 tomorrow, but we're -- we'll work that out. Okay.

24 Thank you.

25 (Committee adjourned)

\* \* \* \* \*

CERTIFICATION

We, KAREN HARTMANN, BEATRICE A. CREAMER and PATRICIA C. DUPRE, the assigned transcribers, do hereby certify the foregoing transcript of proceedings on tape number 4, index number 5000 to 6441; tape number 5, index number 001 to 6500, and tape number 6, index number 001 to 1808, are prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

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