

NEW JERSEY STATE LEGISLATURE
OFFICE OF LEGISLATIVE SERVICES

IN RE:) TRANSCRIPT
) OF
SENATE JUDICIARY) ELECTRONICALLY
COMMITTEE INVESTIGATION) RECORDED TESTIMONY
HEARINGS)

Place: Office of Legislative
Services
State House Annex
Trenton, NJ 08625

Date: March 27, 2001

Time: 10:00 a.m.

MEMBERS PRESENT:

SENATOR WILLIAM L. GORMLEY, CHAIRMAN
SENATOR JAMES CAFIERO, VICE-CHAIRMAN
SENATOR LOUIS F. KOSCO
SENATOR ROBERT J. MARTIN
SENATOR JOHN J. MATHEUSSEN
SENATOR NORMAN M. ROBERTSON
SENATOR JOHN A. GIRGENTI
SENATOR JOHN A. LYNCH
SENATOR EDWARD T. O'CONNOR, JR.
SENATOR RAYMOND J. ZANE
SENATOR GARRY J. FURNARI

ALSO PRESENT:

Senate Democratic Staff
By: JO ASTRID GLADING, ESQ.

Senate Republican Staff
By: CHRISTINE SHIPLEY, ESQ.

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ALSO PRESENT: (Continued)

Latham and Watkins

By: MICHAEL CHERTOFF, ESQ.
SCOTT LOUIS WEBER, ESQ.

Office of Legislative Services

By: JOHN TUMULTY, OLS Aide

Examination - Sachetti

3

1 SENATOR GORMLEY: The hearing will come to
2 order.
3 Lieutenant, you've been previously sworn.
4 Mr. Chertoff.
5 MR. CHERTOFF: I think, Mr. Chairman, I was
6 done and Ms. Glading was going to proceed.
7 SENATOR GORMLEY: Oh, I'm sorry.
8 A L B E R T S A C H E T T I, PREVIOUSLY SWORN
9 MS. GLADING: Good morning, Lieutenant.
10 LIEUTENANT SACHETTI: Good morning. How are
11 you?
12 MS. GLADING: I wonder if we could just --
13 SENATOR GORMLEY: Hit the red button in front
14 of you.
15 MS. GLADING: Hit it so that the red button
16 is showing.
17 Can you recap for me -- or let me see if we
18 have it accurate.
19 Your audit had three phases, is that correct?
20 LIEUTENANT SACHETTI: That's correct.
21 MS. GLADING: Now, the first phase was to see
22 if there were obvious discrepancies in the troopers'
23 records, is that correct?
24 LIEUTENANT SACHETTI: Yes.
25 MS. GLADING: Okay. And if those obvious

1 discrepancies reached a certain level, the trooper
2 would be moved to phase two, is that correct?

3 LIEUTENANT SACHETTI: Yes, ma'am.

4 MS. GLADING: Okay. And then in phase two
5 you would try to determine what discrepancies could be
6 explained or not, is that correct?

7 LIEUTENANT SACHETTI: What we did -- no.
8 Phase two, what we did, the discrepancies that we
9 identified we then made attempts to contact the
10 motorists that were stopped by the trooper and
11 identified as a discrepancy.

12 MS. GLADING: Okay. So you would see if
13 there was a reason for the discrepancy or the substance
14 of the discrepancy, if it was, in fact, really a
15 discrepancy, right?

16 LIEUTENANT SACHETTI: To see if it may have
17 some racial connotations.

18 MS. GLADING: Okay. And your audit from the
19 beginning was intended to look for race-based records
20 falsification, is that right?

21 LIEUTENANT SACHETTI: That's correct.

22 MS. GLADING: Okay. And it was not intended
23 to look at aggregate numbers, is that correct?

24 LIEUTENANT SACHETTI: We, as part of our
25 study, we did a racial composition of every trooper

1 that we audited by individual, by squad and by station.
2 By racial composition I mean the racial breakdown of
3 the individuals that were stopped by these individual
4 troopers.

5 MS. GLADING: Okay. And that was in the
6 synopsis that you presented to Mr. Zoubek on February
7 10th, right?

8 LIEUTENANT SACHETTI: Yes, ma'am.

9 MS. GLADING: You didn't look at consent
10 search rates, did you?

11 LIEUTENANT SACHETTI: No.

12 MS. GLADING: Okay. Now, my understanding is
13 that Cranbury got to phase three, but the other two
14 barracks in Troop D did not, Newark and Moorestown, is
15 that right?

16 LIEUTENANT SACHETTI: That's correct.

17 MS. GLADING: In looking at the audit
18 findings that -- do you need a copy of what you
19 provided to Major Brennan in October of 2000 or do you
20 know this?

21 LIEUTENANT SACHETTI: I don't know how deep
22 you're going to get referring it.

23 MS. GLADING: Well, my question is, in
24 Cranbury, from my reading of your audit, it looks as
25 though you audited 58 troopers.

1 LIEUTENANT SACHETTI: Yes.

2 MS. GLADING: And that 17 of them you found
3 enough discrepancies in phase one that they warranted
4 -- in 17 you found enough discrepancies in phase one
5 that it warranted a phase two review, is that --

6 LIEUTENANT SACHETTI: For 17 troopers,
7 correct.

8 MS. GLADING: And then you did phase three.
9 Now, phase three, my understanding is, that's a random
10 audit of every trooper, is that right?

11 LIEUTENANT SACHETTI: That's correct.

12 MS. GLADING: And is the purpose of that so
13 that if a trooper's discrepancies are papered over well
14 enough and you can't see it in phase one, phase three
15 is going to pick it up because you're actually calling
16 motorists, right?

17 LIEUTENANT SACHETTI: Yes. We also called
18 motorists in phase two also, but the purpose of the
19 randomness was just as you stated, was to if a trooper
20 was sharp enough that these types of discrepancies were
21 not being identified in phase one, we would at least
22 randomly contact motorists that were stopped to see if
23 there was a problem with any of these individual
24 troopers.

25 MS. GLADING: Okay. And in phase three you

1 would have -- you would reach a statistically-valid
2 sample regardless, is that right?

3 LIEUTENANT SACHETTI: That's correct.

4 MS. GLADING: So you knew the number -- based
5 on the number of stops a trooper made, you knew the
6 number of motorists because Eco-Stat had given you
7 those statistics. You knew the number of motorists you
8 needed to contact to get a statistically-valid sample,
9 right?

10 LIEUTENANT SACHETTI: That is correct.

11 MS. GLADING: Okay. If you couldn't reach a
12 motorist, that motorist would drop off and you'd add
13 another one so you would keep the sample valid, right?

14 LIEUTENANT SACHETTI: That's correct.

15 MS. GLADING: Okay. My understanding is, 17
16 troopers, you saw enough problems in phase one to
17 warrant going to phase two and that in phase three of
18 this random sample -- in the phase three part of the
19 analysis, 32 troopers you found some kind of
20 discrepancies, is that right?

21 LIEUTENANT SACHETTI: I don't know that
22 that's accurate. If you have the synopsis there and
23 that's what it indicates, I would have to agree with
24 it.

25 MS. GLADING: You had indicated discrepancies

1 with 26 troopers and then six that listed it as
2 administrative, referred for administrative -- is that
3 your recollection?

4 LIEUTENANT SACHETTI: As best I could. Like
5 I say, if you have it there, I have to go with what you
6 say.

7 MS. GLADING: Okay. Here's my question. I
8 looked at the troopers that you found problems with in
9 phase three and of those 32 troopers, 20 of them or 62
10 percent of them hadn't been picked up in phase one and
11 had never gone to phase two.

12 LIEUTENANT SACHETTI: Right.

13 MS. GLADING: Does that sound about right to
14 you?

15 LIEUTENANT SACHETTI: Yes. That's why I
16 wanted to do phase three.

17 MS. GLADING: Why is that?

18 LIEUTENANT SACHETTI: In the event that these
19 individuals would not have been picked up by way of us
20 just comparing paperwork. At least we'd be able to get
21 a better picture as to what the troopers were doing by
22 the randomness of this audit.

23 MS. GLADING: Okay. So in your mind it was a
24 way of making the audit fair?

25 LIEUTENANT SACHETTI: Making it accurate.

1 MS. GLADING: Okay. I also looked at -- of
2 those 20 troopers that never got picked up in phase one
3 and never went to phase two and didn't get picked up
4 until phase three, there was one case of alleged
5 drinking. There were 13 cases of undocumented
6 searches. There were 15 cases of race falsification.
7 And in fairness, some of them, a couple of them, were
8 calling in the race of the motorist as white when the
9 motorist was actually black. And then there were two
10 instances of people who said that they weren't on the
11 Turnpike at that time. Does that sound about right to
12 you?

13 LIEUTENANT SACHETTI: It sounds right.

14 MS. GLADING: And those are all instances of
15 records falsification that would never have been picked
16 up if you had not gone to phase three, right?

17 LIEUTENANT SACHETTI: I wouldn't term all of
18 them records falsification. I would term them as
19 discrepancies that need to be investigated further.

20 MS. GLADING: Okay. Now, you never went to
21 phase three in Newark and Moorestown.

22 LIEUTENANT SACHETTI: That's correct.

23 MS. GLADING: So we really don't know what
24 level of records falsification was in those two
25 barracks, right?

1 LIEUTENANT SACHETTI: We wouldn't know by way
2 of a phase three audit, no.

3 MS. GLADING: Okay. And since 62 percent of
4 the people who got picked up with problems in phase
5 three had never been picked up in phase one in
6 Cranbury, we have a good idea that most of the troopers
7 that you would have identified in Newark and Moorestown
8 probably also would have been picked up in phase three,
9 right?

10 LIEUTENANT SACHETTI: Correct.

11 MS. GLADING: Did you get to phase three at
12 all in -- did you complete phase three in Cranbury?

13 LIEUTENANT SACHETTI: No. We got a little
14 bit better than half completed.

15 MS. GLADING: Oh, really. So we don't know
16 what the level of falsification you would have found --
17 or discrepancies you would have found had you completed
18 it.

19 LIEUTENANT SACHETTI: That's correct.

20 MS. GLADING: Okay. When you briefed Mr.
21 Zoubek -- let's back up. You briefed Mr. Zoubek and
22 others on the audit in December and February, is that
23 right?

24 LIEUTENANT SACHETTI: No, October and
25 February.

1 MS. GLADING: Okay. And who was in the
2 meeting in October?

3 LIEUTENANT SACHETTI: As I recall, it was
4 Colonel Dunlop, myself, other representatives from
5 Internal Affairs, Debbie Stone from the Attorney
6 General's Office, Chuck Grinnell and Jim Gerrow who was
7 prosecuting the case.

8 MS. GLADING: Okay. Do you know why there
9 were Hogan and Kenna prosecutors at your meeting?

10 LIEUTENANT SACHETTI: That meeting was --
11 that meeting was -- the main focus of that meeting was
12 Hogan and Kenna.

13 MS. GLADING: Okay. Was your Troop D audit a
14 subject of that meeting?

15 LIEUTENANT SACHETTI: Very briefly. It was
16 discussed very briefly and that was it. At this
17 October meeting.

18 MS. GLADING: Okay. And in the February
19 meeting, who was in attendance there?

20 LIEUTENANT SACHETTI: Colonel Williams,
21 Colonel Fedorko, Colonel Dunlop, myself, Detective
22 Sergeant John Cuzzupe who was the lead investigator for
23 the Hogan and Kenna falsification investigation, Mr.
24 Zoubek and Debbie Stone.

25 MS. GLADING: Why was Mr. Cuzzupe there?

1 LIEUTENANT SACHETTI: We were discussing some
2 of the falsification issues for the Hogan and Kenna
3 investigation.

4 MS. GLADING: Okay. In your mind was the
5 timing of your Troop D audit, was there a connection
6 between the completion of your Troop D audit and the
7 records falsification -- the timing of the records
8 falsification investigation of Hogan and Kenna?

9 LIEUTENANT SACHETTI: I wasn't paying too
10 much attention to what was going on over there. These
11 were two separate investigations that were being
12 conducted. In plain English, I had my hands full with
13 what I was doing.

14 MS. GLADING: Okay. At that point you -- I
15 wonder if we can -- can you give the witness a copy of
16 Z-2?

17 Lieutenant, Mr. Zoubek testified that this is
18 what he received from you at the February 10th meeting.
19 Is that your recollection also?

20 LIEUTENANT SACHETTI: Yes, this looks like
21 it.

22 MS. GLADING: And at that meeting did you
23 brief them on the contents of this document?

24 LIEUTENANT SACHETTI: Yes, I did.

25 MS. GLADING: Did you brief them on the

1 methodology that you were using in your audit?

2 LIEUTENANT SACHETTI: I did.

3 MS. GLADING: Did you specifically tell them
4 that the troopers who were working for you on it were
5 making three telephonic attempts and then a certified
6 mail attempt?

7 LIEUTENANT SACHETTI: I don't know that I got
8 into it that deep. We're talking about a meeting that
9 was held over two years ago.

10 SENATOR GORMLEY: Excuse me for one second.
11 We want to get the document available to the members.

12 MS. GLADING: Oh, sorry.

13 SENATOR ROBERTSON: I was going to say, are
14 the documents available to us or is it in our book?

15 MS. GLADING: This is in your red book
16 actually.

17 SENATOR ROBERTSON: All right. What is the
18 date on it and the page number? The date and the page
19 number?

20 SENATOR GORMLEY: It should be in the October
21 1999 time frame. It's marked as Z-2.

22 SENATOR ROBERTSON: That's the only marking,
23 Z-2?

24 SENATOR GORMLEY: Oh, I'm sorry, February
25 '99.

1 SENATOR ROBERTSON: February '99. Thank you.

2 MS. GLADING: In the middle of this document
3 where you're discussing the Cranbury audit, and I'm
4 looking at Page SP59019 or D-18. Do you see that page?

5 LIEUTENANT SACHETTI: Yes, ma'am, I do.

6 MS. GLADING: It specifically spells out that
7 three telephonic attempts to interview the individual
8 are made and if no contact is made, a certified mailing
9 is then sent to that individual. Well, let me ask you
10 this. What was your impression of the Attorney
11 General's Office's views about the way in which you
12 were conducting the audit and what you were finding?

13 LIEUTENANT SACHETTI: As I recall, my
14 recollection indicates to me that Mr. Zoubek was very
15 pleased with the thoroughness of this audit.

16 MS. GLADING: And did you feel some -- were
17 you told that there was a need to speed up the audit at
18 some point?

19 LIEUTENANT SACHETTI: I was never told there
20 was a need to speed up the audit, no.

21 MS. GLADING: Okay. When you added -- in
22 March, did there come a time when you added troopers to
23 the detail bringing it to more than 30?

24 LIEUTENANT SACHETTI: Yes, ma'am.

25 MS. GLADING: And what was the reason for

1 doing that?

2 LIEUTENANT SACHETTI: To complete the one and
3 two -- phase one and two of the Newark station. We
4 ended up with a total of 30. I don't believe that 30
5 were transferred at that time. I still had had guys
6 that were auditing Cranbury, phase three. We then
7 removed them from Cranbury, phase three and put them
8 over so that we could complete Newark.

9 MS. GLADING: Okay. Was it ever said to you
10 or represented to you that the progress of your audit
11 was needed in order to make decisions concerning the
12 Soto appeal?

13 LIEUTENANT SACHETTI: Yes.

14 MS. GLADING: What was said to you?

15 LIEUTENANT SACHETTI: It was said to me that
16 prior to -- originally when the audit was first
17 initiated, it was my impression that we would just be
18 conducting an audit of the troopers that were stationed
19 at Cranbury station. It later changed to Moorestown.
20 And the reason that it was explained to me that we were
21 moving to Moorestown was that they wanted to examine
22 the troopers at Moorestown to see if there was a
23 problem before any decision as to whether or not they
24 would appeal Soto would be made.

25 MS. GLADING: Okay. Did it change to

1 Moorestown or expand to include Moorestown?

2 LIEUTENANT SACHETTI: It expanded to include
3 Moorestown.

4 MS. GLADING: Were you aware that in the
5 motion that the State filed on March 5th to delay
6 arguments in Soto that they cite -- that Mr. Zoubek in
7 his certification cited the pendency of your audit as
8 one reason for the need to delay oral arguments?

9 LIEUTENANT SACHETTI: I'm not aware of that,
10 no.

11 MS. GLADING: Did you provide any subsequent
12 update to Mr. Zoubek or members of the Attorney
13 General's Office on your audit?

14 LIEUTENANT SACHETTI: No, until October the
15 5th of 2000.

16 MS. GLADING: Okay. So the last -- and you
17 provided -- did you provide any written report
18 subsequent to that February 10th --

19 LIEUTENANT SACHETTI: I provided on a daily
20 basis a briefing sheet, both to my Captain, Captain Roy
21 Van Tassel and to Lieutenant Colonel Fedorko, briefing
22 them as to the previous days' contacts with motorists,
23 but none specifically from me to the Attorney General's
24 Office that I'm aware of.

25 MS. GLADING: Okay. And in terms of a

1 summary of the audit's findings to date, there was no
2 update from you --

3 LIEUTENANT SACHETTI: No.

4 MS. GLADING: -- between February 10th and
5 April 20th of 1999?

6 LIEUTENANT SACHETTI: I may have submitted to
7 Colonel Fedorko interoffice communications updating
8 progress. Where they finally ended up, I don't know.
9 They would be addressed to Colonel Fedorko.

10 MS. GLADING: Did Colonel Fedorko ever
11 indicate to you that he was -- that he needed an update
12 for the Attorney General's Office or for downtown prior
13 to the release of the interim report?

14 LIEUTENANT SACHETTI: I believe, as you
15 describe it now, I believe in maybe -- at the end of
16 May or early June there was a conversation between
17 Colonel Fedorko and myself where he did indicate that
18 we were at that point where now we were trying to get
19 some guidance as to where we were going to go with the
20 audit.

21 MS. GLADING: Okay. But the interim report
22 date is April 19th. There was nothing between February
23 10th and April 19th of that nature?

24 LIEUTENANT SACHETTI: That I recall, no.

25 MS. GLADING: Okay. Did you read the interim

1 report when it came out?

2 LIEUTENANT SACHETTI: Yes, I did.

3 MS. GLADING: Do you remember what the second
4 paragraph said?

5 LIEUTENANT SACHETTI: No.

6 MS. GLADING: Okay. Maybe I could read it to
7 you rather than ask you to...

8 It says, "During the course of the
9 investigation of the April 23, 1998 incident, an
10 additional inquiry into the practices of state troopers
11 assigned to the Moorestown and Cranbury barracks of the
12 New Jersey State Police was initiated. That
13 investigation was examining stops made by troopers
14 assigned to those barracks for the first four months of
15 1998 and is still pending. However, some of the data
16 collected as part of that investigation are used in
17 this interim report."

18 What report? Do you know what report they're
19 talking about there?

20 LIEUTENANT SACHETTI: They're talking about
21 the interim report. If you're asking me what of my
22 data they used, I would have no idea.

23 MS. GLADING: Okay. They're talking about
24 your audit here, aren't they?

25 LIEUTENANT SACHETTI: The way I -- the way

1 you've just read it, that's the way it seems to me.

2 MS. GLADING: Do you recall at the time
3 reading about your audit in the interim report and a
4 reference to it as being still pending?

5 LIEUTENANT SACHETTI: I'm sure when I read it
6 I may have made note of that, but what's that, been two
7 years now, right? So I don't recall today sitting
8 here, no.

9 MS. GLADING: The reason I ask that is were
10 you surprised in -- well, let's move forward a little
11 bit. In mid-May you testified I think last week that
12 you needed authorization to advance to the next phase
13 of the audit in order to continue, is that right?

14 LIEUTENANT SACHETTI: That's correct.

15 MS. GLADING: And your troopers were running
16 out of work to do on the audit at that point.

17 LIEUTENANT SACHETTI: That's correct.

18 MS. GLADING: Okay. With the interim report
19 heralding the work that you were doing, in the second
20 paragraph, just a few weeks before, were you surprised
21 that you weren't getting answers to your request for
22 authorization to continue the Troop D audit?

23 LIEUTENANT SACHETTI: I wouldn't relate it
24 directly to that but, yes, I would characterize it as I
25 was surprised that I wasn't getting any response as to

1 the direction in which we would head.

2 MS. GLADING: Okay. And I think you
3 testified last week that you were told by Colonel
4 Fedorko and Colonel Dunlop at different points that the
5 decision was in the hands of downtown in the Attorney
6 General's Office, is that right?

7 LIEUTENANT SACHETTI: That's correct. That's
8 what I was told.

9 MS. GLADING: And then in mid-June the -- or
10 on June 10th the audit was shut down, right?

11 LIEUTENANT SACHETTI: That's correct.

12 MS. GLADING: And were you given a reason at
13 the time for why it was shut down?

14 LIEUTENANT SACHETTI: No. It was just send
15 the guys back, the detail was terminated.

16 MS. GLADING: Okay. Since most of the
17 discrepancies you were finding were coming up in phase
18 three, and phase three was never even completed in
19 Cranbury -- well, my question is this. Was there any
20 difference in the findings that you were making on
21 February 10th in terms of the quality of the numbers of
22 discrepancies, the types of discrepancies, the findings
23 on February 10th when you briefed Mr. Zoubek and he
24 seemed pleased with the progress and the findings that
25 you had been making in May?

1 LIEUTENANT SACHETTI: We were still finding
2 similar discrepancies, yes.

3 MS. GLADING: Okay. So there was no
4 qualitative difference in terms of the discrepancies
5 you were finding that would have led to a decision to
6 shut it down because now you weren't finding anything
7 and then you were finding something?

8 LIEUTENANT SACHETTI: Our response rate was a
9 little lower for Newark. And at the period of time
10 you're talking about, it was coming back at a rather
11 slow rate, but we were still finding discrepancies for
12 those responses that were coming back. Similar, I
13 guess, in the rate as we had found at Cranbury and
14 Moorestown.

15 MS. GLADING: Mr. Zoubek in his deposition
16 was somewhat critical of the audit and he said that he
17 questioned that -- well, let me read it. It's on Page
18 262 of his deposition. He questions why -- "Lieutenant
19 Sachetti is saying one of the reasons they weren't able
20 to complete it is because all they were doing was
21 sending letters out to witnesses and they didn't have
22 work to do in the office." My question is, why wasn't
23 a process of driving to people's houses, knocking on
24 doors and completing that? Was that ever the
25 methodology of this audit?

1 LIEUTENANT SACHETTI: Never.

2 MS. GLADING: Do you have any reason to
3 believe that Mr. Zoubek would have been under a
4 misimpression that that's what you were doing?

5 LIEUTENANT SACHETTI: He may have been under,
6 and I don't want to speak for him, but just as a point
7 of fact, for the Hogan and Kenna falsification
8 investigation, that's what the investigators were
9 doing. So I don't know if he was mixing the two of
10 them together, I don't know.

11 MS. GLADING: Okay. As you pointed out or as
12 you pointed out before, the interim report, the second
13 paragraph, cites your audit. And I just want to be
14 clear on this. You didn't provide an updated complete
15 status report of the audit to that date anytime between
16 February 10th and April 20th, is that right?

17 LIEUTENANT SACHETTI: Similar to what I'm
18 sure you have in your possession that I generated in
19 October of 2000, no.

20 MS. GLADING: Okay. So they hadn't spoken
21 with you for two and a half months at this point. They
22 hadn't gotten that kind of report from you for two and
23 a half months at that point?

24 LIEUTENANT SACHETTI: From me, no.

25 MS. GLADING: Did you find any examples in

1 your audit, without getting into cases that may still
2 be adjudicated as internal discipline cases -- well,
3 first of all, is it your understanding that none of the
4 discrepancies you've identified have ever been
5 adjudicated?

6 LIEUTENANT SACHETTI: That's correct. Not as
7 of this date, no.

8 MS. GLADING: Did you find any discrepancies,
9 record-keeping discrepancies, that were comparable or
10 rose to the level of the records falsification that was
11 alleged in the Hogan and Kenna indictment for records
12 falsification?

13 LIEUTENANT SACHETTI: At my level, which is
14 without a full-blown internal investigation, I did.
15 That's without benefit of any type of in-depth or
16 further investigation I did, yes.

17 MS. GLADING: How many cases were there that
18 were near or at the level?

19 LIEUTENANT SACHETTI: Now, this is at my
20 estimation. I know of one that I think have some -- in
21 my mind, have some serious concerns.

22 MS. GLADING: Okay. And in total you
23 identify discrepancies in how many cases?

24 LIEUTENANT SACHETTI: One hundred and fifty-
25 nine troopers out of 169 that were audited.

1 MS. GLADING: Okay. And at least one of
2 those cases you think was serious enough that it
3 potentially rose to the level of Hogan and Kenna.

4 LIEUTENANT SACHETTI: I have some concerns
5 with, yes.

6 MS. GLADING: And did you raise those
7 concerns with anyone?

8 LIEUTENANT SACHETTI: In conversation, yes.
9 On a formal level, it was turned over for an internal
10 investigation, so obviously others agreed with me that
11 there were some serious concerns there.

12 MS. GLADING: Who did you raise those
13 concerns with and when?

14 LIEUTENANT SACHETTI: My Captain, Captain Roy
15 Van Tassel. And like I had stated, there were some
16 agreement there also because these were turned into
17 internal investigations. Specifically this individual.

18 MS. GLADING: Had you identified -- where did
19 the discrepancies for this egregious case that you're
20 talking about come up, was it in phases one and two or
21 phase three?

22 LIEUTENANT SACHETTI: One and two.

23 MS. GLADING: So it came up by what date?

24 LIEUTENANT SACHETTI: Well, obviously prior
25 to the initial group of ten individuals that internal

1 investigations were initiated on them. And I believe
2 that that may have been February of '99. I believe.

3 MS. GLADING: February of '99?

4 LIEUTENANT SACHETTI: Yes.

5 MS. GLADING: So this is prior to when the
6 records falsification case for Hogan and Kenna was
7 presented to the Grand Jury which was in March, I
8 believe, is that right?

9 LIEUTENANT SACHETTI: I'm not sure of the
10 date of that. I wouldn't know.

11 MS. GLADING: Was it -- you're pretty sure
12 about the date that it's February though that you
13 identified this instance of this trooper?

14 LIEUTENANT SACHETTI: In my original
15 deposition of which you were present, I believe that I
16 testified that I think it was in February and if I
17 testified it was February, then I'm pretty -- I'm
18 pretty certain it was about February when those
19 internals were originally initiated.

20 MS. GLADING: Okay. So it was part of phase
21 one or two, one and two, in Cranbury, is that correct?

22 LIEUTENANT SACHETTI: That's correct.

23 MS. GLADING: And when did you complete
24 phases one and two in Cranbury?

25 LIEUTENANT SACHETTI: Well, certainly by

1 then.

2 MS. GLADING: By when?

3 LIEUTENANT SACHETTI: By February of '99.
4 Now, we may -- by me saying completed, we may still
5 have been receiving one or two calls periodically that
6 still had to do with Cranbury phase two, but for all
7 practical purposes it was pretty much completed by that
8 time.

9 MS. GLADING: And that date was? I was
10 interrupted, I'm sorry.

11 LIEUTENANT SACHETTI: February.

12 MS. GLADING: February. Was it early or late
13 February, do you recall?

14 LIEUTENANT SACHETTI: Early.

15 MS. GLADING: Early February.

16 LIEUTENANT SACHETTI: Yes.

17 MS. GLADING: Okay. Do you know if the case
18 for that trooper was ever presented to a Grand Jury?

19 LIEUTENANT SACHETTI: That I do not know.

20 MS. GLADING: Were you ever called to testify
21 before a Grand Jury?

22 LIEUTENANT SACHETTI: No.

23 MS. GLADING: There were ten cases, weren't
24 there, that were sent down to Criminal Justice for
25 possible -- for review and possible criminal action,

1 right?

2 LIEUTENANT SACHETTI: The total number may be
3 11. I believe it started off as eight and a few others
4 as things went along were identified with other types
5 of problems. I believe a couple of them were
6 supervisors that we identified, so they were sent down
7 also. They had internal investigations initiated
8 against them also.

9 MS. GLADING: Okay. And those ten or 11
10 cases don't include Hogan and Kenna, right?

11 LIEUTENANT SACHETTI: That's correct.

12 MS. GLADING: Can you explain why your audit
13 covered the period of January 1, '98 through April
14 23rd, I believe it was?

15 LIEUTENANT SACHETTI: That's correct.

16 MS. GLADING: Why was that cutoff date
17 chosen?

18 LIEUTENANT SACHETTI: I wanted to get a most
19 recent picture of what the troops out on the Turnpike
20 were doing, so I chose a four-month period. I figured
21 that would encompass just about everything that I
22 needed to look at. I would be able to get a picture,
23 in my estimation, by looking at what a trooper was
24 doing for about a four-month period, and I chose those
25 months.

1 MS. GLADING: Why didn't you pick the end of
2 April though?

3 LIEUTENANT SACHETTI: The date of the
4 shooting was April 23rd.

5 MS. GLADING: So was there some correlation
6 between your work and the shooting investigation in
7 your mind?

8 LIEUTENANT SACHETTI: I'm sure it was
9 initiated as a result of the shooting investigation,
10 yes.

11 MS. GLADING: Was there any need to provide
12 an exact contrast between the activities of Troopers
13 Hogan and Kenna and the activities of all the other
14 troopers in Cranbury?

15 LIEUTENANT SACHETTI: I never heard that, no.

16 MS. GLADING: Just to back up. On the issue
17 of this one egregious case that you identified that
18 rose to the level of falsification potentially that was
19 identified for Troopers Hogan and Kenna, you said it
20 took place during phase one and two of Cranbury, is
21 that right?

22 LIEUTENANT SACHETTI: That's correct.

23 MS. GLADING: Phase three in Cranbury started
24 in December of '98 and I'm wondering if that refreshes
25 your recollection as to when you would have identified

1 the problems with this trooper?

2 LIEUTENANT SACHETTI: There may have been one
3 or -- you know, of several. I can't say specifically
4 now when they came up. They would have been in the
5 boxes of documents with the actual dates, but sitting
6 here right now, I can't testify as to when they came
7 up. I know that a phase three was done on him, only
8 because everyone who had an internal investigation
9 initiated against them also had a phase three audit.

10 MS. GLADING: Okay. You said everyone who
11 had an internal investigation had a phase three?

12 LIEUTENANT SACHETTI: That's correct.

13 MS. GLADING: Were there internals done on
14 troopers in Newark and Moorestown?

15 LIEUTENANT SACHETTI: Moorestown, yes.
16 Newark are presently being conducted right now.

17 MS. GLADING: Did you do phase three on
18 everyone for whom you did internals?

19 LIEUTENANT SACHETTI: I didn't but
20 investigators that were assigned to the Internal
21 Affairs Investigation Bureau did.

22 MS. GLADING: Was that done in the course of
23 the Troop D audit or subsequently?

24 LIEUTENANT SACHETTI: No, subsequently. That
25 was done as part of the internal investigation.

1 MS. GLADING: Okay. Can you explain why you
2 provided a report on an audit that was shut down on
3 June 10th, 1999, why you did not provide a report on
4 that audit until October of 2000?

5 LIEUTENANT SACHETTI: Could I -- I wasn't
6 asked to.

7 MS. GLADING: Did you ask to provide a
8 report?

9 LIEUTENANT SACHETTI: I asked if I should.

10 MS. GLADING: Who did you ask?

11 LIEUTENANT SACHETTI: I asked Colonel
12 Fedorko. I asked Colonel Dunlop. Myself and my
13 Captain at the time, Captain Roy Van Tassel, had that
14 conversation on numerous occasions. He indicated to me
15 that he had brought this to the Third Floor's attention
16 on numerous occasions and that no further action would
17 be taken.

18 MS. GLADING: Was it explained why no further
19 action was going to be taken?

20 LIEUTENANT SACHETTI: No.

21 MS. GLADING: And why then, what prompted
22 your providing a report to Major Brennan in October of
23 2000?

24 LIEUTENANT SACHETTI: I was notified by Major
25 Brennan, who was my supervisor, that I would be

1 attending a meeting with him, several members of
2 Internal Affairs and Mamta Patel from the Attorney
3 General's Office and I was to be prepared to discuss
4 the Troop D audit. This was in October of 2000.

5 MS. GLADING: Do you know why more than a
6 year after you had been shut down there was suddenly
7 new interest in it?

8 LIEUTENANT SACHETTI: No, I don't know why.

9 MS. GLADING: I want to clarify something.
10 When you were in the middle of the audit, well in the
11 spring of 1999, at some point did you ask Colonel
12 Fedorko to reassign the troopers that you were working
13 with to send them back out to their -- the stations
14 that they had come from?

15 LIEUTENANT SACHETTI: A couple different
16 times, yes.

17 MS. GLADING: And were you asking him that
18 with the purpose of ending the audit?

19 LIEUTENANT SACHETTI: The first time I was
20 asking because I had had individuals assigned to me
21 from when this audit commenced and I was concerned that
22 they may be losing out on promotions or specialists
23 positions as a result of being detached to me and I
24 didn't want these individuals, who had performed in an
25 admirable fashion for me, to lose out on any type of

1 promotional opportunities they may have. So I had
2 asked if I could just start sending these individuals
3 back to their original assignments.

4 MS. GLADING: Were you asking that with the
5 assumption that you'd get new people in?

6 LIEUTENANT SACHETTI: Yes.

7 MS. GLADING: Okay. And the second time --
8 was there a second time?

9 LIEUTENANT SACHETTI: The second time was we
10 had a period of I'd say better than a week where I had
11 these 30 investigators, for lack of a better term,
12 sitting around being unproductive. Calls were very
13 slowly coming in. We had completed phase two of Newark
14 and I was looking for some guidance as to where we
15 would proceed. And after a week of having these
16 individuals not being productive, shall we say, I made
17 an attempt to then have them sent back to their
18 original assignments.

19 MS. GLADING: Okay. Then what response did
20 you receive to that attempt?

21 LIEUTENANT SACHETTI: That it would not be
22 done.

23 MS. GLADING: And was a reason given?

24 LIEUTENANT SACHETTI: It's in the Attorney
25 General's Office's hands and they would make the

1 decision as to when these individuals would be sent
2 back.

3 MS. GLADING: In the report that you provided
4 to Major Brennan in October of 2000, you indicate that
5 the -- you indicated that the audit was closed down at
6 your recommendation or request. I'm looking for it
7 right now. Do you recall that phrasing in there?

8 LIEUTENANT SACHETTI: No, I don't.

9 MS. GLADING: I'll get back to it in a
10 second.

11 Did you -- during his testimony before the
12 Senate Judiciary Committee in 1999, Mr. Zoubek
13 testified about the audit that grew out of the Turnpike
14 shooting and he testified that people -- troopers were
15 going out of state and going door-to-door. That wasn't
16 correct, was it?

17 LIEUTENANT SACHETTI: For the Hogan and Kenna
18 investigation, they were, yes.

19 MS. GLADING: No, he was actually testifying
20 about the Troop D audit that grew out of the Hogan and
21 Kenna investigation and indicated that troopers were
22 going door-to-door out of state. That's not correct,
23 is it?

24 LIEUTENANT SACHETTI: That's not correct.

25 MS. GLADING: Okay.

1 I think that's all I've got.

2 Mr. Chairman, that's all I've got.

3 SENATOR GORMLEY: Okay. Questions from
4 members of the Committee?

5 Senator Lynch.

6 SENATOR LYNCH: Lieutenant Sachetti, I just
7 want it clear in my own mind. When you were first
8 brought in to this task in early May of '98, the
9 original instructions of what you were to do were to do
10 an audit or you were given some latitude to determine
11 what you should do or come up with a plan?

12 LIEUTENANT SACHETTI: I was given some
13 latitude. I was given some latitude and offered my
14 opinions as to where we should proceed, yes.

15 SENATOR LYNCH: And were your suggestions in
16 terms of what phases one and two would be accepted?

17 LIEUTENANT SACHETTI: Yes.

18 SENATOR LYNCH: And was this in the context
19 of both Hogan and Kenna as well as the Cranbury
20 barracks as a whole?

21 LIEUTENANT SACHETTI: No. At the time that
22 these conversations took place, I was already -- the
23 Hogan and Kenna investigation had been turned over to a
24 team of approximately 15 investigators. They were
25 actively working on that and I was detached from that

1 at that point.

2 SENATOR LYNCH: So you weren't doing anything
3 regarding Hogan and Kenna directly?

4 LIEUTENANT SACHETTI: Not at that point, no,
5 sir.

6 SENATOR LYNCH: Had you done any previous
7 audits before May of '98?

8 LIEUTENANT SACHETTI: No, sir.

9 SENATOR LYNCH: And did you have any specific
10 training in this?

11 LIEUTENANT SACHETTI: No, sir.

12 SENATOR LYNCH: And so when you determined to
13 make recommendations back as to how this audit should
14 be conducted, did you consult with people as to what it
15 could consist of and what records might be available?

16 LIEUTENANT SACHETTI: I had -- at that point
17 I had spent approximately 22 years as a road trooper or
18 supervising other road troopers. It was my
19 understanding that I was given this detail based upon
20 my road experience.

21 SENATOR LYNCH: And you had an idea, of
22 course, as to what records would be available and what
23 might not be available?

24 LIEUTENANT SACHETTI: Yes, sir, I did.

25 SENATOR LYNCH: And those that would be

1 available would be the call-in logs and patrol charts?

2 LIEUTENANT SACHETTI: Patrol charts, radio
3 logs, summonses sheets, things along these lines. Yes,
4 sir.

5 SENATOR LYNCH: And did you know that
6 consent-to-search information was available?

7 LIEUTENANT SACHETTI: Yes, sir. But if I
8 may, and I don't mean to interrupt you there, Senator,
9 but --

10 SENATOR LYNCH: Feel free.

11 LIEUTENANT SACHETTI: -- we were specifically
12 looking at the types of issues that we identified with
13 Hogan and Kenna.

14 SENATOR LYNCH: Right. And those issues were
15 specifically misleading information on the radio logs
16 and patrol charts, summonses, warnings; so forth, so
17 on?

18 LIEUTENANT SACHETTI: Yes, sir. We would, in
19 the course of our audit, have occasion to view consent
20 searches or probable cause searches when we interviewed
21 the motorists to make sure that proper documentation
22 was filed as a result of a search that was conducted.

23 SENATOR LYNCH: Yeah. So the only thing you
24 had to do in the consent-to-search in the Troop D audit
25 was if you discovered in your communication with the

1 motorists that there had been a search conducted?

2 LIEUTENANT SACHETTI: Yes, sir.

3 SENATOR LYNCH: So it would be purely
4 coincidental. It had nothing to do with the mission
5 that you had embarked on?

6 LIEUTENANT SACHETTI: I'm sorry?

7 SENATOR LYNCH: It didn't have directly to do
8 with the mission you embarked on, namely to --

9 LIEUTENANT SACHETTI: Well, we were examining
10 everything that the troopers did for that four-month
11 period of time --

12 SENATOR LYNCH: Right.

13 LIEUTENANT SACHETTI: -- to determine if
14 there were any discrepancies.

15 SENATOR LYNCH: But you weren't going out and
16 looking at consent-to-search documents from the
17 beginning of the Troop D audit?

18 LIEUTENANT SACHETTI: No, sir.

19 SENATOR LYNCH: Nor did you ever as part of
20 the Troop D audit?

21 LIEUTENANT SACHETTI: To do a study of them?

22 SENATOR LYNCH: Right.

23 LIEUTENANT SACHETTI: No, sir.

24 SENATOR LYNCH: Somewhere in -- I'm trying to
25 get some time lines in my head established. You

1 finished phases one and two in Cranbury, Moorestown and
2 Newark by what date?

3 LIEUTENANT SACHETTI: Well, we began -- we
4 had finished one and two of Moorestown and Cranbury by
5 I would say February of '99. We then initiated phase
6 one and two of Newark March 8th of '99.

7 SENATOR LYNCH: And how long did that take
8 you to complete?

9 LIEUTENANT SACHETTI: Until May. We were
10 May. May was when we got into this situation where I
11 was having individuals --

12 SENATOR LYNCH: Right. And when did you
13 initiate -- it appears that you initiated phase three
14 in Cranbury from your testimony before in December of
15 '98?

16 LIEUTENANT SACHETTI: Yes, sir.

17 SENATOR LYNCH: And why was that done in
18 December of '98, that is the initiation of phase three?

19 LIEUTENANT SACHETTI: I had concerns, as I
20 had previously testified, that there may be a
21 possibility existing of troopers who may have not been
22 identified by an examination of their paperwork. I
23 wanted to make sure that we weren't missing anybody
24 that may be engaging in some type of improper actions.
25 That's when I made the proposal to initiate phase

1 three.

2 SENATOR LYNCH: And so you asked for
3 permission to do phase three and gave the reasons
4 why --

5 LIEUTENANT SACHETTI: Yes, sir.

6 SENATOR LYNCH: -- and that's when you
7 brought in Eco-Stat?

8 LIEUTENANT SACHETTI: Yes, sir, that's
9 correct.

10 SENATOR LYNCH: And when you were shut down
11 in -- strike that.

12 When you began -- when you finished Newark
13 phases one and two was when?

14 LIEUTENANT SACHETTI: We began Newark phase
15 one and two March 8th of '99. We were for all
16 practical purposes finished up in about May. Responses
17 were coming in very slow, so I hesitate to say that we
18 were completed at that point. We were still getting
19 one, two, three responses a day.

20 SENATOR LYNCH: But there wasn't any active
21 pursuit at that point?

22 LIEUTENANT SACHETTI: No, sir.

23 SENATOR LYNCH: And you were shut down from
24 doing any further action in May?

25 LIEUTENANT SACHETTI: No, June 10th or 11th.

1 I believe June 10th.
2 SENATOR LYNCH: Well, when were you put on
3 hold?
4 LIEUTENANT SACHETTI: May.
5 SENATOR LYNCH: May what?
6 LIEUTENANT SACHETTI: Probably about May
7 14th.
8 SENATOR LYNCH: So that would have been the
9 week following the confirmation hearings for Peter
10 Verniero, correct?
11 LIEUTENANT SACHETTI: If you say so. I don't
12 pay too much attention to that.
13 SENATOR LYNCH: And you were shut down June
14 what?
15 LIEUTENANT SACHETTI: June 10th.
16 SENATOR LYNCH: Do you know when Peter
17 Verniero was sworn in to the Supreme Court?
18 LIEUTENANT SACHETTI: No, sir, I don't.
19 SENATOR LYNCH: With the now 11 troopers you
20 identified as having significant problems that you
21 discovered in phase one and two of the three barracks
22 and also I guess part of phase three in Cranbury, there
23 were 11 troopers who you felt had significant
24 violations and you referred to Internal Affairs?
25 LIEUTENANT SACHETTI: No, sir. That was a

1 decision made by my Captain at the time, Captain Roy
2 Van Tassel.
3 SENATOR LYNCH: Okay. So you had turned this
4 information over to Van Tassel and he made the
5 recommendation to go to Internal Affairs?
6 LIEUTENANT SACHETTI: Yes, sir. Yes, sir.
7 SENATOR LYNCH: And there was publicity back
8 in that time frame of the first half of '99 that these
9 ten people were being referred to the Division of
10 Criminal Justice?
11 LIEUTENANT SACHETTI: Yes, sir.
12 SENATOR LYNCH: Do you remember that?
13 LIEUTENANT SACHETTI: Yes, sir, I do.
14 SENATOR LYNCH: Were you aware of that
15 referral?
16 LIEUTENANT SACHETTI: From a conversation I
17 had with the investigators, yes, sir, I was.
18 SENATOR LYNCH: And nothing was presented to
19 a Grand Jury on them to the best of your knowledge?
20 LIEUTENANT SACHETTI: I have no idea, sir.
21 SENATOR LYNCH: Were you certainly weren't
22 called to testify before a Grand Jury?
23 LIEUTENANT SACHETTI: No, sir, I was not.
24 SENATOR LYNCH: Now, these ten or 11 as you
25 now describe, those people, those troopers, did any of

1 them have rank at that time?

2 LIEUTENANT SACHETTI: Yes, sir. There may
3 have been a couple of sergeants in there.

4 SENATOR LYNCH: And were most of them in
5 Cranbury or were they spread evenly throughout the --

6 LIEUTENANT SACHETTI: No, sir, there were
7 more in Cranbury than there were in Moorestown.

8 SENATOR LYNCH: And you had indicated earlier
9 in your deposition and today that one of the reasons
10 you went to phase three was you didn't want people
11 falling through the cracks and who had escaped through
12 the problems with the radio logs and patrol charts, and
13 you wanted to make sure that there was some equity in
14 this process, correct?

15 LIEUTENANT SACHETTI: Yes. I wanted it to be
16 accurate.

17 SENATOR LYNCH: And you also didn't want
18 people to be penalized for relatively minor infractions
19 and those who may have been more culpable would have
20 skated through phases one and two and thus be still in
21 line for promotions and better assignments and all of
22 those things, correct?

23 LIEUTENANT SACHETTI: Yes, sir.

24 SENATOR LYNCH: Of the 11 people that had
25 more significant issues that ultimately were referred

1 to Internal Affairs and then to the Division of
2 Criminal Justice, are you aware to this date whether
3 any of those 11 were pursued through Internal Affairs
4 or through a court martial proceeding?

5 LIEUTENANT SACHETTI: As far as I know, they
6 have never gone through a court martial system, no,
7 sir.

8 SENATOR LYNCH: So they would have nothing in
9 their jackets, their folders, their personnel folders,
10 to indicate that they had these violations as far as
11 you know?

12 LIEUTENANT SACHETTI: I think the
13 investigations are still pending. By pending I mean
14 they haven't gone through the whole process to
15 adjudication.

16 SENATOR LYNCH: And so -- but to answer my
17 question then, there would be nothing in their jackets
18 to indicate that they had any infractions?

19 LIEUTENANT SACHETTI: That's correct.

20 SENATOR LYNCH: So those people could
21 conceivably have been assigned to better detail, to
22 more specialized detail or even promoted, correct?

23 LIEUTENANT SACHETTI: Not necessarily. Any
24 time a specialist selection or promotion process is
25 underway, they contact Internal Affairs to determine if

1 there's anything pending of a significant nature for
2 the individual.

3 SENATOR LYNCH: All right. Are you
4 personally aware of any of those 11 people who have
5 been reassigned to better detail or promoted?

6 LIEUTENANT SACHETTI: No, sir, I am not, no.

7 SENATOR LYNCH: Are you aware of any of those
8 11 who have left the service of the State Police?

9 LIEUTENANT SACHETTI: No, sir, I'm not.

10 SENATOR LYNCH: Did you have any contact in
11 -- I'm sorry, strike that.

12 When did you take on this original assignment
13 which you were in in May of '98? What's the name of
14 the Division or --

15 LIEUTENANT SACHETTI: The Inspection Unit?

16 SENATOR LYNCH: Right, Inspection Unit. You
17 went there when?

18 LIEUTENANT SACHETTI: I went there in October
19 of '97.

20 SENATOR LYNCH: Did you ever have any direct
21 communication orally or in writing with Mr. Rover?

22 LIEUTENANT SACHETTI: No, sir.

23 SENATOR LYNCH: You've never been in his
24 company at any time during any of your discussions?

25 LIEUTENANT SACHETTI: Sir, I wouldn't know

1 him if he walked in this room.

2 SENATOR LYNCH: Starting back when you took
3 this assignment on in the fall of '97, did you have any
4 conversations with Sergeant Gilbert about his work or
5 his audit?

6 LIEUTENANT SACHETTI: No, sir.

7 SENATOR LYNCH: Have you ever had any
8 discussions with him about his work and his audit?

9 LIEUTENANT SACHETTI: Maybe in the past week
10 or two I have, just as a result of his testifying
11 before the Committee. But, no, sir.

12 SENATOR LYNCH: Never in the context of the
13 work that you were doing in the Troop D audits?

14 LIEUTENANT SACHETTI: No, sir.

15 SENATOR LYNCH: Subsequent to your being shut
16 down in June of 1999, were you -- did you continue to
17 perform other audits as part of your duties?

18 LIEUTENANT SACHETTI: No, sir.

19 SENATOR LYNCH: Have you examined other
20 audits that have occurred since June 1, 1999?

21 LIEUTENANT SACHETTI: I don't know -- I know
22 that I generated a special report synthesizing several
23 audits that were conducted prior to my transfer to the
24 Inspection Unit. The exact date of which I'm not
25 certain right now. I think it may have been around

1 that time.

2 SENATOR LYNCH: So that was the summer of '98
3 as I think you previously indicated in your deposition.

4 LIEUTENANT SACHETTI: Like I say, I'm not
5 certain of the time.

6 SENATOR LYNCH: Subsequent to June of 1999,
7 did you do any other analysis of audits?

8 LIEUTENANT SACHETTI: No, sir.

9 SENATOR LYNCH: Have you seen any audits that
10 were conducted since June of 1999?

11 LIEUTENANT SACHETTI: No, sir, I have not.

12 SENATOR LYNCH: So you're not aware of any
13 consent-to-search data or stop data on the Turnpike
14 that would have been accumulated post-June 1999?

15 LIEUTENANT SACHETTI: No, sir, I'm not. I'm
16 not aware of any.

17 SENATOR LYNCH: Between February and -- the
18 beginning of February and the end of April of 1999, did
19 you have any discussions with Colonel Dunlop about his
20 concern that the Attorney General's Office was looking
21 to indict Carl Williams?

22 LIEUTENANT SACHETTI: No, sir.

23 SENATOR LYNCH: Have you talked to Colonel
24 Dunlop in the last two weeks about his testimony or
25 yours?

1 LIEUTENANT SACHETTI: I saw Colonel Dunlop
2 here last week for the two days that I was here waiting
3 to testify. We just spoke in general terms.

4 SENATOR LYNCH: Were you asked to review any
5 documents or testimony by others who have testified
6 here in the last couple of weeks?

7 LIEUTENANT SACHETTI: I was asked by the
8 Division of Law to review my transcript and Director
9 Zoubek's transcript.

10 SENATOR LYNCH: Did you review Director
11 Zoubek's transcript?

12 LIEUTENANT SACHETTI: No, sir, I did not.

13 SENATOR LYNCH: Do you know what the purpose
14 of their looking to have you review Zoubek's testimony
15 was?

16 LIEUTENANT SACHETTI: At the time they asked
17 me to review both and if there were any discrepancies
18 between mine and his to give them a call back.

19 SENATOR LYNCH: But you didn't review
20 Zoubek's testimony?

21 LIEUTENANT SACHETTI: I didn't review it, no.

22 SENATOR LYNCH: You felt it was
23 inappropriate?

24 LIEUTENANT SACHETTI: I didn't have time.

25 SENATOR LYNCH: As part of the confirmation

1 hearings for then Attorney General Verniero on his
2 nomination to the Supreme Court on May 6th, 1999, the
3 Attorney General testified on Page 8 of the May 6th
4 hearing, and I quote. "As I indicated yesterday, the
5 data that is used in part and cited in the April 20
6 report, the interim report, we actually began gathering
7 a year ago." Did you ever look at the interim report
8 to determine if any of your data was contained in the
9 interim report?

10 LIEUTENANT SACHETTI: I recall reading the
11 interim report and I don't believe that any of my data
12 was in there, no.

13 SENATOR LYNCH: So that's not true, is it?

14 LIEUTENANT SACHETTI: I don't believe that
15 any of my data -- they may have used it, I can't say
16 one way or the other, but I don't --

17 SENATOR LYNCH: There's nothing in the
18 written text of that that would indicate that they used
19 it, however --

20 LIEUTENANT SACHETTI: That's correct.

21 SENATOR LYNCH: And then continuing on on the
22 same page the question is: "You began gathering some
23 data subsequent to the shooting but that data was
24 surrounding arrests, wasn't it?"

25 And the answer is: "Well, no, it was data

1 coming out of the Cranbury, Moorestown barracks. I
2 don't know as I sit here if it was exclusively on
3 arrests. It may have been other forms of data as well.
4 It may have been stop-and-search data, I'm not sure."

5 You weren't doing stop-and-search data, were
6 you?

7 LIEUTENANT SACHETTI: No, sir.

8 SENATOR LYNCH: And then in answer to Senator
9 Girgenti's questions on May 5th, 1999 during the
10 confirmation hearings at Page 203, the Attorney General
11 said, "Well, as I, and maybe I'm being unartful, as I
12 indicated last week and I believe earlier, that the
13 data that was included in the report recently issued
14 was gathered, we had begun that process almost a year
15 ago and at that point in time, if I'm not mistaken, and
16 I'd have to check the calendar, there was no political
17 climate back then. That was a year ago. We had begun
18 working in earnest in gathering information and data
19 out of the two barracks, Cranbury and Moorestown, which
20 ultimately allowed us to write the report on April the
21 20th, the interim report."

22 Again, I ask you, was there anything in that
23 report that you saw that came from your Troop D audit?

24 LIEUTENANT SACHETTI: No, sir.

25 SENATOR LYNCH: Also on May the 5th, 1999,

1 the confirmation hearings at Page 206, the Attorney
2 General says, "We are continuing," and this is May 5th,
3 1999, "We are continuing to conduct audits of the
4 various barracks. Whether that touches the exact time
5 statistics or not, I'm not sure. I'm not doing the
6 specific audits, but the investigations are continuing.
7 We're now going into the second phase of that
8 investigation and review."

9 Where were you in terms of this review on May
10 the 5th, 1999?

11 LIEUTENANT SACHETTI: May the 5th we were
12 still completing phase two of Newark. It was starting
13 to slow down at that point.

14 SENATOR LYNCH: But you had already then
15 completed phase one and two of Moorestown and Cranbury
16 and you had completed more than half of phase three,
17 Cranbury, correct?

18 LIEUTENANT SACHETTI: That's correct.

19 SENATOR LYNCH: And subsequent to this date
20 of his testimony on May the 5th, 1999, you were put on
21 hold and you estimated that to be a week later, ten
22 days later, whatever it was?

23 LIEUTENANT SACHETTI: Yes, sir. A week, ten
24 days. I wouldn't use the term "put on hold." The
25 responses were coming in slow. I was looking for

1 guidance as to where we were going to go. Whether we
2 were going to go back and continue with phase three of
3 Cranbury or what direction we were going to head.

4 SENATOR LYNCH: But at that point you had 30
5 plus troopers assigned to your detail and they really
6 had nothing to do for the most part, correct?

7 LIEUTENANT SACHETTI: That's correct.

8 SENATOR LYNCH: And you had indicated this to
9 both Fedorko and Dunlop?

10 LIEUTENANT SACHETTI: That's correct.

11 SENATOR LYNCH: And those 30 plus troopers
12 that really had nothing to do, were they staying home
13 or going to the gym? What were they doing?

14 LIEUTENANT SACHETTI: I would hope that they
15 were finding of a State Police nature to keep
16 themselves occupied. I would hope.

17 SENATOR LYNCH: But at that point in time
18 they really weren't accountable to anyone other than
19 you, correct?

20 LIEUTENANT SACHETTI: They were all over the
21 state. I had them working out of different barracks
22 wherever they lived. This pool of individuals came
23 from as far south as Woodbine and as far north as
24 Sussex. And generally it was here's what your task to
25 do. When it's completed, bring it in. They were given

1 a great deal of latitude as far as --

2 SENATOR LYNCH: Right.

3 LIEUTENANT SACHETTI: -- being responsible.

4 SENATOR LYNCH: But you were concerned about
5 those 30 people because they were removed from their
6 basic assignments to be under your direction and in
7 that vein they also may be missing opportunities for
8 promotions and other things?

9 LIEUTENANT SACHETTI: Yes, sir.

10 SENATOR LYNCH: Again, on May 5th, 1999 of
11 then Attorney General Verniero's testimony on Page 65
12 in answer to Senator Matheussen's question, the
13 Attorney General testified: "Well, the underlying data
14 that was used to support the report we actually begun
15 collecting a year ago, thereabouts, as a result of the
16 Turnpike incident that occurred in April of last year."

17 Again I ask you, was there anything in the
18 underlying data in the report, the interim report, that
19 was a product of your Troop D audit?

20 LIEUTENANT SACHETTI: No, sir, it hadn't been
21 produced, any final work product hadn't been produced
22 at that point.

23 SENATOR LYNCH: Thank you, Lieutenant.

24 SENATOR GORMLEY: Senator Furnari.

25 SENATOR FURNARI: I just have a couple of

1 questions that I just need to clarify for myself.

2 First of all, we talked about the officers or
3 the troopers, and I'm using this word, it's probably
4 not the term of art, but there were administrative
5 deficiencies of the things that they did in their
6 reports, violations of standard operating procedures of
7 the State Police. In your experience as -- and I note
8 that you said here today that there were people that
9 were referred to Internal Affairs. In your experience,
10 have there been many indictments of troopers for
11 failing to properly fill out their reports for these
12 administrative --

13 LIEUTENANT SACHETTI: No, sir.

14 SENATOR FURNARI: Have there ever been any
15 that you're aware of?

16 LIEUTENANT SACHETTI: No, sir, I know of
17 none.

18 SENATOR FURNARI: So in your experience these
19 matters, the ones that are referred for Internal
20 Affairs and discipline, so far as you're concerned and
21 to your knowledge, never in the history of the State
22 Police has a criminal indictment been sought for that
23 kind of activity?

24 LIEUTENANT SACHETTI: Not to my knowledge.

25 SENATOR FURNARI: Okay. Now, I am a little

1 concerned about the previous testimony of Deputy
2 Attorney General Zoubek and his criticism of what was
3 going on in your investigations at the previous
4 proceedings. Do you have any idea what would lead him
5 to believe that your unit should have started to do
6 other things rather than just kind of sit around and
7 wait?

8 LIEUTENANT SACHETTI: I wouldn't know.

9 SENATOR FURNARI: Well, is it standard
10 procedure that -- I mean you're -- well, let's try
11 this. What would you have done to complete phase three
12 once the responses stopped coming back? What would you
13 have done?

14 LIEUTENANT SACHETTI: We would have needed to
15 identify additional motorists that needed to be
16 contacted.

17 SENATOR FURNARI: Okay. Now, why would you
18 need the authorization from someone in the Attorney
19 General's Office to do that?

20 LIEUTENANT SACHETTI: Because I had detached
21 all of the personnel that I had doing phase three at
22 Cranbury, detached them and placed them over to do one
23 and two of Newark. I didn't need authorization from
24 the Office of the Attorney General to do that. I never
25 asked for authorization from the Office of the Attorney

1 General to do that. I asked from my command where I
2 should go with this.

3 SENATOR FURNARI: Okay. And your command
4 indicated to you that they didn't want you to do it.

5 LIEUTENANT SACHETTI: That the decision was
6 not theirs.

7 SENATOR FURNARI: Okay. So they were telling
8 -- now, is that the usual course of business in the
9 course of investigation that the Attorney General will,
10 in your words, "make these decision," it's not the
11 State Police decision?

12 LIEUTENANT SACHETTI: I've never seen it.

13 SENATOR FURNARI: So this is the first time
14 that that's happened?

15 LIEUTENANT SACHETTI: Well, like I say, my
16 experience at this level is very limited. Like I had
17 testified earlier, the majority of my career was spent
18 on the road so on the road we make our own decisions as
19 they occur, as the incidents occur.

20 SENATOR FURNARI: How long were you involved
21 in this unit prior to undertaking this investigation?

22 LIEUTENANT SACHETTI: I was assigned to the
23 Staff Inspection Unit for about 18 months back in 1993
24 to '94 as the Assistant Staff Inspecting Officer. And
25 I was reassigned back here October of 1997.

1 SENATOR FURNARI: Okay. But in your
2 experience over that period of time, the Attorney
3 General had not been as, shall we say, intimately
4 involved in investigations as they became in the ones
5 that you were involved with?

6 LIEUTENANT SACHETTI: As far as I know, yes,
7 sir.

8 SENATOR FURNARI: Okay. Thank you. I have
9 no other questions.

10 SENATOR GORMLEY: Senator Girgenti.

11 SENATOR GIRGENTI: Thank you, Mr. Chairman.
12 Good morning, Lieutenant.

13 LIEUTENANT SACHETTI: Good morning, sir.

14 SENATOR GIRGENTI: Lieutenant, just let me
15 refresh my record here.

16 Who originally charged you with the conduct
17 of the Troop D audit?

18 LIEUTENANT SACHETTI: I'm sorry, sir?

19 SENATOR GIRGENTI: Who originally charged you
20 with the conduct of the Troop D audit? Who gave you
21 that --

22 LIEUTENANT SACHETTI: Lieutenant Colonel
23 Robert Dunlop.

24 SENATOR GIRGENTI: And who were you to report
25 your findings to?

1 LIEUTENANT SACHETTI: I reported my findings
2 both to my Captain and through the chain up to Colonel
3 Fedorko and Colonel Dunlop.

4 SENATOR GIRGENTI: And you directly reported
5 it to your Captain and that was --

6 LIEUTENANT SACHETTI: Yes, sir. He was aware
7 of everything we were doing.

8 SENATOR GIRGENTI: Was it discussed at that
9 time how frequently you would report your findings?
10 Was there supposed to be updates? Was there a time
11 frame or schedule?

12 LIEUTENANT SACHETTI: In about August of 1998
13 I was completing a daily briefing sheet for my Captain
14 and it was my understanding that a copy of that went to
15 Colonel Fedorko. So that was done on a daily basis.

16 SENATOR GIRGENTI: And is my recollection
17 correct that you testified that Lieutenant Colonel
18 Fedorko notified you that the audit was being shut
19 down? Was he the individual that told you that?

20 LIEUTENANT SACHETTI: He's the one who told
21 me that the audit was terminated and I would send these
22 personnel back to their original assignments.

23 SENATOR GIRGENTI: And did he provide you
24 with any reasoning for shutting it down at the time?

25 LIEUTENANT SACHETTI: No, sir, he did not.

1 SENATOR GIRGENTI: He just said shut down --

2 LIEUTENANT SACHETTI: Shut down.

3 SENATOR GIRGENTI: Regarding the three and
4 three-quarter months of time span which you examined,
5 what was your decision to use that time frame from
6 January to April? Why was that period selected or
7 picked?

8 LIEUTENANT SACHETTI: I wanted to get a most
9 recent picture of what the troopers were doing right up
10 to the date of the shooting. And I thought four months
11 could encompass enough of what we need to look at to
12 give us an accurate picture as to what the troops out
13 on the Turnpike were doing.

14 SENATOR GIRGENTI: All right. Because I
15 understand that the rationale for ending the time frame
16 on April 23rd was because of the shooting. Was there a
17 reason for beginning on January 1 or was that just an
18 arbitrary decision --

19 LIEUTENANT SACHETTI: It was just a decision
20 that I made. I felt that we could get, like I said, an
21 accurate portrayal of what the troopers were doing by
22 looking at a four-month period.

23 SENATOR GIRGENTI: So I mean it was your
24 belief that any statistical evidence that one-third of
25 a year would provide an accurate sample to understand

1 the overall behavior of road troopers?

2 LIEUTENANT SACHETTI: At Cranbury if there
3 was any falsification being done I thought I could
4 identify it by looking at a four-month period.

5 SENATOR GIRGENTI: Okay. And just in
6 closing, one other point that was mentioned by Senator
7 Lynch previously. You said that you were asked to
8 review your testimony and Zoubek's testimony?

9 LIEUTENANT SACHETTI: Yes, sir.

10 SENATOR GIRGENTI: Who was the person that
11 asked you to do that?

12 LIEUTENANT SACHETTI: Brian Flanagan and
13 Allison Accurso.

14 SENATOR GIRGENTI: Who were they?

15 LIEUTENANT SACHETTI: From Division of Law.

16 SENATOR GIRGENTI: And your response is you
17 would not do it?

18 LIEUTENANT SACHETTI: My response was if I
19 get the opportunity, I'll do it. I am tasked with
20 running an Inspection Bureau. I have a number of
21 individuals that work for me on a daily basis, I didn't
22 have the time to do that.

23 SENATOR LYNCH: Well, you said earlier you
24 did feel that was inappropriate.

25 LIEUTENANT SACHETTI: That was Senator

1 Lynch's characterization.

2 SENATOR GIRGENTI: Would you characterize it
3 that way?

4 LIEUTENANT SACHETTI: I may.

5 SENATOR GIRGENTI: Thank you very much.

6 SENATOR GORMLEY: Just two questions. Jo.

7 MS. GLADING: Lieutenant, I just want to
8 clarify the record because I mischaracterized something
9 before. I said that the decision was made by you to
10 shut down the audit but, in fact, there's a reference
11 in what you filed in October indicating that the
12 decision -- on June 9th a decision was made by Fedorko,
13 Acting Superintendent, to discontinue the audit and
14 return personnel. There was testimony last week by
15 Colonel Fedorko, and I'm just trying to understand
16 this, last week by Colonel Fedorko and by Colonel
17 Dunlop that the decision was made by the AG's Office,
18 is that correct?

19 LIEUTENANT SACHETTI: Well, Colonel Fedorko
20 is in my chain-of-command so that's who I took my order
21 from.

22 MS. GLADING: Okay. So you got the order
23 from Colonel Fedorko --

24 LIEUTENANT SACHETTI: Yes.

25 MS. GLADING: -- but not -- the decision was

1 not necessarily made by Colonel Fedorko?

2 LIEUTENANT SACHETTI: I don't know who made
3 the decision. As I've testified, Colonel Fedorko gave
4 me the order.

5 MS. GLADING: Okay. And just quickly. On
6 the Soto appeal when you had an understanding that the
7 decision of -- that your audit would have an effect on
8 the proceedings in Soto, on the Soto appeal, when did
9 you hear that? Would that have been February?

10 LIEUTENANT SACHETTI: No. No, that would
11 have been much -- that would have been prior to
12 initiating the Moorestown audit.

13 MS. GLADING: Okay. So when was that?

14 LIEUTENANT SACHETTI: I think in the fall.

15 MS. GLADING: Okay. And the interim report
16 was still -- the reference to your audit -- here is my
17 question. On March 5th when the State sought to delay
18 the appeal date, the Appellate arguments in Soto --

19 LIEUTENANT SACHETTI: I'm sorry, what was the
20 date?

21 MS. GLADING: On March 5th, 1999 when the
22 State sought to delay the Appellate arguments in Soto
23 and used your audit as one of the justifications for
24 it, you had not provided them any updates since
25 February 10th. And, in fact, you didn't provide them

1 any update up until April 20th when the Soto appeal was
2 actually dropped, is that right?

3 LIEUTENANT SACHETTI: I didn't specifically,
4 but I'm not privy to what may have been provided by
5 Colonel Fedorko or Colonel Dunlop.

6 MS. GLADING: Okay. But in terms of the
7 synopsis of -- the overall status of the audit --

8 LIEUTENANT SACHETTI: For the 169 troopers,
9 no, nothing would have been provided at that point.

10 MS. GLADING: And February 10th was the last
11 synopsis of the overall audit that they had, is that
12 right?

13 LIEUTENANT SACHETTI: That's correct.

14 MS. GLADING: Okay. So apparently they were
15 able to make the decision about dropping Soto without
16 your audit?

17 LIEUTENANT SACHETTI: I don't know.

18 MS. GLADING: And then the interim report
19 reference in the second paragraph to your audit being
20 still pending, in a sense it's still pending now, isn't
21 it?

22 LIEUTENANT SACHETTI: It's -- yes. There's
23 internal investigations that are presently being
24 conducted for those troopers that have been identified.

25 MS. GLADING: In the page of your report that

1 we received, we're missing page -- we're apparently
2 missing a page and it's trooper number 34. Is there
3 anything about trooper number 34 that stands out --
4 well, actually the missing page encompasses part of
5 trooper 33 and part of trooper 34. If I showed you
6 these pages, would you tell me if you think there's
7 anything that we're missing that ought to be here?

8 LIEUTENANT SACHETTI: I don't know who
9 trooper 34 is, ma'am.

10 MS. GLADING: It doesn't stand out in your
11 mind as an important case?

12 LIEUTENANT SACHETTI: No. I haven't visited
13 this report for two years so I wouldn't really know.
14 Other than providing it back in October, I haven't
15 reviewed it for two years.

16 MS. GLADING: Do you see how those pages
17 don't match up?

18 LIEUTENANT SACHETTI: Yes. Yes. I would
19 have no idea. I have no explanation for that.

20 MS. GLADING: Do you have any -- is it the
21 trooper that was the most egregious that you had
22 identified to your recollection or is it a trooper that
23 doesn't stand out in your mind?

24 LIEUTENANT SACHETTI: I can't answer that. I
25 have to look at the original report to determine that.

1 MS. GLADING: Okay. Maybe we can get a
2 complete copy of that audit report from you. We'll
3 make a request through the Attorney General's Office.

4 LIEUTENANT SACHETTI: Certainly.

5 MS. GLADING: Thank you.

6 SENATOR GORMLEY: Okay. Thank you.

7 Senator Zane.

8 SENATOR ZANE: Lieutenant, just a couple of
9 questions.

10 You were asked some questions by both
11 Senators Girgenti and Lynch about reviewing certain
12 documents prior to testifying here?

13 LIEUTENANT SACHETTI: Yes, sir.

14 SENATOR ZANE: Okay. And the documents that
15 you were asked to review were what again?

16 LIEUTENANT SACHETTI: Transcripts of my
17 deposition and Director Zoubek's deposition.

18 SENATOR ZANE: Okay. Could you tell us --
19 you indicated that that request was made of you a
20 couple weeks ago?

21 LIEUTENANT SACHETTI: I would say last
22 Friday.

23 SENATOR ZANE: Okay.

24 LIEUTENANT SACHETTI: Not this past Friday,
25 the Friday before.

1 SENATOR ZANE: Ten days ago, thereabouts?

2 LIEUTENANT SACHETTI: Yes, sir.

3 SENATOR ZANE: Okay. And you mentioned the
4 names of two people. Are they Attorney Generals?

5 LIEUTENANT SACHETTI: Yes, sir.

6 SENATOR ZANE: What were the names again?

7 LIEUTENANT SACHETTI: Brian Flanagan and
8 Allison Accurso.

9 SENATOR ZANE: What is your connection to
10 either of those Attorney Generals?

11 LIEUTENANT SACHETTI: I would imagine they're
12 my legal representation.

13 SENATOR ZANE: Are they sitting here in this
14 room today?

15 LIEUTENANT SACHETTI: Brian is right here and
16 I don't see Allison, no, sir.

17 SENATOR ZANE: Okay. Were the circumstances
18 of you being asked to review those documents for
19 discrepancies --

20 LIEUTENANT SACHETTI: Yes, sir.

21 SENATOR ZANE: -- is that what you said?
22 Okay.

23 Was that just in the course of some routine
24 review with your attorney or was that a specific
25 meeting for that purpose?

1 LIEUTENANT SACHETTI: I don't know the actual
2 reason for it, sir. That's all -- the conversation I
3 had was exactly as I had stated.
4 SENATOR ZANE: Who asked for the meeting?
5 LIEUTENANT SACHETTI: It wasn't a meeting, it
6 was telephone calls.
7 SENATOR ZANE: Telephone?
8 Was there a follow up to find out whether you
9 did it or not?
10 LIEUTENANT SACHETTI: Yes, sir.
11 SENATOR ZANE: And what did you tell them?
12 LIEUTENANT SACHETTI: That I hadn't gotten to
13 it.
14 SENATOR ZANE: What did they tell you?
15 LIEUTENANT SACHETTI: If you get a chance,
16 get to it.
17 SENATOR ZANE: Was there any other follow up
18 to that?
19 LIEUTENANT SACHETTI: No, sir.
20 SENATOR ZANE: I may have written something
21 down incorrectly. If I did, please help me out here.
22 When you were talking about I think the termination of
23 your report and your investigation and the possible
24 restart of your investigation, you indicated in
25 response to Ms. Glading's question, you said something

1 about it's in the hands of the Attorney General. Do
2 you recall saying that?
3 LIEUTENANT SACHETTI: Yes, sir. That was not
4 my characterization, that was the explanation I got
5 from both Colonel Fedorko and Colonel Dunlop.
6 SENATOR ZANE: Colonel Fedorko and who else?
7 LIEUTENANT SACHETTI: Colonel Dunlop.
8 SENATOR ZANE: At the same time or at
9 different times?
10 LIEUTENANT SACHETTI: Probably at the same
11 time and probably at different times.
12 SENATOR ZANE: So it was said to you more
13 than once?
14 LIEUTENANT SACHETTI: Yes, sir.
15 SENATOR ZANE: So it was clear to you that --
16 I guess I'm asking you, was it clear to you that your
17 investigation was terminated at the direction of the
18 Attorney General based upon what Fedorko and Dunlop had
19 said to you?
20 LIEUTENANT SACHETTI: Yes, sir.
21 SENATOR ZANE: Did you inquire why?
22 LIEUTENANT SACHETTI: No, sir.
23 SENATOR ZANE: They said it and that was an
24 order and you were a good soldier and did exactly what
25 they said, is that correct?

1 LIEUTENANT SACHETTI: Yes, sir.
2 SENATOR ZANE: Did anybody volunteer an
3 explanation?
4 LIEUTENANT SACHETTI: No, sir.
5 SENATOR ZANE: What was the timing of those
6 conversations, approximate, with Dunlop and Fedorko?
7 LIEUTENANT SACHETTI: I'm not sure of the
8 question, sir. What do you mean by timing?
9 SENATOR ZANE: Yeah. Approximately when did
10 that happen that they told you to stop? Was this in
11 1999?
12 LIEUTENANT SACHETTI: Yes, sir, '99.
13 SENATOR ZANE: This was the latter part of
14 '99?
15 LIEUTENANT SACHETTI: Well, no, it would have
16 been June of 1999 is when we were terminated.
17 SENATOR ZANE: Okay. Let me ask you this
18 then. Who was the first one to tell you to terminate
19 it?
20 LIEUTENANT SACHETTI: Colonel Fedorko.
21 SENATOR ZANE: Why did Dunlop then have to
22 tell you also?
23 LIEUTENANT SACHETTI: Why didn't he?
24 SENATOR ZANE: Why did he tell you also?
25 You indicated they both --

1 LIEUTENANT SACHETTI: No, sir. I think
2 you're misunderstanding me, sir.
3 SENATOR ZANE: Okay.
4 LIEUTENANT SACHETTI: When Colonel Fedorko
5 told me that it was terminated, it was terminated. We
6 had conversations prior to it being terminated as to
7 where we were going to go with it, whether we were
8 going to go back to Cranbury and complete phase three
9 or the detail would be terminated. I had conversations
10 with both Colonel Fedorko and Colonel Dunlop along
11 these lines, and they both informed me that it was in
12 the Attorney General's hands.
13 SENATOR ZANE: As to whether it would proceed
14 or terminate?
15 LIEUTENANT SACHETTI: Yes, sir.
16 SENATOR ZANE: Okay. But then it was only --
17 is it true then -- I just want to complete this picture
18 in my mind. Were they both together when they said to
19 you that's it, it's done, stop, don't do anymore?
20 LIEUTENANT SACHETTI: No. I received a phone
21 call. They may have been together, I don't know. I
22 received a phone call from Colonel Fedorko to send
23 these people back to their original assignments. Get
24 the word to them that they're going back to their
25 original assignments.

1 SENATOR ZANE: Were there any conversations
2 with either Dunlop or Fedorko prior to that as to the
3 reason why it might be terminated?

4 LIEUTENANT SACHETTI: No, sir. I had some
5 feelings along those lines.

6 SENATOR ZANE: What were they?

7 LIEUTENANT SACHETTI: The response rate was a
8 little low. With Newark we were discovering problems
9 that we hadn't experienced with the other two stations
10 in that people, due to the length of time from the time
11 they were stopped, because we may now be into a period
12 of time where now we're about a year and a half from
13 the time in which they may have been stopped and their
14 recollection of the events of the particular stop were
15 a little vague, fuzzy, contradictory. And we were
16 experiencing these types of problems with Newark.

17 SENATOR ZANE: Would you -- who would --
18 Fedorko, when he was the Superintendent, report to?

19 LIEUTENANT SACHETTI: I'm sorry?

20 SENATOR ZANE: When he was the
21 Superintendent, Fedorko, who would he report to?

22 LIEUTENANT SACHETTI: I imagine the Attorney
23 General's Office.

24 SENATOR ZANE: The Attorney General's Office.
25 Do you know anybody -- I mean is there someone in

1 particular?

2 LIEUTENANT SACHETTI: Oh, I have no idea. I
3 don't -- I'm not privy to those types of -- to those
4 types of meetings.

5 SENATOR ZANE: You've never seen an
6 organizational chart that spells out who his boss is?

7 LIEUTENANT SACHETTI: Oh, I'm certain he
8 reports to the Attorney General, but who he was
9 reporting to here, I don't know.

10 SENATOR ZANE: Did he indicate to you by name
11 who in the Attorney General ordered the termination of
12 your investigation?

13 LIEUTENANT SACHETTI: No, sir.

14 SENATOR ZANE: Who would be -- I mean
15 certainly the Attorney General sitting in the first row
16 didn't say that to Fedorko, correct?

17 LIEUTENANT SACHETTI: I don't know.

18 SENATOR ZANE: He wouldn't have listened to
19 them, would he, if he thought it was the appropriate
20 thing?

21 LIEUTENANT SACHETTI: You'd have to ask him.

22 SENATOR ZANE: Okay. Would you have any
23 sense or feel who in the Attorney General's Office
24 would be capable of giving the Superintendent of the
25 State Police that kind of a directive to give to you?

1 LIEUTENANT SACHETTI: I would imagine it
2 would be someone high in the Attorney General's Office.

3 SENATOR ZANE: And high in the Attorney
4 General's Office to you would be who?

5 LIEUTENANT SACHETTI: Someone of a higher
6 rank than Colonel Fedorko.

7 SENATOR ZANE: And that would be?

8 LIEUTENANT SACHETTI: I don't know. I'm not
9 doing too good on this test, I guess.

10 SENATOR ZANE: That's okay.

11 (Laughter)

12 LIEUTENANT SACHETTI: I don't know, sir.

13 SENATOR ZANE: Okay. Thank you.

14 SENATOR GORMLEY: Thank you for your
15 testimony.

16 Next witness.

17 The next witness will be William Buckman.

18 Would you please stand and raise your right
19 hand.

20 W I L L I A M B U C K M A N, SWORN

21 SENATOR GORMLEY: Be seated.

22 Mr. Weber.

23 MR. WEBER: Good morning, Mr. Buckman.

24 MR. BUCKMAN: Good morning.

25 MR. WEBER: Are you currently employed as a

1 private practitioner in the State of New Jersey?

2 MR. BUCKMAN: Yes, sir.

3 MR. WEBER: And you were involved in the Soto
4 case?

5 MR. BUCKMAN: That's correct.

6 MR. WEBER: In what capacity?

7 MR. BUCKMAN: I was one of the team of
8 attorneys litigating Soto.

9 MR. WEBER: Did you represent some or all of
10 the defendants in that case?

11 MR. BUCKMAN: I represented four of the
12 defendants in that case.

13 MR. WEBER: And it was a consolidated case,
14 correct?

15 MR. BUCKMAN: That's correct.

16 MR. WEBER: I'd like to -- my purpose today
17 is to not go through the whole Soto litigation, but I'd
18 like to bring you to some more current events and ask
19 you to account for the Committee a phone conversation
20 that you had on March 5th, 1999 in which you got a call
21 from Paul Zoubek.

22 MR. BUCKMAN: I recall that.

23 MR. WEBER: Okay. Was that the conversation
24 where Mr. Zoubek first approached you about an
25 extension of time for the State to file its response to

1 an amicus brief and to extend oral argument in the Soto
2 appeal?

3 MR. BUCKMAN: Yes. I was actually in my car
4 and Mr. Zoubek called me to ask for consent to continue
5 the oral argument in Soto, the oral argument of the
6 appeal on Soto, which was scheduled for April 28th of
7 that year.

8 MR. WEBER: Did he explain to you why he was
9 seeking an extension of time?

10 MR. BUCKMAN: He said that the State was just
11 looking into or starting to look into the issue of
12 racial profiling.

13 MR. WEBER: And this was after the
14 announcement in February that there was going to be a
15 review of the State Police, correct?

16 MR. BUCKMAN: From a review of the documents,
17 I realized that there was an announcement in February.
18 I mean from the context of that conversation, he told
19 me that the State was essentially looking into the
20 issue seriously at that point.

21 MR. WEBER: Did Mr. Zoubek say anything else
22 to you as to why the State wanted an extension of time?

23 MR. BUCKMAN: Only because they were looking
24 into it and they were going to think about where they
25 were going with their appeal.

1 MR. WEBER: What was your response to his
2 request?

3 MR. BUCKMAN: My response was that the appeal
4 obviously had been pending for a long time, for three
5 years. That Soto itself had been, at that point, had
6 been pending for nine years. And I would have to think
7 about it. The call was at 3:00 p.m. on a Friday
8 afternoon. I told him that I was also part of a
9 litigation team and I wanted to run it by a number of
10 the other attorneys that I was working with and
11 essentially I wanted two business hours, until Monday
12 morning, to think it over and to get back to him.

13 MR. WEBER: What was Mr. Zoubek's response?

14 MR. BUCKMAN: His response was if I could not
15 immediately consent at that point, they were going to
16 file their motion with the Appellate Division anyway to
17 seek a continuance.

18 MR. WEBER: Okay. Was the motion, in fact,
19 filed before you responded to Mr. Zoubek about his
20 request?

21 MR. BUCKMAN: Yes.

22 MR. WEBER: When was it filed?

23 MR. BUCKMAN: It appears from my review of
24 the documents, it was filed that very afternoon. As a
25 matter of fact, when I got back to my office, I was

1 receiving calls from the media already saying what's
2 your position on this motion that they filed?

3 MR. WEBER: Okay. Did ultimately you file a
4 position with the Appellate Division on the request for
5 the extension?

6 MR. BUCKMAN: Yes, sir.

7 MR. WEBER: And what was your position?

8 MR. BUCKMAN: My position when I filed one
9 was one of opposing it.

10 MR. WEBER: There was then a telephonic oral
11 argument conducted on March 16th of 1999, correct?

12 MR. BUCKMAN: That's correct.

13 MR. WEBER: Who participated in the
14 telephonic oral argument?

15 MR. BUCKMAN: I participated in the
16 telephonic argument. Mr. Zoubek -- well, let me back
17 up a little bit. It was an argument initiated by the
18 Appellate Division with all three Judges of the panel
19 on the -- at one office participating. They were
20 Judges Stern, Landau and Braithwaite. I was patched in
21 from my office and Mr. Zoubek was -- identified himself
22 as being present from the Attorney General's Office
23 with Gerald Simms, who was the author of the brief in
24 the Soto case for the Deputy for the Attorney General's
25 Office and who had, along with Mr. Fahy, conducted the

1 Appellate proceedings.

2 MR. WEBER: Okay. This was a motion filed by
3 the State, so I take it Mr. Zoubek or somebody from the
4 Attorney General's Office spoke first during the oral
5 argument?

6 MR. BUCKMAN: Yes. It was either Judge Stern
7 or Judge Landau. I think it was Judge Stern who asked
8 Mr. Zoubek why he wanted the continuance.

9 MR. WEBER: And what was Mr. Zoubek's
10 response?

11 MR. BUCKMAN: Mr. Zoubek's response was that,
12 "Well, we are looking into this issue of racial
13 profiling. At this point we are starting to study it
14 and we want to see where we are going with this
15 appeal."

16 MR. WEBER: Was there any response from the
17 Judicial panel?

18 MR. BUCKMAN: Yes.

19 MR. WEBER: What was it?

20 MR. BUCKMAN: It was one of the Judges was
21 quite strong in his statement. He said, "You mean to
22 tell me that this thing has been pending all of these
23 years and the Attorney General's Office is only looking
24 at it now?"

25 MR. WEBER: What was Mr. Zoubek's response?

1 MR. BUCKMAN: Essentially silence. After a
2 while, after some what seemed like at least a half a
3 minute, said to the extent, well, we've decided to look
4 into it.

5 Another -- right on the heels of that, I
6 should point out, another Judge asked, "By the way,
7 sir, you realize this is a criminal proceeding?" And
8 Mr. Zoubek said, "Yes." And the other Judge said, "If
9 you are investigating this matter, you'll understand
10 that you have an obligation to provide your adversaries
11 with continuing discovery."

12 MR. WEBER: What was Mr. Zoubek's response?

13 MR. BUCKMAN: He said that he understood.

14 MR. WEBER: Was the issue of the continuing
15 discovery obligation discussed anymore during that oral
16 argument?

17 MR. BUCKMAN: It was -- yes. I know that I
18 brought it up. I said that certainly I would like to
19 see any continuing discovery that the State had. We
20 have not been -- I pointed out to the Appellate
21 Division that we had not been provided with anything
22 subsequent to Soto indicating that the State had
23 seriously looked into the allegations that we had
24 raised and indeed proven in Soto.

25 MR. WEBER: When you say -- let me just stop

1 you for a second.

2 MR. BUCKMAN: Sure.

3 MR. WEBER: When you say you hadn't been
4 provided with anything subsequent to Soto, do you mean
5 that subsequent to the issuance of the decision in
6 March of 1996 up until March of 1999 you had not been
7 provided with any discovery by the State?

8 MR. BUCKMAN: Yeah. As a matter of fact, we
9 hadn't been provided with anything by the State from
10 the close of testimony in May of '95 until March of '99
11 -- 1999.

12 MR. WEBER: What else was said during the
13 telephonic oral argument?

14 MR. BUCKMAN: Another Judge raised the fact
15 that in addition to providing discovery, reminded the
16 State of its ethical obligation, reminded Mr. Zoubek,
17 of the State's ethical obligation not to argue on
18 appeal a position that it knew to be factually or
19 legally incorrect.

20 MR. WEBER: What was Mr. Zoubek's response?

21 MR. BUCKMAN: Quite frankly, I don't recall.
22 I generally recall that he said that he was aware of
23 that.

24 MR. WEBER: Was there anything else that was
25 discussed during the telephonic oral argument on March

1 16th, 1999? Any other major issues other than those
2 that you've detailed to the Committee?

3 MR. BUCKMAN: The major issues -- I was given
4 an opportunity to set forth why I opposed the request
5 for a continuation.

6 MR. WEBER: Just briefly, why did you oppose
7 the request for a continuation?

8 MR. BUCKMAN: I opposed it because I told the
9 Judges that I felt it was entirely political. That the
10 Attorney General's Office was asking the Appellate
11 Division to weigh in essentially in a political issue
12 by continuing this long-scheduled appeal so that
13 apparently the Attorney General could be cleared for
14 confirmation. And that the Appellate Division should
15 not get involved in political issues. That the issue
16 is ready and ripe for argument and indeed the State had
17 been fighting and denying profiling for nine years and
18 not only the parties but the public were entitled to
19 some resolution.

20 MR. WEBER: Did the State respond to that
21 argument at all?

22 MR. BUCKMAN: No. Actually I recall that the
23 State was essentially -- did not object to that
24 argument in the sense that -- only to the sense that I
25 think that there was a general disagreement with the

1 fact that this was a political decision.

2 MR. WEBER: Now, ultimately the Appellate
3 Division issued a decision on the extension request
4 that day, correct?

5 MR. BUCKMAN: Yes, sir.

6 MR. WEBER: And what was the Appellate
7 Division's decision?

8 MR. BUCKMAN: They denied the State's request
9 to continue the appeal and they placed in the order
10 language reminding the State of its ethical obligation
11 not to argue on appeal positions that it knew to be
12 inaccurate.

13 MR. WEBER: I want to direct your attention
14 to one other area. In November of 2000 as you know,
15 the Attorney General's Office released approximately
16 90,000 pages of documentation that concerned the issue
17 of racial profiling and a public repository was set up.
18 Have you had an opportunity to go to the public
19 repository and take a look at any of the documents that
20 have been produced?

21 MR. BUCKMAN: Yeah, I have -- I have copies
22 of those on CD's.

23 MR. WEBER: This goes back to an issue that
24 we discussed before as far as the State's discovery
25 obligations. Did you see, during your review of the

1 90,000 plus pages of documentation produced in November
2 of 2000, any documents that had not been previously
3 produced to you in connection with the Soto litigation
4 that had been requested by your office or by any of the
5 other defense attorneys?

6 MR. BUCKMAN: Absolutely.

7 MR. WEBER: Were there general categories of
8 documentation that had not been produced?

9 MR. BUCKMAN: Yes.

10 MR. WEBER: What types of documents?

11 MR. BUCKMAN: In particular, consent-to-
12 search data. Certainly training materials. There's
13 certainly the subsequent -- now, I think we have to
14 separate this out in terms of some of the materials
15 that were relevant during the course of Soto and some
16 of the materials that certainly should have been
17 provided to us as the Appellate Judge himself noted to
18 the State, even after the close of testimony. There
19 appears, from my review of the materials, training
20 materials that existed during the course of Soto that
21 were not provided to us. There was a particular
22 handout on a drug courier profile that appears to be
23 fairly old and speaks very specifically of profiles and
24 does appear to me from my review of it to have been in
25 existence before the close of testimony in Soto.

1 MR. WEBER: Okay. Before the close of
2 testimony in Soto, had you requested any information
3 about either consent-to-search data or consent-to-
4 search data forms?

5 MR. BUCKMAN: Yes.

6 MR. WEBER: Had that documentation been
7 provided to you during the course of Soto?

8 MR. BUCKMAN: No.

9 MR. WEBER: What was the State's response to
10 your request?

11 MR. BUCKMAN: The State said that they
12 thought it was irrelevant and they wouldn't provide it.
13 That was their first response. Because we first
14 requested consent-to-search data in July of 1993 before
15 Soto even began. The State's first response was that
16 it was not relevant and it was too burdensome to
17 obtain.

18 During the course of Soto, we renewed our
19 request for data and the Attorney General's Office,
20 through Mr. Fahy as well as its witnesses, said that
21 they don't know where it is housed and they didn't know
22 how to locate it. In particular, I cross-examined I
23 believe at that time then Lieutenant Madden fairly
24 extensively about consent-to-search data and was told
25 that he didn't know where to locate it.

1 At another occasion one of our experts, James
2 Fyfe, talked about the fact that there appears to be
3 consent-to-search data in existence because there was
4 an SOP in existence at that time which had as part of
5 it the fact that troopers when they execute a consent
6 to search, not only have to get written consent to
7 search but had to fill out what appeared to be a
8 computer form, consent-to-search data forms. Now, we
9 requested both of those items. We were denied those
10 and we were even told that they didn't know how to
11 begin to reconstruct those or find them.

12 MR. WEBER: Okay. Just so we're clear.
13 During the pendency of the Soto litigation, the defense
14 team had requested consent-to-search data forms and you
15 were told either they didn't exist or that they were
16 unable to be found and could not therefore be produced,
17 is that correct?

18 MR. BUCKMAN: That's correct. Yes.

19 MR. WEBER: No further questions, Mr.
20 Chairman.

21 MS. GLADING: Mr. Buckman, after the
22 Appellate Division ruled in denying the State's motion
23 to delay the Appellate arguments and the State then
24 subsequently dismissed -- dropped its appeal in Soto,
25 when were the actual underlying cases dismissed?

1 MR. BUCKMAN: August of '99.

2 MS. GLADING: Okay. And was there any
3 discovery produced to you between April 20th of '99 and
4 August of '99?

5 MR. BUCKMAN: No. I had even made a request
6 for it that was not provided. I then filed a motion
7 requesting materials and that's when the State
8 dismissed -- finally moved to dismiss the cases in
9 August of '99.

10 MS. GLADING: Okay. And you've been involved
11 probably in this issue longer than anyone from a legal
12 perspective in New Jersey. Do you have any thoughts
13 about how this issue ought to be addressed by public
14 policy-makers?

15 MR. BUCKMAN: I have a few.

16 MS. GLADING: Would you share them with us
17 briefly?

18 MR. BUCKMAN: Yes, briefly. I mean my first
19 impression is that from what I have seen occur,
20 particularly from a review of the 90,000 pages of
21 documents, certainly it is absolutely essential to hold
22 individuals accountable for what occurred and
23 apologizing and allowing profiling to flourish for so
24 many years. But we can't lose sight of the fact that
25 what we now know calls for deep-seated institutional

1 change. The consent decree is only a beginning of what
2 we must do with the State Police. I think that the
3 consent decree, some of the structure, should be
4 essentially kept permanent. Perhaps most importantly
5 we have to think very seriously about allowing the
6 State Police or the structure wherein the State Police
7 remain within the Attorney General's Office. We have
8 seen in this release of documents that there is a
9 built-in conflict of interest where the Attorney
10 General's Office at once is supposed to be supervising
11 the State Police and at the other point defending it.
12 And sadly we now see from all the documents that we are
13 seeing that for some reason, sociological or whatever,
14 that the Attorney General's Office decided essentially
15 to defend the State Police and not further or -- and
16 not deal with the issue of racial profiling.

17 In my mind, while you have credited me with
18 knowing something about profiling for some years,
19 another major change that needs to occur is to allow an
20 atmosphere in the State Police where people who see
21 things, troopers who see things that they know are
22 inappropriate, can come forward without fear of
23 retaliation. There still exists within the State
24 Police this climate of fear. Where troopers fear to
25 report profiling activities and report to their

1 superiors or complain to their superiors the fact that
2 even to this day profiling may be continuing.

3 I would -- I would suggest that there are a
4 number of experts in the field who have studied the
5 phenomenon of profiling nationally and in New Jersey
6 that could help this Committee put together a reasoned
7 response to the phenomenon of profiling. I mean
8 although I've heard it said that New Jersey didn't
9 invent profiling -- New Jersey might not have invented
10 profiling, but it did hone it to a fine art. And it is
11 particularly deep-seated in New Jersey. And there are
12 a number of experts who have studied it in New Jersey
13 as well as nationally. One that comes to mind is
14 Professor David Harris from the University of Toledo
15 Law School who has studied the phenomenon nationally.
16 James Fyfe who testified for us in Soto. Dr. Lamberth,
17 for that matter, are experts who can help in the area.
18 There are a number of experts out there that could
19 weigh in on the area -- in the area.

20 MS. GLADING: Thank you, Mr. Buckman.

21 That's all I have, Mr. Chairman.

22 SENATOR GORMLEY: Okay. Thank you.

23 Senator Furnari has one question, then
24 Senator Lynch has a few questions.

25 SENATOR FURNARI: Mr. Chairman, may I ask

1 that the request for discovery that the witness has
2 talked about be made part of the record? I mean
3 inasmuch as these seem to fly directly in the face of
4 the testimony of Mr. Fahy who indicated that consent
5 search documentation was never requested. I'd like to
6 make that a part of the record.

7 SENATOR GORMLEY: Okay, fine.

8 MR. BUCKMAN: I brought with me a copy of
9 our --

10 SENATOR GORMLEY: And the State's response,
11 yes.

12 MR. BUCKMAN: I brought a copy of our
13 September 30th, 1993 request to then Assistant
14 Prosecutor Brent Hopkins requesting consent-to-search
15 data. Certainly the numerous other requests are in the
16 record of Soto. Again, I would direct your attention
17 to my cross-examination of Lieutenant Madden. I
18 believe I raised the issue again with, at that time,
19 Lieutenant Materelli and James Fyfe. One of our
20 experts talked about consent-to-search data and the
21 need to obtain it.

22 I would also point out the fact, particularly
23 in light of Mr. Fahy's testimony, because I had the
24 occasion while waiting to testify here to review some
25 of it, that the issue in Soto was very well defined by

1 the time we were done. The issue not was as much about
2 -- was, yes, about consent-to-search data, but the real
3 issue in Soto was the discretion, which as the Court
4 described it, which had devolved upon the general
5 trooper. And what we presented in Soto was from
6 differing angles evidence that showed that the more
7 discretion a particular trooper had, the higher the
8 stop rate of African-Americans went. To the point
9 where in some areas it was fully 50 percent of all
10 stops, not just arrests.

11 So by the time that Soto was done, it was
12 clear that we were looking for every bit, every piece
13 of documentation that tracked discretionary activities.

14 I would also point out one other thing. And
15 that is that as early as I believe 1994, and I saw it
16 recently in my review of the CD's, we had presented the
17 State with Dr. Lamberth's evaluation of individual
18 arrest rates of the troopers involved in Soto because I
19 had heard that issue mentioned some days ago. We had
20 presented that as part of our case. It was part of our
21 expert reports. The State objected in Soto to a review
22 of individual troopers's records, at which point we
23 said well, fine, if you're stipulating that what's at
24 stake is an agency policy, we'll move on. I was
25 somewhat incredulous when the State then raised on

1 appeal an objection saying that the Judge below had
2 erred because he wouldn't let them put in evidence of
3 individual trooper activities.

4 MR. WEBER: Mr. Buckman, was there a written
5 response to your September 30, 1993 written request?

6 MR. BUCKMAN: That is when the State said
7 that they thought that it was irrelevant and burdensome
8 and I have a copy of that as well.

9 MR. WEBER: Okay. If you could provide the
10 Committee with copies of those documents, I'd
11 appreciate it.

12 MR. BUCKMAN: Yes. These copies are yours.

13 MR. WEBER: Thank you.

14 SENATOR GORMLEY: Senator Lynch.

15 SENATOR LYNCH: Yes. Mr. Buckman, can we
16 also get all of the requests that you made either by in
17 letter form or by motion form for the production of
18 discovery during the whole pendency of Soto right up
19 and through August of 1999 when it was dismissed?

20 MR. BUCKMAN: Yes. I can --

21 SENATOR LYNCH: And the responses by the
22 State.

23 MR. BUCKMAN: I can provide the motions that
24 we made. You'll have to understand that in terms of
25 the six-month long trial of Soto there were a number of

1 oral motions made and I simply can't guarantee that I'm
2 going to have the time to go through the transcript --

3 SENATOR LYNCH: Well, what's in the record in
4 the proceedings themselves, we'd have to cull out
5 ourselves. I'm not holding you to that.

6 MR. BUCKMAN: Thanks.

7 SENATOR LYNCH: So as far as you're
8 concerned, there's no question, at least in the early
9 1990s, that you were seeking consent-to-search data
10 from the State?

11 MR. BUCKMAN: No, there's no question at all.

12 SENATOR LYNCH: And this business that we've
13 been hearing testimony about that Soto was not about
14 consent to search but it was about stop data, was
15 simply the product of the fact that it was only the
16 stop data that you were able to get any access to.

17 MR. BUCKMAN: That's correct. And even the
18 stop data, I mean as early as -- certainly by January
19 1997 from my review of the CD's, the State was aware
20 from its own study that the stop data that they then
21 had was consistent with what we had proven in Soto. So
22 we were never provided with that report as well.

23 SENATOR LYNCH: But you knew all along that
24 the smoking gun was always the consent-to-search data?

25 MR. BUCKMAN: Well, we knew all along that

1 that was an important indicator of trooper discretion.

2 SENATOR LYNCH: Right.

3 MR. BUCKMAN: And we looked for it. I mean
4 the consent-to-search data became an issue, as you'll
5 see in our letter, because with great fanfare the
6 Attorney General's Office, then under Attorney General
7 Del Tufo, as well as the State Police, then under
8 Colonel Dintino, issued a new SOP in 1990 addressing
9 the issues of consent to search which, among other
10 things, promulgated this consent-to-search data form.
11 It was right there as part of the State Police
12 documents that they were supposed to start collecting
13 consent-to-search data on what appeared to be a
14 computerized form.

15 SENATOR LYNCH: And so for what period were
16 you seeking the consent-to-search data?

17 MR. BUCKMAN: Well, we were seeking consent-
18 to-search data from 1988 until 1991. However, there
19 were some studies done during the course of Soto, if I
20 recall, that opened it up somewhat and we were looking
21 forward even into '93 and '94.

22 SENATOR LYNCH: And did you later during the
23 Soto hearing ask for more updated data on consent-to-
24 search?

25 MR. BUCKMAN: Well, it wasn't so much that we

1 asked for updated data, we continually -- it is my
2 recollection said we'd like to see this consent-to-
3 search data. Where is it? Who knows where it is?
4 And, of course, we now know that it was essentially in
5 a few drawers and was easily obtainable. But we were
6 told that it could not be -- it could not be located.
7 I mean there were -- during Soto, particularly as we
8 look over these CD's, there were a number of documents
9 that we asked for and critical documents that we
10 requested that we were told did not exist and number
11 one, we were either able to independently prove their
12 existence in Soto, where now we know that they did
13 exist.

14 SENATOR LYNCH: Let's try to stick to the
15 question itself if you can. You've sat here and
16 listened to most of the testimony in these proceedings?

17 MR. BUCKMAN: No, I haven't.

18 SENATOR LYNCH: Did you listen to Mr. Rover's
19 testimony?

20 MR. BUCKMAN: I listened to parts of it.

21 SENATOR LYNCH: Did you understand what his
22 role was when he was brought in by First Assistant
23 Waugh at that time?

24 MR. BUCKMAN: Well, I can't say that -- I
25 understand his role from reviewing the CD's.

1 SENATOR LYNCH: Did you look at the
2 underlying documents that apparently were in Waugh's
3 possession from the time he came onboard -- or that he
4 accumulated from the time he came onboard in the end of
5 1996 through the time he left in '99?

6 MR. BUCKMAN: I'm not sure what you're
7 referring to. If you could ask me about what documents
8 I reviewed. I mean --

9 SENATOR LYNCH: Well, information that he was
10 communicating along to the Department of Justice.

11 MR. BUCKMAN: Yes.

12 SENATOR LYNCH: In your mind was all of that
13 discoverable?

14 MR. BUCKMAN: Oh, yeah. I absolutely think
15 that all of that material was discoverable and should
16 have been provided to us, in particular consent-to-
17 search data. In particular the draft of the early 1997
18 letter to Loretta King where they admit that the stop
19 data, what remains is consistent essentially with Soto.
20 And then the final draft eliminated that point. Those
21 things in particular stuck out in my mind.

22 SENATOR LYNCH: If you knew that data was in
23 the Division of Criminal Justice all along, would you
24 have filed some motion for sanctions?

25 MR. BUCKMAN: Well, I certainly would have

1 filed a motion with the Appellate Division to send the
2 matter back to the trial level to supplement the
3 record. I certainly would have seriously considered a
4 motion for sanctions.

5 SENATOR LYNCH: At the time of the oral
6 argument on the -- the telephonic oral argument on
7 March the 16th, 1999, was there as part of this
8 discussion about the politics of this, was there
9 reference to the recent articles by the *Star Ledger*
10 about their attempts to retrieve information and also
11 of the Department of Justice inquiry or investigation
12 and the announcement of their review team, et cetera?

13 MR. BUCKMAN: No, I don't think that we
14 discussed that. At least I don't recall it.

15 SENATOR LYNCH: Sergeant Gilbert testified
16 that -- I believe it was confirmed in the depositions,
17 that the so-called blue book of documents that he had
18 accumulated was put together and turned over on March
19 the 15th, 1999. Have you had an opportunity to review
20 that blue book?

21 MR. BUCKMAN: Yes. It was purportedly --
22 I've seen it on CD's and I've had the occasion to
23 depose Sergeant Gilbert myself.

24 SENATOR LYNCH: Was everything in that blue
25 book discoverable?

1 MR. BUCKMAN: I certainly believe so. I
2 think it was directly relevant to the issues in Soto.
3 One, you have a memo from the point person looking into
4 the issue of racial profiling that says I've looked
5 over the data and they do not look good. Certainly
6 that is directly relevant, I think, from the standpoint
7 of Brady v. Maryland, from our own discovery rules in
8 this state and ethically.

9 SENATOR LYNCH: And that was as early as
10 1996?

11 MR. BUCKMAN: That's correct.

12 SENATOR LYNCH: No further questions.

13 SENATOR GORMLEY: Okay. Scott.

14 MR. WEBER: Mr. Buckman, just one follow-up
15 question.

16 The December 30th, 1993 letter that you sent
17 to Brent Hopkins, he was an Assistant County Prosecutor
18 in Gloucester County, correct?

19 MR. BUCKMAN: That's correct.

20 MR. WEBER: Did you make similar requests to
21 any representatives from the Attorney General's Office,
22 Mr. Fahy, or anyone else requesting consent-to-search
23 form data?

24 MR. BUCKMAN: I am certain that during the
25 course of Soto we renewed on the record our request for

1 consent to search. Certainly, if I didn't specifically
2 ask Mr. Fahy, it was an issue, it was the central issue
3 or was part of the central issue of the case. I do not
4 recall how many times and on what occasions I asked for
5 consent-to-search data. I do know that I consistently
6 cross-examined State witnesses on consent-to-search
7 data and the review of it.

8 MR. WEBER: And Mr. Fahy was present when you
9 were cross-examining those witnesses, correct?

10 MR. BUCKMAN: Oh, Mr. Fahy -- yeah. Mr. Fahy
11 was lead counsel by that point.

12 MR. WEBER: And Mr. Fahy was also the
13 individual who would have opposed any motions that you
14 made orally for discoverable information such as
15 consent-to-search information, correct?

16 MR. BUCKMAN: Yes, sir.

17 MR. WEBER: Nothing further, Mr. Chairman.

18 SENATOR GORMLEY: Okay. Senator Robertson.

19 SENATOR ROBERTSON: Thank you, Mr. Chairman.

20 The offenses that were alleged as part of the
21 criminal indictments of the defendants in Soto took
22 place between the period of 1988 and 1991?

23 MR. BUCKMAN: That's correct, sir.

24 SENATOR ROBERTSON: What is your
25 understanding of the discovery responsibilities of the

1 State and its respective data that was assembled
2 regarding troopers' actions subsequent to 1991?

3 MR. BUCKMAN: Well, my understanding is, in
4 particular, when we are studying this issue -- well,
5 let me -- to try and say it succinctly under Brady v.
6 Maryland, anything would be favorable to the defense
7 and the defense's position should have been provided,
8 particularly in a criminal proceeding. Under our rules
9 of discovery, those materials, even subsequent, should
10 have been provided. And certainly there's an
11 independent ethical obligation not only to an
12 adversary, but to a Court to provide material that may
13 impact on an attorney's position in front of that
14 Court.

15 Now, what we were studying in Soto was
16 trooper discretion and how it impacted on stop rates.
17 And although our stops were from 1988 until 1991, of
18 course, much of the data that we had to assemble to
19 look at trooper discretion came later than that. For
20 instance, our own violator survey and population survey
21 on the Turnpike was conducted in 1993. So we had to --
22 we had to just by, if for no other word, default look
23 at statistics impacting on trooper discretion even
24 after 1991.

25 SENATOR ROBERTSON: Okay. And the period of

1 study even from your own expert was for a period
2 subsequent to 1991, correct?

3 MR. BUCKMAN: That's correct. Because we
4 were looking at violator studies and population studies
5 taken in 1993.

6 SENATOR ROBERTSON: And the Court found in
7 Soto that that information on periods of time
8 subsequent to 1991 was, in fact, relevant?

9 MR. BUCKMAN: Yes.

10 SENATOR ROBERTSON: And --

11 MR. BUCKMAN: Because -- I'm sorry. I can
12 expand on that if you'd like. I could tell you why.

13 SENATOR ROBERTSON: Yeah, because, yes.

14 MR. BUCKMAN: Because essentially it
15 established the benchmark. I mean essentially what we
16 proved was that, number one, something -- that any
17 given time African-Americans were approximately 13.5
18 percent of the population on the Turnpike and lo and
19 behold we also proved something very shocking which was
20 that 98.9 percent of the people on the Turnpike were
21 violating the law at any given time and eligible to be
22 stopped and yet depending on the area of the Turnpike
23 that we looked at, African-Americans were being stopped
24 between rates of 34 to 50 percent.

25 SENATOR ROBERTSON: Was any attempt made to

1 ascertain what the average speed was of those who were
2 stopped?

3 MR. BUCKMAN: Anecdotally, yes. For
4 instance, the great bulk -- the State tried to argue on
5 appeal that well, maybe troopers stopped the most
6 egregious violators. And the fact of the matter is is
7 that most people who were stopped, particularly
8 African-Americans and particularly south of Exit 3,
9 which was the real epicenter of profiling, didn't even
10 get tickets, they got warnings. They got -- 63 percent
11 of those people got warnings. So the egregious
12 violators weren't being stopped.

13 SENATOR ROBERTSON: I have no further
14 questions.

15 SENATOR GORMLEY: Thank you.

16 We are going to take a 20-minute break and
17 then we'll be back and Judge Waugh will be the next
18 witness.

19 (Off the record)

20 SENATOR GORMLEY: Members be seated.

21 Judge, will you please stand.

22 A L E X A N D E R P. W A U G H, J R., SWORN

23 SENATOR GORMLEY: Mr. Chertoff.

24 MR. CHERTOFF: Thank you, Mr. Chairman.

25 Judge Waugh, good afternoon.

1 HONORABLE WAUGH: Good afternoon.

2 MR. CHERTOFF: Judge Waugh, you were
3 Executive Assistant Attorney General at the Department
4 of Law and Public Safety during what period of time?

5 HONORABLE WAUGH: From I believe late August
6 or early September of 1993 until January of 1998.

7 MR. CHERTOFF: Now, focusing your attention
8 on the period of time from late 1993 through 1996. Did
9 you supervise Deputy Assistant -- I'm sorry, Deputy
10 Attorney General Jack Fahy in connection with his
11 handling of the Soto litigation?

12 HONORABLE WAUGH: I wouldn't say that I
13 supervised him, I would say that he came to me from
14 time to time and asked me questions. And when he
15 wanted to get some information through to the Attorney
16 General, he would come and do that.

17 MR. CHERTOFF: Now, at that period of time
18 Mr. Fahy was -- was he attached to the Office of the
19 Attorney General?

20 HONORABLE WAUGH: My recollection is that he
21 was in Legal Affairs I think as long as Legal Affairs
22 existed, but at some point he was transferred to the
23 Division of Criminal Justice and went to the State
24 Grand Jury. So I'm not sure exactly what period of
25 time he was where.

1 MR. CHERTOFF: When he was at Legal Affairs,
2 was that part of the Office of the Attorney General?

3 HONORABLE WAUGH: Yes.

4 MR. CHERTOFF: And to whom did Legal Affairs
5 report?

6 HONORABLE WAUGH: It depends on the period of
7 time.

8 MR. CHERTOFF: '93 to '96.

9 HONORABLE WAUGH: '93 to '96, generally to --
10 I think when Fred DeVesa was Acting Attorney General,
11 the Legal Affairs Director reported to me. When
12 Attorney General Poritz became Attorney General, I
13 think there was some question as to where the Legal
14 Affairs Director reported and my sense was that she
15 more often went to the Attorney General or the First
16 Assistant Attorney General or would sometimes come to
17 me, depending on what the issue was.

18 MR. CHERTOFF: To whom did you report during
19 '93 to '96?

20 HONORABLE WAUGH: The Attorney General.

21 MR. CHERTOFF: Now, are you familiar with the
22 Soto case?

23 HONORABLE WAUGH: Yes.

24 MR. CHERTOFF: Actually, were you here this
25 morning when we heard testimony from Mr. Buckman

1 concerning certain requests for discovery in that case
2 that related to consent-to-search documents and
3 information?

4 HONORABLE WAUGH: Yes, I was.

5 MR. CHERTOFF: Do you recall during the time
6 that you were Executive Assistant Attorney General from
7 '93 on, being aware of these requests for information?

8 HONORABLE WAUGH: No.

9 MR. CHERTOFF: Did Mr. Fahy ever come to you
10 about any discovery issues with respect to Soto?

11 HONORABLE WAUGH: Not that I recall.

12 MR. CHERTOFF: To whom did Mr. Fahy report on
13 those issues?

14 HONORABLE WAUGH: Well, let me try to
15 explain. Mr. Fahy was a Deputy Attorney General in the
16 Division of Criminal Justice, I believe, and that he
17 was on the Criminal Justice payroll. He was, for a
18 long period of time, assigned to Legal Affairs. He was
19 asked to work on the Soto appeal because the County
20 Prosecutor in whatever county -- I guess it was
21 Gloucester County, needed assistance. I don't know
22 exactly who he reported to, whether there was someone
23 in Criminal Justice that he reported to for Criminal
24 Justice purposes, but for Legal Affairs purposes, as
25 long as he was in Legal Affairs, he would have reported

1 to the Legal Affairs Director.

2 MR. CHERTOFF: And who --

3 HONORABLE WAUGH: But as I said --

4 MR. CHERTOFF: And who was -- well, here's my
5 question. I will be more specific. With respect to
6 decisions about Soto, who did Mr. Fahy talk it over
7 with? Who was his superior?

8 HONORABLE WAUGH: Well, I think sometimes he
9 talked it over with the Prosecutor's Office. Sometimes
10 he would come to me. And I don't know whether there
11 were other people that he went to.

12 MR. CHERTOFF: Did he have the authority to
13 make a decision about what discovery would be turned
14 over and not turned over on his own?

15 HONORABLE WAUGH: As far as I know he did.
16 He did -- let me say he did as far as it concerned me.
17 Whether there was someone else he was talking to, I
18 don't know.

19 MR. CHERTOFF: And you have no recollection
20 of the issue of discovery requests for consent-to-
21 search data coming up from Mr. Fahy?

22 HONORABLE WAUGH: No.

23 MR. CHERTOFF: Now, there came a point in
24 time that you became aware of the fact that there were
25 in addition to Soto other challenges brought by various

1 attorneys in other counties related to the issue of
2 racial profiling, correct?

3 HONORABLE WAUGH: Yes.

4 MR. CHERTOFF: And you became aware as well
5 that in some instances rather than litigate those
6 challenges, cases were dismissed, correct?

7 HONORABLE WAUGH: I don't recall that.

8 MR. CHERTOFF: Well, for example --

9 HONORABLE WAUGH: I know there was a case --
10 if you're talking about the Middlesex County case,
11 there was a case in Middlesex County where there was a
12 motion to suppress that was denied and then I believe
13 the County Prosecutor dismissed some or all of the
14 cases. If that's what you're talking about, yes, I was
15 aware of that.

16 MR. CHERTOFF: And also in Hunterdon County,
17 was there not a request or a discussion with the
18 Hunterdon County Prosecutor that she dismiss two cases
19 involving first-degree narcotics crimes because of the
20 pendency of litigation concerning selective
21 prosecution?

22 HONORABLE WAUGH: I believe at my deposition
23 you showed me a document that related to that.

24 MR. CHERTOFF: And the document indicated
25 that, in fact, there had been a meeting with Mr. Fahy

1 and the Prosecutor about that issue, right?

2 HONORABLE WAUGH: I believe so, yes.

3 MR. CHERTOFF: And you received a copy of
4 that, right?

5 HONORABLE WAUGH: I believe so.

6 MR. CHERTOFF: Do you remember any discussion
7 about it?

8 HONORABLE WAUGH: No.

9 MR. CHERTOFF: Is it fair to say your regular
10 practice though would have been to review documents and
11 memos you received like this, right?

12 HONORABLE WAUGH: Oh, yes.

13 MR. CHERTOFF: Is it fair to say, therefore,
14 that by the latter part of 1996 you were aware that the
15 issue of challenges to racial profiling were
16 sufficiently serious that in some instances it had
17 caused cases to be dismissed?

18 HONORABLE WAUGH: I knew that there were
19 challenges to racial profiling and I knew that cases
20 were dismissed. My recollection from the Middlesex
21 County case was that there was some unhappiness in the
22 Attorney General's Office that those cases were
23 dismissed.

24 MR. CHERTOFF: You'd agree --

25 HONORABLE WAUGH: I believe by the Prosecutor

1 and I -- you could tell me when it was. If it was when
2 Fred DeVesa was still Acting Attorney General, I
3 believe my recollection is that he was unhappy that
4 they had been dismissed without consulting him. As far
5 as the Hunterdon County cases, I don't recall.

6 MR. CHERTOFF: Would you agree with me though
7 in general the notion of dismissing cases in order to
8 avoid a potential legal challenge is a significant
9 matter for the Office of the Attorney General? It's
10 not a lightly-taken decision, right?

11 HONORABLE WAUGH: Yes.

12 MR. CHERTOFF: Now, you became aware in
13 approximately March of 1996 that Judge Francis rendered
14 is decision in Soto, correct?

15 HONORABLE WAUGH: Yes.

16 MR. CHERTOFF: Did you read the decision?

17 HONORABLE WAUGH: Yes, I did.

18 MR. CHERTOFF: And you had discussions about
19 it with then Attorney General Poritz and others?

20 HONORABLE WAUGH: Yes.

21 MR. CHERTOFF: Is it fair to say that in
22 dealing with the question whether that decision ought
23 to be appealed, a number of people within the
24 Department weighed in on the discussion?

25 HONORABLE WAUGH: Yes.

1 MR. CHERTOFF: Who were the principal people
2 who weighed in on that in early to mid-1996?

3 HONORABLE WAUGH: Well, I know that the
4 Attorney General, the First Assistant Attorney General
5 were involved. I believe that the Attorney General
6 asked people in the Division of Criminal Justice,
7 particularly Ann Paskow who was in charge of the
8 Appellate section, and I believe maybe Debbie Stone. I
9 think she was -- she may have been involved. And
10 Jaynee LaVecchia who was the Director of the Division
11 of Law and whether one of the two AAG's in charge of
12 appeals in the Division of Law looked at it or not, I
13 don't know.

14 MR. CHERTOFF: Now, was there an issue of
15 some immediate urgency in early 1996 concerning filing
16 a motion for leave to appeal within a certain time
17 frame?

18 HONORABLE WAUGH: Yes.

19 MR. CHERTOFF: So that it was necessary to
20 reach at least a preliminary determination about filing
21 the motion for leave to appeal to preserve the right to
22 appeal down the road, right?

23 HONORABLE WAUGH: Right. My recollection of
24 the Appellate rules is that a motion for leave to
25 appeal has to be filed 15 days from the date of the

1 order being appealed.

2 MR. CHERTOFF: Now, am I also correct that
3 one of the issues being debated at the time was whether
4 the Judge was correct in his reliance on statistics
5 relating to stops as a basis for establishing
6 sufficient disparate impact to move forward with the
7 case?

8 HONORABLE WAUGH: As a general proposition,
9 yes. But I think it was more complicated than that.

10 MR. CHERTOFF: Why don't you lay out what you
11 understood as of that period of time where the issues
12 that were raised in criticism or objection to the
13 Judge's decision.

14 HONORABLE WAUGH: I think there were two
15 principal objections. The first was a legal one that
16 he improperly shifted the burden of proof from the
17 defendants to the State. And the second was not so
18 much -- or not at all, actually, as I remember, with
19 the statistics on the stops but with the user and
20 violator survey that was offered by the defense that as
21 I understood it the State's expert had criticized as
22 being not valid.

23 MR. CHERTOFF: Now, just to make sure we're
24 clear, although I think we've covered this. The user
25 and violator survey is what establishes the baseline

1 against which one measures the stop data to determine
2 whether there's a disparity in stopping.

3 HONORABLE WAUGH: That's the theory.

4 MR. CHERTOFF: And there was criticism
5 rendered about the particular way in which the Public
6 Defender's Office in the Soto case developed the
7 violator and user baseline.

8 HONORABLE WAUGH: Correct.

9 MR. CHERTOFF: And that was one of the issues
10 for the appeal.

11 HONORABLE WAUGH: Correct.

12 MR. CHERTOFF: Now, I take it the motion for
13 leave to appeal was filed within a very limited time
14 frame set forth, right?

15 HONORABLE WAUGH: Right. Of course, you
16 appeal an order, not a decision, so there probably was
17 some period of time between when Judge Francis issued
18 his opinion and when he entered an order. I don't know
19 what that period of time was. There may have been more
20 than the 15 days. Or I mean sometimes Judges will send
21 an order with their opinion. I just don't remember.
22 But it was not the 45 days that you would have to
23 appeal the final judgment.

24 MR. CHERTOFF: What I want to be clear about
25 though is that decision was a decision that had to be

1 reached within a fairly short period of time, otherwise
2 you'd simply lose your right to even appeal.

3 HONORABLE WAUGH: Yes, with the caveat that
4 if you didn't file -- at one point there was a
5 discussion of whether we should file for leave to
6 appeal or whether the cases should be, some or other,
7 dismissed and an appeal as of right should be taken.
8 And the advice that came from I believe Ann Paskow was
9 that it would be better to file the motion for leave to
10 appeal. But if you had missed the 15-day period, that
11 wouldn't have meant that you could never appeal.

12 MR. CHERTOFF: But what I'm driving at, and
13 correct me if I'm wrong, is that the decision that was
14 made at this period of time was really driven by the
15 need to position the case procedurally for appeal and
16 not a final conclusion about the merits of the appeal?

17 HONORABLE WAUGH: Time was a factor that had
18 to be -- the decision had to be made within a limited
19 period of time.

20 MR. CHERTOFF: Now, there came a point in
21 time that Attorney General Poritz became -- was
22 nominated and was appointed to the Supreme Court.

23 HONORABLE WAUGH: right.

24 MR. CHERTOFF: And then Mr. Verniero became
25 Attorney General, correct?

1 HONORABLE WAUGH: Correct.

2 MR. CHERTOFF: Were you involved in the
3 transition process?

4 HONORABLE WAUGH: Not as much as I had been
5 in past transitions and I think that's largely because
6 the other two transitions I went through were from one
7 administration to another and this was a sort of a
8 within an administration and it wasn't -- there wasn't
9 as much time and I don't think it was done as
10 elaborately as it had been in the past. I might have
11 been asked or I may have upon my own prepared some
12 briefing memos.

13 MR. CHERTOFF: Do you know whether either in
14 writing or orally you communicated with Attorney
15 General Verniero during this initial phase about the
16 Soto?

17 HONORABLE WAUGH: I don't recall having done
18 that.

19 MR. CHERTOFF: Do you know whether anybody
20 else did?

21 HONORABLE WAUGH: I don't know.

22 MR. CHERTOFF: Now, I want to direct your
23 attention to November of 1996. Did there come a point
24 in time you got a telephone call from the Department of
25 Justice in Washington?

1 HONORABLE WAUGH: Yes.

2 MR. CHERTOFF: And who called you and what
3 was the call?

4 HONORABLE WAUGH: There was an attorney
5 named --

6 MR. CHERTOFF: Rosenbaum?

7 HONORABLE WAUGH: Rosenbaum, yeah. Because
8 there's an attorney that I deal with that has a similar
9 name. I get them confused. Mr. Rosenbaum called the
10 office and for a reason I'm not entirely clear on, I
11 was asked to take the call. And the reason I say that
12 is I don't know whether no one else was there or
13 everyone else was busy. I took the call and he
14 explained that the Civil Rights Division and the
15 Department of Justice was looking into the area of
16 racial profiling in a number of states. They were
17 aware of the Soto decision and they wanted to take a
18 look at New Jersey.

19 MR. CHERTOFF: And --

20 HONORABLE WAUGH: He told me what their
21 statutory authority was and sort of outlined how he
22 envisioned the process.

23 MR. CHERTOFF: What did you say?

24 HONORABLE WAUGH: I said I will communicate
25 that to the Attorney General.

1 MR. CHERTOFF: Did you do that?

2 HONORABLE WAUGH: Yes.

3 MR. CHERTOFF: Tell us about the conversation
4 you had with Mr. Verniero.

5 HONORABLE WAUGH: I don't have a dialogue
6 recollection of that and I don't even know -- it was
7 probably the same day because I think if it hadn't
8 been, I would have written a memo. I told him
9 basically what the telephone call was.

10 MR. CHERTOFF: And what did he say?

11 HONORABLE WAUGH: I think he was concerned as
12 to why they were looking at New Jersey. Said he'd like
13 to go down and meet with them.

14 MR. CHERTOFF: Did he indicate to you he felt
15 this was an important matter?

16 HONORABLE WAUGH: Yes.

17 MR. CHERTOFF: Did he tell you he was
18 concerned that the matter not be described as an
19 investigation?

20 HONORABLE WAUGH: I know that at some point
21 there was a preference to call it something else. I
22 don't know whether it was at that initial conversation
23 or some other time.

24 MR. CHERTOFF: Within a very short period --
25 well, let me ask you this. Did Mr. Verniero, either

1 initially or very shortly thereafter, indicate to you
2 that he wanted you to request the Department of Justice
3 to meet and to defer sending a letter confirming that
4 there was an investigation?

5 HONORABLE WAUGH: Yes.

6 MR. CHERTOFF: Why did he want to avoid that
7 letter and avoid that description?

8 HONORABLE WAUGH: Well, I don't know that he
9 explained that. I mean as a general proposition
10 agencies of state government don't like to be
11 investigated. And I know he wanted to go down and talk
12 to them about what they were interested in. And I
13 think he wanted to have the letter held until he went
14 down and did that and they decided what was going to
15 happen.

16 MR. CHERTOFF: Is it fair to say that again
17 from your discussion with him at this initial point,
18 that you understood he was, you know, reasonably -- I'm
19 not saying it's unreasonable, quite reasonably
20 concerned about the possibility of having any
21 indication on the record that there was actually an
22 investigation of his agency by the U.S. Civil Rights
23 Division?

24 HONORABLE WAUGH: I don't think that was
25 articulated, but --

1 MR. CHERTOFF: Was that clear to you?

2 HONORABLE WAUGH: Well, he wanted them to
3 hold the letter until we went down and met with them.

4 MR. CHERTOFF: Did you go down with Mr.
5 Verniero to meet with the Department of Justice?

6 HONORABLE WAUGH: I went down to Washington
7 and I met with the Department of Justice with Mr.
8 Verniero and I still to this day don't remember how I
9 got there.

10 MR. CHERTOFF: Well, do you remember who went
11 with you besides Mr. Verniero?

12 HONORABLE WAUGH: I believe Jack Fahy went
13 and there was a trooper. And I know that when we
14 arrived at the Justice Department, we arrived in a car
15 driven by a state trooper.

16 MR. CHERTOFF: In anticipation of the
17 meeting, which I will tell you occurred on December
18 12th, 1996, was there a meeting a couple days earlier,
19 three days earlier, at the Attorney General's Office to
20 prepare for the meeting?

21 HONORABLE WAUGH: I believe there was.

22 MR. CHERTOFF: And in that meeting did Mr.
23 Fahy brief the Attorney General as to what the status
24 was with respect to the Soto case and the other
25 profiling cases?

1 HONORABLE WAUGH: I believe he did.

2 MR. CHERTOFF: Do you remember, in fact,
3 whether he prepared a memo that set forth some of the
4 facts relating to Soto?

5 HONORABLE WAUGH: I think I've seen such a
6 memo.

7 MR. CHERTOFF: Now, in that conversation,
8 among other things, or as of that conversation, were
9 you aware that there was a Maryland case that had been
10 brought involving State Police in Maryland that had
11 resulted in a consent decree?

12 HONORABLE WAUGH: I don't remember being
13 aware of the Maryland case at that time. I know from
14 having looked through my file that there must have been
15 a press clipping in the clippings that were done every
16 day in the Attorney General's Office that I ripped out.
17 And my sense was that that clipping came into my
18 possession in '97, but I could be wrong. I mean it's
19 in my file and it probably has a date on it.

20 MR. CHERTOFF: Well, didn't Mr. Fahy in a
21 memo that went to you, among others, and the Attorney
22 General make reference to the Maryland case?

23 HONORABLE WAUGH: He may have. You asked me
24 if I remembered and I didn't remember.

25 MR. CHERTOFF: Well, let me refresh your

1 memory with Page 77 of your deposition. At Line 21 the
2 question was: "Did you become aware in this period of
3 time, again preparing for the December 12th meeting,
4 that the issue of profiling had been raised in other
5 states, particularly Maryland and Illinois?"

6 The Witness: "I believe I knew that
7 generally and I don't think that the Department of
8 Justice that Mr. Rosenbaum said specifically what other
9 states they were looking at, but he said that they were
10 looking at other states."

11 Question: "And if I look, if I show you the
12 Page 3 of this memo to you, last paragraph, does that
13 refresh your memory that Jack Fahy had pointed out to
14 you this was ongoing with other states?"

15 Answer: "That's what it says."

16 Is that correct? That refreshes --

17 HONORABLE WAUGH: I have no reason to dispute
18 that.

19 MR. CHERTOFF: Now --

20 HONORABLE WAUGH: But what I'm not clear of
21 is whether we knew at that time that there was a case
22 in Maryland or that Maryland had entered into the
23 consent decree.

24 MR. CHERTOFF: Did Mr. Fahy tell you at this
25 preparatory meeting that he had actually met with

1 officials from Maryland on this case?

2 HONORABLE WAUGH: I don't recall that. I
3 don't recall that he did.

4 MR. CHERTOFF: Did you in this meeting
5 discuss the decision in the Gloucester County case in
6 related memos?

7 HONORABLE WAUGH: I would assume that we did,
8 yes.

9 MR. CHERTOFF: So it's clear to you that as
10 of that point at least the Attorney General and the
11 others participating were aware of the Gloucester
12 County case and generally what the litigation status
13 was with respect to racial profiling?

14 HONORABLE WAUGH: Yes.

15 MR. CHERTOFF: Now, what was the substance of
16 the meeting -- first of all, who did you meet with at
17 the Department of Justice, if you recall?

18 HONORABLE WAUGH: There was Loretta King, who
19 was I believe at the time the highest-ranking person
20 because I think the person in charge had left or was on
21 his way out. There was Mr. Rosenbaum. There was an
22 attorney named Posner. And I believe there was another
23 attorney.

24 MR. CHERTOFF: What was the discussion at the
25 meeting? What did the Attorney General -- what did

1 Attorney General Verniero say and what was said in
2 response?

3 HONORABLE WAUGH: After general introductions
4 I think -- I forget whether he started or they started,
5 they would have said what they were doing, what they
6 were interested in. I think he wanted to tell them
7 about the Soto appeal and why it was being appealed and
8 what he viewed as the issues. He said that he wanted
9 to cooperate with them.

10 MR. CHERTOFF: Now, did he indicate that he
11 was very concerned again about not having this process
12 be described as an investigation?

13 HONORABLE WAUGH: I don't really remember
14 that being discussed but it may well have been.

15 MR. CHERTOFF: Well again, let me go back to
16 your deposition at Page 86, Line 12. "My recollection
17 is, and again I don't remember specifically, you know,
18 how -- how it took place, is that the Attorney General
19 I think did want to, you know, no one -- no one -- no
20 state government wants to be investigated and I think
21 that he was interested I guess in having it called
22 something other than an investigation." Was that
23 correct?

24 HONORABLE WAUGH: Yes.

25 MR. CHERTOFF: And did he communicate that to

1 the federal people at the meeting?

2 HONORABLE WAUGH: If I said that he did in
3 his deposition, I would stand by my deposition
4 testimony.

5 MR. CHERTOFF: Did he say at the meeting that
6 he felt this was an important issue and that's why he
7 came down personally?

8 HONORABLE WAUGH: Yes.

9 MR. CHERTOFF: So it's clear to you that he
10 was focused on this issue.

11 HONORABLE WAUGH: Yes.

12 MR. CHERTOFF: And he was able to talk about
13 Soto with some degree of knowledge about the issues in
14 the appeal?

15 HONORABLE WAUGH: Yes.

16 MR. CHERTOFF: Did he do most of the talking
17 on behalf of the State, by the way?

18 HONORABLE WAUGH: I would say he probably did
19 a lot of the talking. He may have asked Jack Fahy to
20 answer some questions.

21 MR. CHERTOFF: Now, did he make any
22 representations at that meeting concerning what he had
23 been told by the State Police concerning profiling?

24 HONORABLE WAUGH: It's quite -- I don't
25 remember dialogue from that meeting. It's quite

1 possible that he told them about some steps that had
2 been taken after the Soto decision was issued and that
3 the State Police were -- assured him that there was
4 certainly no official approval of profiling, quite the
5 contrary. It was not approved and that State Police
6 was on the lookout to make sure it didn't happen.

7 MR. CHERTOFF: Now, after this meeting or in
8 the course of this meeting did the Department of
9 Justice indicate they wanted to start receiving certain
10 information from the State of New Jersey?

11 HONORABLE WAUGH: Yes.

12 MR. CHERTOFF: Did they agree, by the way,
13 not to send a letter describing this as an
14 investigation?

15 HONORABLE WAUGH: I have to assume so because
16 they didn't send the letter. And they gave us -- and
17 sort of a continued answer to your first question, they
18 gave us a document that was sort of in blank and said
19 this is the kind of document, documents we usually look
20 for in something like this. Why don't you take it back
21 and look at it or something like that.

22 MR. CHERTOFF: And when you left, were you
23 essentially assigned by Attorney General Verniero to
24 take charge of this matter and report it directly to
25 him?

1 HONORABLE WAUGH: That's probably a fair
2 statement.

3 MR. CHERTOFF: And you then supervised who in
4 terms of carrying out this project?

5 HONORABLE WAUGH: I started working with Jack
6 Fahy and then there came a time when I think Jack Fahy
7 wanted to get out of the issue because he had by that
8 time gone to the Division of Criminal Justice, was
9 working at the State Grand Jury. That was a very
10 interesting responsible position for him. It was a
11 good career move. And I think after how ever many
12 years, he was sort of tired of working on this one
13 issue. So then the question became who was going to
14 take his place.

15 MR. CHERTOFF: So is it fair to say that at
16 that point in time the chain became first Fahy and then
17 George Rover, to you, to Attorney General Verniero?

18 HONORABLE WAUGH: Yes.

19 MR. CHERTOFF: Now, in connection with this
20 discussion at the Department of Justice, was there any
21 discussion when you were there about having
22 communication be oral as much as possible as opposed to
23 in writing?

24 HONORABLE WAUGH: I don't remember anything
25 like that.

1 MR. CHERTOFF: Now, when you came back from
2 the meeting, did you at some point get this blank
3 sample document request and furnish it to Mr. Fahy?

4 HONORABLE WAUGH: Yeah. I believe I sent him
5 a memo asking him not so much to contact -- I guess I
6 told him not to contact the State Police yet but to
7 give me an idea from his knowledge and experience in
8 handling the case, what sort of documentation there was
9 and how easy or hard it would be to get.

10 MR. CHERTOFF: Why did you tell him
11 specifically not to contact the State Police right
12 away?

13 HONORABLE WAUGH: What was the date of the
14 memo?

15 MR. CHERTOFF: It was December 20th, 1996.

16 HONORABLE WAUGH: I believe that there was
17 going to be a meeting subsequent to that -- I see
18 December 24th written on the board over here and that I
19 think is the date there was a meeting with the
20 Superintendent and I think that the reason I didn't ask
21 him to contact the State Police is because we were
22 going to bring it up at that meeting.

23 MR. CHERTOFF: And did you attend the meeting
24 on December 24th?

25 HONORABLE WAUGH: Yes.

1 MR. CHERTOFF: Who was at the meeting?

2 HONORABLE WAUGH: I was, the Attorney General
3 was, Jack Fahy was, the Superintendent and I don't
4 remember who was there else from the State Police.

5 MR. CHERTOFF: And what was the discussion at
6 that meeting?

7 HONORABLE WAUGH: The Attorney General
8 related what the discussion was at the Department of
9 Justice. I think there probably was a discussion of
10 the documents, the type of documents. And I think the
11 Attorney General basically said that we would work with
12 the Department of Justice in providing the documents as
13 they asked for them.

14 MR. CHERTOFF: Now, let me ask you this. In
15 your experience before this point in time, had there
16 ever been an Civil Rights investigation of the
17 Department of Law and Public Safety or any of its
18 components that you were aware of?

19 HONORABLE WAUGH: There was -- by the time I
20 got there, there was a consent decree between the State
21 Police and the Department of Justice with respect to
22 minority and women hiring.

23 MR. CHERTOFF: And when had that been entered
24 into?

25 HONORABLE WAUGH: I know it -- well, I got

1 there in '89 and I believe it had been in place for
2 quite a while. I'm not sure exactly when.

3 MR. CHERTOFF: So it's fair to say that an
4 investigation of the State -- of the State Department
5 of Law and Public Safety by the feds is an unusual and
6 important occurrence?

7 HONORABLE WAUGH: Yes.

8 MR. CHERTOFF: And is it fair to say that it
9 commanded the personal attention of the Attorney
10 General?

11 HONORABLE WAUGH: Yes.

12 MR. CHERTOFF: Now, was that sense of
13 importance communicated at the meeting of December
14 24th? What was the discussion on the 24th? The
15 Superintendent comes in. Is it fair to say he's
16 concerned about what all this business is in
17 Washington?

18 HONORABLE WAUGH: I would say so.

19 MR. CHERTOFF: And did the Attorney General
20 express his concern as well?

21 HONORABLE WAUGH: I don't recall anyone
22 expressing concern in the sense that it was obvious.

23 MR. CHERTOFF: Did anybody talk about the
24 need to try to avoid getting into a formal
25 investigative situation by trying to provide documents

1 and be cooperative and keeping it informed?

2 HONORABLE WAUGH: The latter but I don't
3 believe there was a discussion of the former.

4 MR. CHERTOFF: Did the Attorney General
5 indicate to the Superintendent that he had been able to
6 avoid having a letter sent out that characterized this
7 as an investigation?

8 HONORABLE WAUGH: I don't have a recollection
9 of that being said but as I said, I don't remember
10 dialogue. I was aware that they weren't going to send
11 a letter and we sent a letter. I just don't remember
12 specifically.

13 MR. CHERTOFF: I now want to take you forward
14 a little bit into the new year of 1997. At that point
15 is it fair to say in terms of who you dealt with on the
16 issue of this Department of Justice investigation, you
17 reported directly to Peter Verniero?

18 HONORABLE WAUGH: Yes.

19 MR. CHERTOFF: And was it your regular --

20 HONORABLE WAUGH: I reported to Peter
21 Verniero directly for everything.

22 MR. CHERTOFF: Was it your regular practice
23 to keep him advised of any significant or material
24 development or issue with respect to racial profiling?

25 HONORABLE WAUGH: Yes.

1 MR. CHERTOFF: And you typically did that in
2 writing most of the time or orally most of the time?

3 HONORABLE WAUGH: I would -- I would say
4 probably -- I don't know how to answer that question
5 because I know I sent him a lot of memos and if I would
6 get a document that I thought he should see, I would
7 send it to him. So it's easy to count those up and see
8 how many there were. I would say that on most
9 significant issues, especially if there was a document
10 attached to it or a document that raised an issue, that
11 I would have done it in writing. But, you know, his
12 office and my office was on the same floor so we'd run
13 into each other.

14 MR. CHERTOFF: Was he, starting in January of
15 1997 and going forward the next six months, hands-on in
16 terms of being advised and participating in discussions
17 with respect to the significant events in connection
18 with the Department of Justice review?

19 HONORABLE WAUGH: I would say so, yes.

20 MR. CHERTOFF: I want to show you what we've
21 previously marked as exhibit F-26. It's OAG625 and it
22 is a draft letter. It says either January 7 or 17th,
23 1997 and it's a draft to Loretta King, which I'm
24 putting up.

25 HONORABLE WAUGH: I have it.

1 MR. CHERTOFF: Okay. I just also wanted --

2 HONORABLE WAUGH: Is it P or F-26?

3 MR. CHERTOFF: F-26.

4 HONORABLE WAUGH: Yes.

5 MR. CHERTOFF: Mr. Weber's handwriting is not
6 very good.

7 Do you recognize this document?

8 HONORABLE WAUGH: Yes, I do.

9 MR. CHERTOFF: And who prepared the initial
10 draft of this letter to Ms. King at the Department of
11 Justice?

12 HONORABLE WAUGH: I believe Jack Fahy did.

13 MR. CHERTOFF: And he sent it up to you?

14 HONORABLE WAUGH: Yes.

15 MR. CHERTOFF: And then you sent it up to Mr.
16 Verniero?

17 HONORABLE WAUGH: Yes.

18 MR. CHERTOFF: Now, the handwriting that
19 appears on the first page, there's a piece of
20 handwriting that says, "Patty, please make revisions
21 and produce another double-spaced draft." Whose
22 writing is that?

23 HONORABLE WAUGH: That's mine.

24 MR. CHERTOFF: The other writing on the page,
25 whose is that?

1 HONORABLE WAUGH: That's Attorney General
2 Verniero's -- well, wait a minute. You said most of
3 the other writing on the page is the Attorney
4 General's. I think I changed "mutually committed" to
5 "mutual commitment."

6 MR. CHERTOFF: But the writing at the top --

7 HONORABLE WAUGH: Yes.

8 MR. CHERTOFF: -- above the typing would be
9 Attorney General Verniero's?

10 HONORABLE WAUGH: That's correct.

11 MR. CHERTOFF: Now, I'm not going to take you
12 through all the handwriting. You've covered it in the
13 deposition. But I want to direct your attention
14 specifically to Page 8 of the draft.

15 HONORABLE WAUGH: Yes.

16 MR. CHERTOFF: Now, let's put Page 8 up.

17 Now, with respect to this page, you see
18 there's some typing that says, "I believe the time has
19 come to spend sufficient resources to develop and
20 conduct a trustworthy violator survey." And then the
21 paragraph continues, right?

22 HONORABLE WAUGH: Yeah.

23 MR. CHERTOFF: You see it stricken out?

24 HONORABLE WAUGH: Yes.

25 MR. CHERTOFF: And you see there's

1 handwriting instead that says, "My office is in the
2 process of developing."

3 HONORABLE WAUGH: Correct.

4 MR. CHERTOFF: Whose writing is that?

5 HONORABLE WAUGH: It's the Attorney
6 General's.

7 MR. CHERTOFF: It was Peter Verniero.

8 HONORABLE WAUGH: Yes.

9 MR. CHERTOFF: And the striking out was also
10 Mr. Verniero's, to your knowledge?

11 HONORABLE WAUGH: Yeah.

12 MR. CHERTOFF: Now, you do review this draft
13 before you sent it to Mr. Verniero?

14 HONORABLE WAUGH: Yes.

15 MR. CHERTOFF: The typed draft.

16 HONORABLE WAUGH: Yes.

17 MR. CHERTOFF: And you didn't suggest
18 striking out this language here that talks about stops
19 and remaining near the level reported in the Soto case?

20 HONORABLE WAUGH: Not that I recall. I mean
21 if I was going to suggest something like that, I would
22 have put it in brackets.

23 MR. CHERTOFF: Did he tell you why he struck
24 it out?

25 HONORABLE WAUGH: No.

1 MR. CHERTOFF: At this time were you aware --
2 again, you were aware there was a pending appeal with
3 respect to the Soto matter.

4 HONORABLE WAUGH: Yes.

5 MR. CHERTOFF: Did you give any consideration
6 to whether the existence of information concerning a
7 number of stops in the same geographic location and was
8 more current than the data that was underlying the Soto
9 case, whether that was something that needed to be made
10 available to the defense or potentially to the Court in
11 connection with the litigation?

12 HONORABLE WAUGH: No.

13 MR. CHERTOFF: Did you ever discuss that with
14 anybody?

15 HONORABLE WAUGH: No.

16 MR. CHERTOFF: As you sit here now, do you
17 have a sense of perhaps there was something that at
18 least should have been considered in terms of
19 continuing discovery obligations or disclosure to the
20 Court?

21 HONORABLE WAUGH: Well, I heard Mr. Buckman's
22 testimony and I heard Mr. Buckman take the position
23 that it should have been. I'm not a criminal
24 practitioner, I've never -- I've argued a few criminal
25 appeals just because when I was there I wanted to argue

1 something. I'm not familiar with criminal practice and
2 procedures, so I don't know the answer to that
3 question.

4 MR. CHERTOFF: Do you know whether it was
5 discussed at all in terms of this letter or anytime
6 thereafter?

7 HONORABLE WAUGH: Not in my presence, no. I
8 didn't see it as an issue.

9 MR. CHERTOFF: Again, the Attorney -- you had
10 no discussion at any point with the Attorney General
11 concerning why he struck this language from the letter?

12 HONORABLE WAUGH: Not that I recall. It was
13 very common for us to send drafts back and forth and so
14 it would just come back to me with the changes. I
15 think if I recall correctly I made a few more edits
16 that are more stylistic or grammatical and then I sent
17 it to my secretary to be redone.

18 MR. CHERTOFF: And you saw the final letter
19 that went out, right?

20 HONORABLE WAUGH: I believe so, yes.

21 MR. CHERTOFF: And the language that was
22 stricken here concerning the current -- or more current
23 information about stops remained out of the letter.

24 HONORABLE WAUGH: Correct.

25 MR. CHERTOFF: And I take it you understood

1 that there was some significance to the fact, whether
2 it's conclusive or not, that the stop percentages for
3 minorities in the Moorestown area of the Turnpike was
4 continuing to be the same recently as it had been back
5 in '88 to '91, right?

6 HONORABLE WAUGH: It was an issue.

7 MR. CHERTOFF: I mean isn't it a fact that at
8 various points in time one of the arguments that was
9 made about whether there was a racial profiling issue
10 was that the information in Soto was dated information
11 and that it was based upon events that had occurred
12 before reforms were put into place in the early
13 nineties?

14 HONORABLE WAUGH: Well, yes, but the Soto --
15 I think that's correct, but the Soto decision, as I
16 recall it, was stops that were made between '88 and
17 '91.

18 MR. CHERTOFF: So in terms of dealing with
19 the Department of Justice, did you ever hear anybody
20 make the argument that Soto was really irrelevant or
21 not particularly persuasive because it was really based
22 on old data and things had changed a lot and there had
23 been a lot of reform since 1991? Had that argument
24 been made or discussed in your presence?

25 HONORABLE WAUGH: I'm having trouble with

1 your question and I can't figure out why.

2 MR. CHERTOFF: All right. Let me try it
3 again. It's probably the fault of the questioner.

4 In the discussion with the Department of
5 Justice, let's say, in December of 1996, there was a
6 description by the people from New Jersey about the
7 Soto appeal. Did anybody say anything like look, one
8 of the reasons Soto was not particularly helpful is
9 it's all based on data that occurred before 1991 and
10 we're already in 1996 and there have been a lot of
11 changes since then? Was that point made to the
12 Department of Justice?

13 HONORABLE WAUGH: I know there have been a
14 lot of changes point was made and the former point may
15 have been made, I don't recall.

16 MR. CHERTOFF: But you'd agree with me,
17 therefore, that if it was -- if there was an indication
18 that the number of stops in '95 and '96 remained the
19 same as they had been in '88 through '91, it would have
20 an impact on the way in which the argument about
21 changes had been received, right?

22 HONORABLE WAUGH: Well, the position, as I
23 understood it, was that it wasn't the numbers of stops,
24 but you had to look at the numbers of stops and
25 something else.

1 MR. CHERTOFF: I understand. But in addition
2 to that argument, wasn't there also another argument
3 made that the whole Soto case was based on facts from
4 five or six years ago and that the reforms that had
5 been put into place since then could very well make
6 those numbers academic? Wasn't that argument made?

7 HONORABLE WAUGH: It was always argued that
8 there had been reforms from the early nineties through
9 when the Soto decision was made and after that were
10 intended to address the issue.

11 MR. CHERTOFF: And you'd agree with me that
12 if, in fact, there was information presented, that the
13 numbers hadn't changed despite that intervening period
14 of time, it would tend to undercut that argument made
15 by the State, right? Or at least raise the issue.

16 HONORABLE WAUGH: It might, but I mean my
17 understanding is the numbers still haven't changed.

18 MR. CHERTOFF: In any case, you'll agree with
19 me that the letter that was sent to Loretta King
20 omitted the language with respect to this more current
21 information about stops, correct?

22 HONORABLE WAUGH: Correct.

23 MR. CHERTOFF: Now, is it fair to say that as
24 this matter went forward in connection with discovery
25 and correspondence with the Department of Justice, the

1 Attorney General asked to be closely informed by you
2 about the progress of this matter?

3 HONORABLE WAUGH: Yes. I think there was a
4 settling-in period when Mr. Rover, who eventually was
5 asked by me to take over for Jack Fahy and Mr. Posner
6 at the Department of Justice, were sort of beginning to
7 talk about what was going to be produced and how it was
8 going to be produced and the Attorney General wanted to
9 know what was going on.

10 MR. CHERTOFF: And is it fair to say that he
11 wanted to be informed at a fairly detailed level about
12 all the interaction with the Department of Justice on
13 this issue?

14 HONORABLE WAUGH: Well, I kept him informed
15 at a fairly detailed level. I don't know whether -- I
16 mean and I knew he wanted to be informed. Whether I
17 was giving him more detail than he wanted, I don't
18 know.

19 MR. CHERTOFF: And so, for example, with
20 respect to the next draft of this letter to Loretta
21 King dated January 9th, which is exhibit W-15, we can
22 put that up on the board, if you look down at the
23 bottom of that document you'll see the words "Alex,
24 let's discuss P-110." Is that Peter Verniero's
25 handwriting?

1 HONORABLE WAUGH: Yes.

2 MR. CHERTOFF: And did you, in fact, go and
3 discuss Loretta with him?

4 HONORABLE WAUGH: I assume I did, yes.

5 MR. CHERTOFF: So it would be fair to say
6 then that he wanted to then not only make provisions to
7 the prior draft, but he wanted to discuss this second
8 draft or later draft, right?

9 HONORABLE WAUGH: Well, he wanted to discuss
10 the issue. Whether he wanted to discuss the draft or
11 something else about the issue, I don't remember.

12 MR. CHERTOFF: Then let me put up W-17, which
13 is a memo to you from George Rover summarizing a
14 January 30th conference call. Put that up.

15 HONORABLE WAUGH: Right.

16 MR. CHERTOFF: Now, with respect to that,
17 there's your handwriting at the top "To PV." That
18 would be Peter Verniero, right?

19 HONORABLE WAUGH: Right.

20 MR. CHERTOFF: "FYI, I have asked DAG Rover
21 to prepare an options memo for our review and
22 discussion," correct?

23 HONORABLE WAUGH: Right.

24 MR. CHERTOFF: So again, you were keeping him
25 informed with respect to this telephone call, right?

1 HONORABLE WAUGH: Right.

2 MR. CHERTOFF: The next document shows a
3 letter, it's W-21, February 6, 1997 to Mark Posner. He
4 was one of the Civil Rights lawyers. And to George
5 Rover?

6 HONORABLE WAUGH: Yes.

7 MR. CHERTOFF: And it's copied to you and in
8 the right-hand corner it says, "To PV FYI," and that's
9 your handwriting, right?

10 HONORABLE WAUGH: Right.

11 MR. CHERTOFF: And then the upper left-hand
12 corner it says, "Alex, please see me," right?

13 HONORABLE WAUGH: Right.

14 MR. CHERTOFF: Now, do you remember what in
15 particular he wanted to talk to you about?

16 HONORABLE WAUGH: No.

17 MR. CHERTOFF: But again, this is a -- he
18 followed up with respect to this letter, too?

19 HONORABLE WAUGH: The usual --

20 MR. CHERTOFF: You'd agree with me --

21 HONORABLE WAUGH: The usual procedure was if
22 I sent something in to the Attorney General and he
23 wanted to talk to me about it, he would send it back
24 with "See me," or sometimes he would just come to my
25 office with it.

1 MR. CHERTOFF: But he certainly didn't see
2 you about every letter or memo that you passed up to
3 him with respect to every case or every matter in the
4 Department.

5 HONORABLE WAUGH: No, not -- I mean he may
6 have seen me about all or most in particular issues
7 that I was working on, but certainly not everything I
8 sent.

9 MR. CHERTOFF: So for him to say "Please see
10 me" would indicate that he had --

11 HONORABLE WAUGH: Something to say.

12 MR. CHERTOFF: You put it better than I
13 could.

14 By the way, when you brought Mr. Rover in to
15 this, remember you sent him a memo saying you didn't
16 want him to freelance.

17 HONORABLE WAUGH: Right.

18 MR. CHERTOFF: And what did you mean by that?

19 HONORABLE WAUGH: George had something of a
20 reputation of being somebody who would sometimes go off
21 and work on something and you'd never hear from him.
22 And I wanted to make it clear to him that I wanted to
23 know what was going on. And I'll give you an example,
24 although obviously I didn't have it in mind at the
25 time, of the sort of thing that I wouldn't have wanted

1 to happen. And that is he sent me a memo later on that
2 talked about we should educate the Justice Department
3 and send them DEA tapes and we should get other
4 Attorneys General to call the Justice Department. I
5 would not have wanted him to do something like that
6 just on its own. That's the sort of thing I had in
7 mind.

8 MR. CHERTOFF: Is it fair to say that you
9 communicated to Mr. Rover that you wanted -- you didn't
10 want him making decisions of any materiality or
11 significance without consulting you on this matter?

12 HONORABLE WAUGH: I think I would agree with
13 that.

14 MR. CHERTOFF: And is it fair to say that you
15 didn't make any decisions of materiality or
16 significance regarding this matter without talking to
17 the Attorney General?

18 HONORABLE WAUGH: Yes.

19 MR. CHERTOFF: Let me go to the next
20 document, W-22. It's 2-6-97. Again, it's actually the
21 -- it's a letter from February 6th from the Civil
22 Rights Division to someone at the Turnpike, which had
23 been sent to Mr. Rover and it says at the top, "Alex,
24 please see me," again --

25 HONORABLE WAUGH: Right.

1 MR. CHERTOFF: And in the middle it says, "To
2 PV, FYI." And again, this would be part of that course
3 of conduct whereas with respect to this time period
4 pretty much any correspondence or communication with
5 the Department you would run by Mr. Verniero.

6 HONORABLE WAUGH: Right.

7 MR. CHERTOFF: And he often wanted to see you
8 about it.

9 HONORABLE WAUGH: So far.

10 MR. CHERTOFF: Do you know what he discussed
11 with respect to this particular letter?

12 HONORABLE WAUGH: I have a vague recollection
13 that he asked me why they were writing to the Turnpike
14 and I think I said to him because they thought the
15 Turnpike might have the information they were looking
16 for.

17 MR. CHERTOFF: Okay. Now, let me go again to
18 a document we've marked as W-23A and this is a proposed
19 letter to the Civil Rights Division regarding requests
20 for information about summonses and warning data from
21 the Cranbury and Moorestown stations with a cover sheet
22 to the Attorney General. "Attached for your review and
23 approval is a proposed letter responding to several
24 questions asked by the DOJ." Again, was it -- again
25 the practice as of this point for the Attorney General

1 to actually literally review and edit a letter like
2 this on this matter?

3 HONORABLE WAUGH: I felt that it was -- that
4 I should be bringing this stuff to his attention.
5 Whether he edited this letter or not, I don't know.

6 MR. CHERTOFF: But he certainly indicated he
7 wanted you to do that, right? He didn't say stop,
8 you're giving me too much paper?

9 HONORABLE WAUGH: He never said that.

10 MR. CHERTOFF: And, in fact, as we've seen,
11 he would often say to you, please see me or let's talk
12 about it.

13 HONORABLE WAUGH: Right.

14 MR. CHERTOFF: Again, W-24, the next
15 document, OAG825 is a letter or a memorandum to you
16 from George Rover regarding another conversation with
17 Mark Posner. And again, you have on it "To PV, FYI,"
18 that's your writing again, right?

19 HONORABLE WAUGH: Yeah.

20 MR. CHERTOFF: Now, at this same time was
21 there also work being done with respect to the draft
22 brief in the Soto case?

23 HONORABLE WAUGH: I believe so.

24 MR. CHERTOFF: And the Attorney General then
25 was personally involved in editing that?

1 HONORABLE WAUGH: I know he saw it. If you
2 gave him a draft document, he would edit it.

3 MR. CHERTOFF: So -- now, I take it, again
4 from your experience, it wasn't the practice of the
5 State Attorney General to even review every brief filed
6 by the Division of Criminal Justice in criminal cases?

7 HONORABLE WAUGH: It was not the practice of
8 the Attorney General to review every brief by any of
9 the Legal Division.

10 MR. CHERTOFF: Because there are a lot of
11 briefs filed and you could spend 60 hours a day
12 reviewing briefs if you read them all, right?

13 HONORABLE WAUGH: At least.

14 MR. CHERTOFF: But with respect to this
15 appeal, it was, in fact, given to the AAG to be looked
16 at before it was finalized, correct?

17 HONORABLE WAUGH: It was not -- it was not
18 unusual for an Attorney General to edit a brief. But
19 your question was -- no Attorney General that I ever
20 saw edit it ever -- but if it was a significant issue,
21 it was not unusual for an Attorney General to at least
22 ask him to look at it.

23 MR. CHERTOFF: And this was clearly a
24 significant issue?

25 HONORABLE WAUGH: Yeah.

1 MR. CHERTOFF: Now, let me show you F-22,
2 which is a memo to Peter Verniero to John M. Fahy
3 regarding the Appellate brief and enclosing the merits
4 brief on the appeal. Now, at the bottom of this
5 writing it says, "John Fahy. Looks okay to me. After
6 we file, we may want to send a copy to DOJ in
7 Washington. Peter, 3-11." Is that Peter Verniero's
8 handwriting?

9 HONORABLE WAUGH: Yes.

10 MR. CHERTOFF: Did you ever have any
11 discussion with him about why he might want to file
12 that appeal brief?

13 HONORABLE WAUGH: Why he might want to file
14 it?

15 MR. CHERTOFF: I'm sorry, send it to DOJ.

16 HONORABLE WAUGH: No. I don't believe I
17 received a copy of this memo. It doesn't show that
18 either Jack Fahy or the Attorney General sent it to me.
19 I mean I don't want to mislead you because he may have
20 said to me at anytime, when the Soto brief is finished
21 and ready to be filed, maybe we should send it to the
22 Department of Justice and I probably would have said,
23 you know, yeah, why not?

24 MR. CHERTOFF: Now, what were the arguments,
25 again the principal arguments made in the brief, if you

1 can recall, challenging Judge Francis' decision?

2 HONORABLE WAUGH: My recollection and
3 understanding is that they were what we talked about
4 before, that the legal standard was incorrect and that
5 the Court should not have relied on the violator/user
6 survey because it was not valid.

7 MR. CHERTOFF: Now, was it your understanding
8 that the reason to send this to the Department of
9 Justice might be again to put before the Civil Rights
10 Division the arguments about why they should not put
11 too heavy a reliance on Soto in their own review?

12 HONORABLE WAUGH: I don't know that I would
13 agree with that. When we went down, we told them about
14 the Soto appeal. We told them why we appealed and I
15 believe the thought was it was something they were
16 interested in so we should let them have it. But maybe
17 I'm not understanding your --

18 MR. CHERTOFF: Well, I mean my question was
19 whether you had an understanding about why it was that
20 there was some interest in giving these arguments or
21 passing these arguments in the Department of Justice in
22 Washington? Was it with a notion that they should use
23 this in considering whether they wanted to treat Soto
24 as a significant factor in their review?

25 HONORABLE WAUGH: I don't recall that being

1 articulated. I think it was just that they had been
2 told about Soto. Soto involved -- I mean when Mr.
3 Rosenbaum called me, he told me that they were -- that
4 they knew about Soto and so it was for their
5 information.

6 MR. CHERTOFF: Now, at this point again, the
7 focus of Soto was on stops, right?

8 HONORABLE WAUGH: Yes.

9 MR. CHERTOFF: And it's fair to say that one
10 of the arguments that the State of New Jersey felt was
11 a powerful argument is that the stop data was not
12 particularly meaningful in the absence of a valid
13 baseline violator or user survey, correct?

14 HONORABLE WAUGH: I believe that was the
15 argument.

16 MR. CHERTOFF: And that was again articulated
17 in Soto, right?

18 HONORABLE WAUGH: Yes.

19 MR. CHERTOFF: Now, let me show you what's
20 W-26, a memo to Peter Verniero, April 7th. And again,
21 this is attaching a copy of a Department of Justice
22 request for specific information as to statistics for
23 certain dates. And is it fair to say again you sent
24 this on to Peter Verniero for him to review as well?

25 HONORABLE WAUGH: Yes.

1 MR. CHERTOFF: Now, I want to locate you in
2 time now to the period of April 1997. And as we've
3 just indicated, the focus of Soto was stops and one of
4 the points made clear to the Civil Rights Division,
5 both orally and by sending a copy of the Soto brief was
6 that there was a flaw, a logical flaw in relying too
7 heavily on stop data because of the absence of the
8 baseline, fair to say?

9 HONORABLE WAUGH: I think that was the
10 argument.

11 MR. CHERTOFF: But during the period of March
12 -- February, March and April of '97, did you become
13 aware through conversations with Mr. Rover that there
14 had been other analysis done with respect to a
15 different type of issue as it relates to the Turnpike,
16 namely consents to search?

17 HONORABLE WAUGH: Well, I became aware at
18 some point and I think it was in that time period that
19 the Department of Justice had talked to him about
20 consent-to-search information, so that's one.

21 Two, I know from what reading I've done to
22 prepare for today that there was an issue with respect
23 to a couple of documents that dealt with roadways other
24 than the Turnpike that I think he testified he had
25 asked me about and I had said that I didn't think they

1 needed to be produced.

2 MR. CHERTOFF: Well, we'll get to that later.

3 HONORABLE WAUGH: All right. I want to just
4 focus on this issue, which is did you become aware
5 sometime between February and April from discussions
6 with Mr. Rover that Mr. Rover had learned that the
7 Justice Department was interested in consent-to-search
8 data and that that data had been a factor in a Maryland
9 case that led to a consent decree for the Maryland
10 State Police?

11 HONORABLE WAUGH: Yes. I mean I certainly by
12 the time we got to the May 20th meeting, I knew all
13 that and I think it sort of came piecemeal during that
14 period of time.

15 MR. CHERTOFF: Okay. And, in fact, to help
16 you out in locating this in time, I'm going to show you
17 a memo with a cover page, 4-23-97, to PV. It's W-27,
18 OAG865. Now, attached to this document is a memo to
19 you from George Rover regarding the State Police,
20 right?

21 HONORABLE WAUGH: Correct.

22 MR. CHERTOFF: And if you look at Page 6 of
23 that memo, midway through the page it says, "The second
24 unrelated issue involves NJSP consent-to-search data."

25 HONORABLE WAUGH: Right.

1 MR. CHERTOFF: And he talks in this memo
2 about the forms, that DOJ is interested in the data
3 because of action pursued by plaintiffs in the Maryland
4 case where they used this data to prove selective
5 prosecution in getting consent decree. And that he
6 wanted to start educating the DOJ of the position that
7 these documents are irrelevant to the issue of stops
8 and therefore should not be considered by the
9 Department of Justice as part of their review. Is that
10 a fair summary of the content of the memo?

11 HONORABLE WAUGH: Where is the part where you
12 say he talks about educating the Department of Justice?

13 MR. CHERTOFF: Prior to that -- this is on
14 Page 7, prior to that -- this is the last paragraph, "I
15 would like to begin 'educating' USDOJ of our position
16 on these documents and what conclusions can be drawn
17 from them. It's my belief that they are irrelevant to
18 the inquiry of whether law enforcement officers are
19 engaging in selective prosecution. This information
20 has nothing to do with the reason why a motorist is
21 stopped initially, which is the basis of the USDOJ
22 inquiry." Do you remember that?

23 HONORABLE WAUGH: Yes. That's what it says.

24 MR. CHERTOFF: Now, if we turn to the cover
25 sheet, you write to Peter Verniero, "I would like to

1 discuss this issue with you. The attached is my only
2 copy." And you sign it, is that correct?

3 HONORABLE WAUGH: Right.

4 MR. CHERTOFF: And then underneath it says in
5 writing, "Alex, do we need another meeting in D.C.? It
6 appears so." And that's Peter Verniero's writing.

7 HONORABLE WAUGH: Correct.

8 MR. CHERTOFF: Now, standing back from this
9 document, is it fair to say that as of this point --
10 well, let me withdraw that question.

11 Before you go the memo, had George Rover
12 discussed with you the issues that are in the memo at
13 various points in time?

14 HONORABLE WAUGH: I don't think he ever
15 discussed with me before that his idea about educating
16 the Justice Department with respect to the DEA and that
17 set of issues. It's not impossible that he, either
18 over the phone or every once in a while he would stop
19 by, told me that the Justice Department was asking
20 about the consent-to-search data. In other words, I
21 can't tell you as I sit here today whether this memo
22 from him dated April 22nd is the first time I became
23 aware of that or whether I knew it some time in advance
24 because he told me it was an issue.

25 MR. CHERTOFF: So I will represent to you

1 that it's in the record that he testified here that he
2 had spoken to you about it before he sent the memo. I
3 take it you wouldn't disagree with that?

4 HONORABLE WAUGH: I don't have a factual
5 basis to disagree with that, but I don't -- I don't
6 remember.

7 MR. CHERTOFF: You'll also agree with me that
8 certainly as of the date of the memo you received this
9 information, correct?

10 HONORABLE WAUGH: Definitely.

11 MR. CHERTOFF: I take it you understood the
12 significance of the difference between consent to
13 search and stop, right?

14 HONORABLE WAUGH: Yes. I understood that
15 they were two separate issues. That's at least how I
16 viewed it.

17 MR. CHERTOFF: Is it fair to say as well that
18 you understood that the concerns raised with respect to
19 a violator survey as a baseline for stops were not
20 applicable when you're looking at consent-to-search
21 data, because there your baseline is the composition of
22 the population of people who have already been stopped?

23 HONORABLE WAUGH: Are you asking me whether I
24 agree with that or whether I knew that at the time?

25 MR. CHERTOFF: Well, I'm asking -- I'll ask

1 you both. A, do you agree with it? And B, did you
2 know it at the time?

3 HONORABLE WAUGH: It makes sense to me. I
4 don't recall -- I don't recall thinking about it at the
5 time.

6 MR. CHERTOFF: Now, again, to the extent that
7 Mr. Rover discussed this issue with you prior to the
8 memo, was this the kind of material you would discuss
9 with the Attorney General from time to time, you
10 reported up to him?

11 HONORABLE WAUGH: Probably.

12 MR. CHERTOFF: And this --

13 HONORABLE WAUGH: I mean obviously when I got
14 the memo, I gave it to the Attorney General. Since I
15 don't remember whether Mr. Rover mentioned it to me
16 beforehand, I don't remember whether if he did, I
17 discussed it with the Attorney General.

18 MR. CHERTOFF: But again, you'd agree your
19 regular habit and practice was to discuss anything
20 material or significant with the Attorney General?

21 HONORABLE WAUGH: That's correct.

22 MR. CHERTOFF: As it relates to this matter.

23 HONORABLE WAUGH: Yes.

24 MR. CHERTOFF: Now, with respect to this
25 particular memo, obviously it came back to you from the

1 Attorney General. Did you have a discussion with him
2 -- well, let me withdraw the question.

3 We know there was a May 20th meeting.
4 Between the time you got this back on May 20th, do you
5 recall any discussions with him concerning this memo?

6 HONORABLE WAUGH: I know that there's another
7 memo that talks about going to -- back to D.C. And I
8 don't remember whether I discussed the issue with him
9 after I got this one or after I got the second one, but
10 my recollection is that there was -- and again, I don't
11 remember dialogue, but I believe there was a discussion
12 and I think his point was well, they seem to be
13 expanding their inquiry, maybe we should go back and
14 talk to them about it. And my general recollection is
15 that I probably said I don't think it's worth it
16 because, you know, it's their inquiry. They can expand
17 it if they want to. I just didn't see a point in going
18 back to Washington. I don't remember dialogue, but
19 that is my best recollection of what the discussion
20 would have been.

21 MR. CHERTOFF: All right. Let me show you
22 what's been marked as W-28, which is an e-mail from you
23 to the Attorney General's then Assistant.

24 HONORABLE WAUGH: Right. It could be --
25 well, I'm sorry. I should wait for your question.

1 MR. CHERTOFF: Well, my question is, do you
2 remember this e-mail as an effort to get some time to
3 talk to Mr. Verniero about this issue raised in the
4 memo we've just seen from Mr. Rover?

5 HONORABLE WAUGH: Right.

6 MR. CHERTOFF: Okay.

7 HONORABLE WAUGH: And I think maybe this is
8 the one that I was thinking about that it's quite
9 possible that between the 23rd when I sent the memo
10 that's W-28 in and the 29th when I sent this e-mail to
11 his secretary, I had not been able to talk to him and
12 so I was asking -- telling his secretary that I needed
13 to talk to him. And then my handwritten note that
14 says, "Go back again to see them June 9, 10, AG will be
15 there," I assume reflects that I talked to him,
16 although it could be that his secretary told me that he
17 was going to be in Washington, so if we needed to go
18 back, that would be a time when we could do it.

19 MR. CHERTOFF: Now, you also -- I take it
20 it's his handwriting that says, "Alex, let's discuss
21 maybe time today, maybe."

22 HONORABLE WAUGH: Right.

23 MR. CHERTOFF: So is it fair to say as best
24 you can recall, that around this time at the end of
25 April, the beginning of May, you did wind up talking

1 with him. You suggested perhaps that you didn't think
2 it was worth going to Washington, but he indicated his
3 willingness and readiness to do so on this issue of
4 expanding the investigation.

5 HONORABLE WAUGH: Yes. But I think it was
6 probably in reverse order.

7 MR. CHERTOFF: Okay. Then give us the order
8 you think it was in.

9 HONORABLE WAUGH: He said maybe we should go
10 to Washington and I said I don't think it's worth it.
11 And then I think it wasn't an issue anymore because we
12 never did go again.

13 MR. CHERTOFF: Now, on this issue though,
14 let's be clear. The discussion was going to Washington
15 because of a concern the investigation would be
16 expanded to go from focusing on stops to focusing on
17 consents to search, right?

18 HONORABLE WAUGH: Right.

19 MR. CHERTOFF: And as of this point in time,
20 both of you had, both you and the Attorney General, had
21 in your possessions the memo that made it clear that
22 this consent-to-search data was precisely the data that
23 had led to a consent decree in Maryland, right?
24 Because that was dated April 23rd.

25 HONORABLE WAUGH: That -- I'm sorry. If

1 Rover's April 22nd memo specifically mentions Maryland,
2 then that would be correct.

3 MR. CHERTOFF: Well, I don't want there to be
4 any doubt about it. It says at Page 7, "In the
5 Maryland action, the plaintiff successfully argued that
6 the percentage of minorities subjected to consent
7 searches, supported a finding that the Maryland State
8 Police engaged in selective prosecution. As a result
9 of this finding, the MSP and a group of plaintiffs
10 entered into a consent order."

11 So that as of the time there was a discussion
12 about going to Washington, whether it was worth trying
13 to go to Washington and limit the search, it was
14 understood between you and the Attorney General that
15 the implication of limiting the search would be to keep
16 the Justice Department out of the consent-to-search
17 issue, which was the issue that ultimately led to the
18 consent decree in Maryland? I can break it up if it's
19 too long.

20 HONORABLE WAUGH: Well, we both had that --
21 we both had that memo. We both -- I mean I knew
22 because I read the memo and I have to assume that the
23 Attorney General did as well, that consent to search
24 was the issue in the Maryland case and that that was
25 the basis upon which Maryland had agreed to a consent

1 decree. So I think my answer to your question is that
2 we did know that.

3 MR. CHERTOFF: And therefore, that was the
4 context in which the discussion occurred about whether
5 it was worth trying to go to Justice to limit the
6 investigation to stops rather than consents to search,
7 correct?

8 HONORABLE WAUGH: Well, that's one of the
9 reasons why I didn't think it was worth going.

10 MR. CHERTOFF: Now, there then is a meeting
11 that occurs on May 20th, right?

12 HONORABLE WAUGH: Right.

13 MR. CHERTOFF: And you actually prepared the
14 agenda for that meeting.

15 HONORABLE WAUGH: I believe so.

16 MR. CHERTOFF: And that --

17 HONORABLE WAUGH: And yet it was typed by my
18 secretary and I'm, I guess, 75 percent sure that I was
19 probably the one that did it. Somebody else may have
20 done it and she typed it.

21 MR. CHERTOFF: I'm going to show you W-29,
22 which is actually three versions of the same typed
23 memo, but I want you to turn to the second page, second
24 sheet, which is a version that has writing on it that
25 says, "Tickle two weeks."

1 HONORABLE WAUGH: Right.

2 MR. CHERTOFF: Is that your writing?

3 HONORABLE WAUGH: Yes, it is.

4 MR. CHERTOFF: Was it your habit sometimes
5 after a meeting to make a note like this as a way to
6 remind you or your secretary to kind of bring this to
7 your attention every couple weeks and to take further
8 action?

9 HONORABLE WAUGH: Yes. Not done every time,
10 but that's what I would put if I wanted that done.

11 MR. CHERTOFF: Now, why was this meeting
12 called?

13 HONORABLE WAUGH: I believe the meeting was
14 called because the memo from Rover raised the issue of
15 the Justice Department had asked for consent-to-search
16 data and I think my recollection is, although it's not
17 really stated in this memo, that they sort of not asked
18 -- they had asked and then they weren't asking at
19 present. But the issue, as far as I was concerned, had
20 to be decided, and that is that's what they're asking
21 for, are we going to supply them with that information?
22 And I think I suggested that there should be a meeting.

23 MR. CHERTOFF: Now, in particular, how did
24 you assemble the agenda items for the meeting? How did
25 you decide what should be on the agenda?

1 HONORABLE WAUGH: I don't really remember
2 specifically, I think I just tried to, you know, cull
3 through the recent memos that I got from DAG Rover to
4 try to decide sort of what are the issues that need to
5 be talked about, status, decide them.

6 MR. CHERTOFF: Now, the bullet point
7 production of consent-to-search documents, is it fair
8 to say that comes out of that April 22nd memo which
9 talks about the Maryland case?

10 HONORABLE WAUGH: Yes.

11 MR. CHERTOFF: And when it talks about proper
12 characterization of documents, does that reflect an
13 effort to try to discuss how one could characterize the
14 consent-to-search data forms in a way so as to try to
15 keep the investigation limited to the stop issue rather
16 than getting into the consent-to-search issue?

17 HONORABLE WAUGH: I wouldn't put it that way.
18 I think -- I think it was a way of raising the issue of
19 whether these were documents that were -- maybe it was
20 a way of trying to articulate whether these documents
21 were related to the investigation that they said they
22 were doing.

23 MR. CHERTOFF: Well, let me ask you this. If
24 we go back to your April -- the April 22nd memo you
25 got, Mr. Rover suggested on the last page, "We should

1 state to USDOJ that if it wants to use this data,"
2 meaning consent-to-search data, "as an indicator of
3 State Police activity, then USDOJ must be required to
4 examine each case the factual circumstances that
5 resulted in the office requesting the consent to
6 search." Do you remember that suggestion?

7 HONORABLE WAUGH: I remember that it was in
8 the memo.

9 MR. CHERTOFF: Was part of this discussion
10 here relating to proper characterization of documents,
11 to put on the table a discussion of whether you could,
12 if you're going to have to turn this stuff over, figure
13 out a way to tell the Justice Department the only way
14 they really should be able to use it is if they're
15 willing to go and look at each case individually?

16 HONORABLE WAUGH: I don't recall that. I
17 mean I don't know how you limit the Justice Department
18 from what they're going to do with a document when you
19 give it to them.

20 MR. CHERTOFF: Was there a discussion about,
21 at this point in time, about telling the Justice
22 Department that you turned over the consent-to-search
23 documents, but only because it might have information
24 relating to the reason for the initial stop and not
25 because you were agreeing that there should be a

1 broadening of the investigation to consent to search?

2 HONORABLE WAUGH: At this time.

3 MR. CHERTOFF: Yeah.

4 HONORABLE WAUGH: I don't recall.

5 Ultimately, when the letter was sent out in -- well, it
6 was drafted in October and sent out in November, that's
7 what was said.

8 MR. CHERTOFF: All right. The meeting occurs
9 on May 20th in the Attorney General's Office.

10 HONORABLE WAUGH: Right.

11 MR. CHERTOFF: And you attended.

12 HONORABLE WAUGH: I attended. I think both
13 Rover and Fahy attended. The Attorney General
14 obviously. The Colonel. I think Captain Blaker. And
15 I guess --

16 MR. CHERTOFF: Sergeant Gilbert?

17 HONORABLE WAUGH: -- Sergeant Gilbert.

18 MR. CHERTOFF: And as it relates to this
19 issue with respect to the production of consent-to-
20 search documents, what was the discussion?

21 HONORABLE WAUGH: Again, I don't recall
22 dialogue except for a couple of things that really
23 stood out in my mind from that meeting. But I think
24 the discussion was with respect to that issue that the
25 State Police was very concerned that the consent-to-

1 search data, if produced for the Justice Department,
2 could lead to a consent decree.

3 MR. CHERTOFF: And was it explained why they
4 had that concern?

5 HONORABLE WAUGH: I'm sure it was to some
6 extent and I think I came away from the meeting with
7 the understanding that there was a significant
8 relationship between their consent to search, or what
9 they felt their consent to search numbers were and what
10 they were in Maryland.

11 MR. CHERTOFF: So that they essentially
12 expressed the view that the numbers in Maryland and the
13 numbers in New Jersey appeared to be very close.

14 HONORABLE WAUGH: I'm not comfortable with
15 "very close." I think that there was -- it was my
16 understanding that there was a similarity. Whether --
17 I don't recall that it was refined that closely.

18 MR. CHERTOFF: Well, did the State Police
19 indicate that because of the numbers and the comparison
20 in the numbers between New Jersey and Maryland, that
21 they were very concerned?

22 HONORABLE WAUGH: Yes.

23 MR. CHERTOFF: And did the issue arise about
24 whether the State would agree to disclose the data
25 about the consent to searches or try to resist it?

1 HONORABLE WAUGH: Again, I don't remember
2 dialogue, but what I came away from the meeting was
3 that we would wait until they asked for the documents
4 again, and then they would probably be produced.

5 MR. CHERTOFF: And was there a discussion
6 about the fact that when they were produced, if they
7 were asked for and produced, there would be an effort
8 made to still confine the focus of the inquiry on the
9 stop data that's contained on the forms rather than
10 allowing it to broaden out to consent to search?

11 HONORABLE WAUGH: I don't recall that
12 discussion.

13 MR. CHERTOFF: Now, let me stand back and try
14 to get just a general sense of this. Is it fair to say
15 at this point it's clear that if one looks at consent-
16 to-search data in New Jersey, it's going to be
17 problematic for the State Police because the numbers
18 are comparable to those in Maryland with respect to a
19 consent decree?

20 HONORABLE WAUGH: That's what they were
21 concerned about.

22 MR. CHERTOFF: It's also clear as of the
23 meeting that consent to search involves different
24 considerations than stop, right -- than stops?

25 HONORABLE WAUGH: Yeah.

1 MR. CHERTOFF: And it's also clear at this
2 point or self-evident at this point that whatever
3 objections can be raised with respect to violator
4 surveys as it relates to the usefulness of stop data,
5 those objections do not pertain with respect to
6 consent-to-search data, right?

7 HONORABLE WAUGH: I don't think do. I don't
8 think I ever heard anyone articulate the issue that
9 way. But, I mean, it makes sense to me.

10 MR. CHERTOFF: Is it also clear at this point
11 that one approach you could take to consent-to-search
12 data if you have skepticism about it is to actually
13 look at the underlying files?

14 HONORABLE WAUGH: Say that again?

15 MR. CHERTOFF: Is it also clear as of this
16 point that if you have some question about the
17 conclusiveness of the consent-to-search numbers, one
18 approach to take is to look at the actual files of the
19 individual cases?

20 HONORABLE WAUGH: Are you asking me whether I
21 agree with that today?

22 MR. CHERTOFF: Well first, do you agree with
23 that today?

24 HONORABLE WAUGH: Yeah, I think so.

25 MR. CHERTOFF: Wasn't that also clear at the

1 time?

2 HONORABLE WAUGH: I don't remember that being
3 discussed.

4 MR. CHERTOFF: Well, didn't Mr. Rover, even
5 Mr. Rover himself say in his memo of April 22nd that
6 the position he suggested taking with Justice --

7 HONORABLE WAUGH: Oh, yeah, you're right, he
8 did.

9 MR. CHERTOFF: So it had to be clear to
10 anyone who read the memo that one way to look at the
11 consent-to-search numbers, even if you were skeptical
12 about their conclusiveness, would be to drill down and
13 look at the actual case files?

14 HONORABLE WAUGH: That's what he said in --

15 MR. CHERTOFF: And it was in the memo that
16 was before everybody at the time of this meeting,
17 correct?

18 HONORABLE WAUGH: I don't think -- I don't
19 think the memo was before everyone at the time of the
20 meeting.

21 MR. CHERTOFF: Well, it had been presented
22 previous to the meeting to you, to the Attorney General
23 and certainly Mr. Rover had it because he wrote it.

24 HONORABLE WAUGH: Right.

25 MR. CHERTOFF: Now, under these

1 circumstances, let me ask you this. Did anybody in the
2 meeting say or express a question about whether anybody
3 should do any further investigation with respect to the
4 consent-to-search data to see if there was a problem, a
5 real problem?

6 HONORABLE WAUGH: I don't remember that being
7 discussed.

8 MR. CHERTOFF: Was there any discussion in
9 the meeting about whether there should be any
10 investigation from a statistical standpoint or a case
11 review standpoint to determine whether racial profiling
12 really is a problem in the State of New Jersey?

13 HONORABLE WAUGH: I don't think I recall that
14 being discussed either.

15 MR. CHERTOFF: Was there any discussion about
16 whether somebody should look at the possibility that
17 corrective action should be taken with respect to
18 racial profiling or alleged racial profiling in the
19 State of New Jersey?

20 HONORABLE WAUGH: Well, it was sort of --
21 most of the time, to my recollection and I can't say
22 that it occurred at every meeting, when there was a
23 discussion of racial profiling, there would usually be
24 a discussion with the State Police about, you know,
25 you're supposed to be making sure this doesn't happen.

1 As I testified at my deposition, I remember the
2 Attorney General asking the Superintendent if racial
3 profiling was a problem and he said no. I don't recall
4 a discussion of specific remedies though at that
5 meeting.

6 MR. CHERTOFF: Well, let me get to this
7 question. Now, you recall -- your testimony is you do
8 recall, one thing you do recall from the meeting is the
9 Attorney General saying to the State Police
10 Superintendent, is there racial profiling and he says
11 no, right?

12 HONORABLE WAUGH: Right. That's not the only
13 thing that I recalled specifically.

14 MR. CHERTOFF: But you remember that -- that
15 comment.

16 HONORABLE WAUGH: Yeah. And I think my
17 testimony at my deposition was that I remember that
18 taking place and I'm pretty sure that it was at that
19 meeting because I think it falls into the context of
20 that meeting in terms of the State Police being so
21 concerned about a consent decree. But I'm not a
22 thousand percent sure that it wasn't at another
23 meeting, but I'm pretty sure that it was at this
24 meeting.

25 MR. CHERTOFF: But even if it occurred at

1 this meeting, the response you recall is simply there's
2 no problem and it was dropped at that -- left at that?
3 I mean here's my question, maybe I can put it in
4 context a little bit. You've told us that in this
5 meeting what's on the table, either because of the memo
6 that was submitted earlier or because of the
7 discussion, is the fact that there's a new set of
8 statistics, different than stops, which were the
9 subject of the Soto appeal that appeared to have had a
10 major impact on the litigation in Maryland that the
11 State Police are worried about and that present
12 different considerations from stop data and --

13 HONORABLE WAUGH: I would say that there was
14 a new set of data being asked for by -- or documents
15 being asked for by the Justice Department.

16 MR. CHERTOFF: It was also clear in the
17 meeting that the State Police had done some kind of
18 review of the statistics on consent to search because
19 they made a comparison between their statistics and
20 those in Maryland?

21 HONORABLE WAUGH: Well, they had to have
22 known something in order to be concerned.

23 MR. CHERTOFF: Did anybody say at the meeting
24 to the State Police, what are the numbers?

25 HONORABLE WAUGH: I don't recall that.

1 MR. CHERTOFF: Did anybody say at the
2 meeting, why are you concerned about the numbers?

3 HONORABLE WAUGH: No, I don't recall that --
4 I don't recall that being discussed other than that
5 they were afraid of a consent decree.

6 MR. CHERTOFF: And the response of the
7 Attorney General to that was he wasn't going to sign a
8 consent decree, right?

9 HONORABLE WAUGH: That wasn't his only -- I
10 mean I recall the Attorney General saying something to
11 the effect of if the Justice Department comes back to
12 us with suggestions of remedial measures, I will
13 seriously consider them, but I am not inclined to a
14 consent decree and then he said whatever it is that
15 somebody wrote on his agenda --

16 MR. CHERTOFF: That "They'd have to tie me to
17 a train and drag me along the tracks."

18 HONORABLE WAUGH: It was that or something
19 like that.

20 MR. CHERTOFF: All right. But the response
21 to this issue with respect to the concern about the
22 consent-to-search numbers was put in terms of the
23 Attorney General's being steadfast in opposing a
24 consent decree, right?

25 HONORABLE WAUGH: Well, I don't want to

1 quibble with you, but the way I remember the meeting
2 there were two responses. One was to ask the
3 Superintendent if there was a real problem with
4 profiling, and I don't remember exactly how the
5 question was asked, but I do remember that he seemed a
6 little bit upset.

7 MR. CHERTOFF: Who seemed upset?

8 HONORABLE WAUGH: The Attorney General. I
9 don't know whether upset is right or frustrated but,
10 you know, the Superintendent was -- or the State Police
11 were concerned about this and he said, look, is -- he
12 said something like, and I don't remember dialogue, he
13 said something like is racial profiling a problem?
14 Let's get that straight. Or something like that. And
15 the Attorney General said -- I mean the Superintendent
16 said no. Then there was a discussion of what remedies
17 would be considered if the Justice Department came back
18 and said, you know, we're concerned about what we've
19 seen, and that's when I recall the Attorney General
20 saying something like I would consider reasonably
21 remedial measures, but I'm not inclined to sign a
22 consent decree. I mean state government entities in my
23 experience in the Attorney General's Office don't like
24 consent decrees.

25 MR. CHERTOFF: But this is the question I'm

1 driving at. Let me start with your state of mind.
2 It's obvious to you in this meeting that the State
3 Police -- the subject is now switched from stops as to
4 which there's a debate about whether the numbers are
5 meaningful to consent to search, which is a different
6 set of issues, correct?

7 HONORABLE WAUGH: Well, I wouldn't say it was
8 switched. I would say that it was -- that that was an
9 added issue.

10 MR. CHERTOFF: All right. So now there's a
11 new added issue and you also know the State Police have
12 looked at the numbers because they wouldn't be able to
13 be concerned if they hadn't looked at it, right?

14 HONORABLE WAUGH: They looked at it to the
15 extent of being concerned.

16 MR. CHERTOFF: Right. So you knew there's
17 information and data out there, right? Correct?

18 HONORABLE WAUGH: Again, I don't want to
19 quibble with you, but I knew that they had the
20 impression that the numbers would not be helpful to
21 them. I know that there's been an issue as to whether
22 specific numbers were discussed at that meeting and I
23 don't recall that they were.

24 MR. CHERTOFF: In your mind though, did you
25 have a curiosity about gees, how bad are the numbers if

1 they're worried about it?

2 HONORABLE WAUGH: I don't remember thinking
3 that. It was my position all along that the Justice
4 Department should get what they were asking for.

5 MR. CHERTOFF: I'm not talking about from the
6 standpoint of litigation. Let me step back.

7 Is the Attorney General responsible for
8 supervising the State Police?

9 HONORABLE WAUGH: Yes.

10 MR. CHERTOFF: So in terms of the hierarchy,
11 the buck stops with the Attorney General, right?
12 Correct? In the Department of Law and Public Safety.

13 HONORABLE WAUGH: Yes.

14 MR. CHERTOFF: By the way, in terms of your
15 position as Executive Assistant, were you in the chain-
16 of-command for the State Police?

17 HONORABLE WAUGH: No.

18 MR. CHERTOFF: Okay. So that the
19 Superintendent reported directly to the Attorney
20 General?

21 HONORABLE WAUGH: Yes.

22 MR. CHERTOFF: But the Attorney General at
23 least had supervisory authority over the State Police,
24 right?

25 HONORABLE WAUGH: That was the theory.

1 MR. CHERTOFF: So he had obligations, not
2 just as a lawyer litigating for a client, but as a
3 manager supervising a department of state, right?

4 HONORABLE WAUGH: Right.

5 MR. CHERTOFF: In that capacity as his
6 advisor, at any point in time, in the meeting or after
7 the meeting, did you say to him, look, in substance, if
8 the State Police are really worried about this, don't
9 we need to kind of find out what the numbers are and
10 why they're so worried and whether there's really a
11 problem?

12 HONORABLE WAUGH: I don't believe I did.

13 MR. CHERTOFF: Let me ask you now in
14 retrospect. Is it your view that it was part of the
15 responsibility of the Attorney General in 1997 if there
16 was a red flag up about a problem with the State
17 Police, to take steps as a manager to find out if there
18 really was a problem and if so to take steps to correct
19 it?

20 HONORABLE WAUGH: If you're asking me, and
21 this isn't precisely your question, but if you're
22 asking me whether in hindsight I wish I had given that
23 advice to the Attorney General, yes, I do.

24 MR. CHERTOFF: Now, with respect to this
25 issue again of what was discussed in the meeting, did

1 anybody raise the issue in the meeting of actually
2 looking at the underlying cases to see whether, in
3 fact, these requests for searches were valid or not
4 valid?

5 HONORABLE WAUGH: I don't remember that --
6 I'm sorry. I don't remember that being discussed.

7 MR. CHERTOFF: Would I be correct in saying,
8 therefore, in sum with respect to the meeting of May
9 20th, that there was other than the question that you
10 recall being put to the Superintendent by the Attorney
11 General, is there a profiling problem? to which the
12 Superintendent said no, there was no inquiry or probing
13 or questioning concerning the underlying facts as it
14 relates to consent to searches?

15 HONORABLE WAUGH: I don't recall any such
16 discussion.

17 MR. CHERTOFF: In fact, would it be fair to
18 say in the entire period of time you were Executive
19 Assistant Attorney General from the time of the
20 Department of Justice began until you left to become a
21 Judge, at no time did you participate in a meeting in
22 which anybody in the Office of the Attorney General
23 said let's actually find out what the facts are with
24 respect to all these numbers and see if there's any
25 corrective action to be taken?

1 HONORABLE WAUGH: Other than by cooperating
2 with the Department of Justice and other than the, I
3 think, consistent reminding the State Police that they
4 were supposed to be policing unattended the issue, I
5 don't recall any such discussion.

6 MR. CHERTOFF: Did you know, by the way, that
7 from December '96 going forward until you left the
8 Department, that George Rover was dealing with Sergeant
9 Gilbert from the State Police as his point of contact
10 with the State Police?

11 HONORABLE WAUGH: From what -- well, from
12 when?

13 MR. CHERTOFF: From December '96 --

14 HONORABLE WAUGH: I don't think George Rover
15 got involved until --

16 MR. CHERTOFF: Oh, you're right, let me --

17 HONORABLE WAUGH: -- January.

18 MR. CHERTOFF: Let me withdraw it.

19 HONORABLE WAUGH: I knew that he was dealing
20 with someone and I probably knew it was Sergeant
21 Gilbert, but I can't answer your question more
22 specifically than that.

23 MR. CHERTOFF: Well, let me go to Page 119 of
24 your deposition and refresh your memory, Line 15.

25 Question: "Was it your understanding that

1 Deputy Attorney General Rover was a person who was
2 dealing with Sergeant Gilbert?"

3 Answer: "Correct."

4 "And Rover would then communicate to you
5 things from Sergeant Gilbert?"

6 "Well, Rover -- Rover would communicate with
7 me if your question is every time Sergeant Gilbert told
8 him something that he'd tell me, I don't think that
9 would be the case. But I was the sort of person that
10 he spoke to and then I spoke to the Attorney General."

11 Is that correct?

12 HONORABLE WAUGH: Yes.

13 MR. CHERTOFF: Is it fair to say that with
14 respect to any information, as far as you knew and your
15 understanding was with Mr. Rover, any material or
16 significant information he received from the State
17 Police he communicated to you?

18 HONORABLE WAUGH: Ask that question again,
19 please?

20 MR. CHERTOFF: As far as you know and as far
21 as your instructions were to Mr. Rover, any significant
22 or material information that Rover received from the
23 State Police he communicated to you.

24 HONORABLE WAUGH: My instructions were that
25 he should keep me informed of what was going on. I

1 having read his, both his deposition and his testimony
2 before the Committee, I'm not sure that I have the
3 confidence that he was telling me everything.

4 MR. CHERTOFF: Well, you instructed him not
5 to freelance, right?

6 HONORABLE WAUGH: Yes.

7 MR. CHERTOFF: And you instructed him to tell
8 you everything of material importance, right?

9 HONORABLE WAUGH: Yes.

10 MR. CHERTOFF: Insofar as he told you thing,
11 did you communicate those to the Attorney General?

12 HONORABLE WAUGH: If I thought it was
13 significant and he needed to know, yes, I would.

14 MR. CHERTOFF: Is it clear to you from the
15 meeting, that the -- on May 20th, that the State Police
16 believed the consent-to-search numbers were not helpful
17 and they wanted to find a way to avoid providing them
18 if possible?

19 HONORABLE WAUGH: That was my sense of the
20 meeting.

21 MR. CHERTOFF: Now, eventually -- to skip
22 ahead a little bit, in late October 1997 the Department
23 of Justice finally forced the issue with respect to the
24 copies of the consent-to-search forms, right?

25 HONORABLE WAUGH: My understanding was that

1 in October of 1997 the Justice Department asked for the
2 documents again and they were given the documents
3 shortly after that.

4 MR. CHERTOFF: Now, the documents they asked
5 for were consent-to-search forms, the forms themselves,
6 right?

7 HONORABLE WAUGH: Right.

8 MR. CHERTOFF: They didn't ask for any
9 compilations of data, right?

10 HONORABLE WAUGH: Correct.

11 MR. CHERTOFF: And you didn't suggest or no
12 one suggested at the Office of the Attorney General, to
13 your knowledge, that anybody voluntarily give them any
14 compilations?

15 HONORABLE WAUGH: Well, other than the
16 document that was -- that I sent to the Attorney
17 General in July of 1997, if you consider that a
18 compilation that would come within what you're asking
19 me, other than that, I think that's correct.

20 MR. CHERTOFF: So when we talk about that one
21 of the responses which was -- I asked you earlier what
22 was the -- what effort was made by people in the Office
23 of the Attorney General to address the actual
24 underlying problem with profiling, your response was,
25 well, to cooperate with the investigation in the

1 Justice Department. But it's also fair to say that the
2 cooperation with the Justice Department didn't mean
3 giving them a lot of information so they could figure
4 it out, it meant waiting till they asked for specific
5 things and then giving them kind of what was asked for
6 and nothing more. Is that fair to say?

7 HONORABLE WAUGH: I don't think I would have
8 phrased it that way, but my --but we were cooperating
9 with them by giving them what they asked for.

10 MR. CHERTOFF: But not volunteering anything.

11 HONORABLE WAUGH: Well, again, leaving aside
12 the July 1997 document which is a particular issue, I
13 guess -- I guess that would be correct.

14 MR. CHERTOFF: And you knew, for example,
15 from the original form document that you got from
16 Justice, that they did request an analyses, studies and
17 reports regarding searches, among other things?

18 HONORABLE WAUGH: I knew that it was in that
19 document and I think if you look at -- let me find it,
20 W-17?

21 MR. CHERTOFF: Yes.

22 HONORABLE WAUGH: On Page 2, number five:
23 "Mr. Posner asked about whether the State Police has
24 any computerized data base of information about
25 auditing State Police traffic stop activity, we advised

1 DOJ that they do not have this information in the
2 computerized data base."

3 MR. CHERTOFF: But my -- the information
4 request calls for analyses, not necessarily
5 computerized analyses, but analyses relating to, among
6 other things, effectuating a search. Is it fair to say
7 that no one made an effort to comply with that request?

8 HONORABLE WAUGH: Well, I guess to some
9 extent it depends on how you view that document and how
10 you view -- how the Justice Department was going about
11 its inquiry. That document was given to us as sort of
12 a this is the type of thing we asked for. I believe
13 that they then started asking for specific things over
14 a period of time, including some things that they asked
15 for after I left. They -- they raised at the time that
16 that telephone call talks about, they raised the issue
17 of analysis and their question was, do you have it in
18 computer form? They didn't ask for it in hard copy.

19 MR. CHERTOFF: And therefore, because they
20 didn't ask for it in hard copy, a decision was made not
21 to volunteer anything in hard copy?

22 HONORABLE WAUGH: I don't -- I don't think
23 that I would say that a decision was made in the sense
24 that that suggests that there was a conscious decision
25 as to, you know, thought process as to whether or not

1 to do that. I would agree with you that it was not
2 provided.

3 MR. CHERTOFF: Was there a general approach
4 to the issue of dealing with the Department of Justice
5 in Washington that was essentially give them what they
6 specifically ask for but nothing more?

7 HONORABLE WAUGH: It was certainly give them
8 what they ask for. I don't recall anyone saying don't
9 give them anything else. When we get to the July
10 document, you know, we could talk about that because it
11 was my view that it should have -- that it should be
12 produced and for reasons that I guess I'll have to
13 explain, it wasn't.

14 MR. CHERTOFF: All right. So let's get to
15 that.

16 I'm going to show you W-30. I'm going to
17 show you this. This is a memo to you -- I'm sorry, to
18 Peter Verniero from you dated July 29, 1997. It
19 attaches copies of State Police documents, including
20 one, patrol issues, concerns at Moorestown station.
21 There's a pie chart attached to it. A series of other
22 documents. And it concludes with an analysis on the
23 last several pages, State Police issues and concerns,
24 that among other things, lists a lot of statistics
25 about 1995 searches and criminal activities. Now, do

1 you remember receiving the underlying documents apart
2 from the cover page?

3 HONORABLE WAUGH: I'm sorry. You mean --

4 MR. CHERTOFF: You got the reports --

5 HONORABLE WAUGH: I received a document and I
6 sent it to the Attorney General. And if you're asking
7 me --

8 MR. CHERTOFF: Is it this document?

9 HONORABLE WAUGH: -- whether I recall today
10 that this, that all of these pages were attached to the
11 document, I would have to say no, I don't recall that.
12 I don't know where -- I mean they're all Bates
13 numbered --

14 MR. CHERTOFF: Well, I mean I can represent
15 -- I'll represent --

16 HONORABLE WAUGH: -- subsequently, and if
17 this is the document that was in my file, then that's
18 the document I got.

19 MR. CHERTOFF: Okay. I'll represent to you
20 that we've been informed by letter from the Department
21 of Law and Public Safety which is to produce the
22 document, that the document in the form which you have
23 is the way it was in the file.

24 HONORABLE WAUGH: All right. Then that's how
25 I received it.

1 MR. CHERTOFF: Okay. When you got the
2 document, where did you get it from, do you remember?

3 HONORABLE WAUGH: I testified at my
4 deposition that I thought I got it from DAG Rover and I
5 now think that that is not correct. I think I got it
6 from a Deputy in the Division of Law who must have been
7 working on some sort of litigation, and I don't
8 remember who it was.

9 MR. CHERTOFF: Do you remember how it came to
10 you?

11 HONORABLE WAUGH: No. It could well be that
12 somebody came up to my office and said here's a
13 document that we've come across in the process of doing
14 whatever it is they were doing and we thought you
15 should know about it. And then I gave it to Rover.

16 MR. CHERTOFF: Okay. And then in addition to
17 giving to him, what did you tell Rover when you gave it
18 to him?

19 HONORABLE WAUGH: I said that -- and again, I
20 don't remember specific dialogue, but I gave him the
21 document and I said, I think this is probably something
22 that we should produce. What do you think? I think he
23 agreed with me. And I told him to hold onto it and I
24 was going to find out from the Attorney General whether
25 he agreed.

1 MR. CHERTOFF: And tell us what you did.

2 HONORABLE WAUGH: I sent -- what I did?

3 MR. CHERTOFF: Yes. Tell us what happened.

4 HONORABLE WAUGH: I know that -- I remember
5 that George came back to me once and said, "What about
6 the document?" And I said I don't know yet. I'm
7 pretty sure that I went in to the Attorney General once
8 and said what about this document and he said something
9 like I don't know yet or I haven't read it yet. And
10 then I lost track of it.

11 MR. CHERTOFF: Well, let me ask you this
12 question. You sent this document to Mr. Verniero,
13 right?

14 HONORABLE WAUGH: Right.

15 MR. CHERTOFF: And you told Mr. Rover you
16 wanted to wait a decision on turning it over.

17 HONORABLE WAUGH: Right.

18 MR. CHERTOFF: You didn't make that decision,
19 did you?

20 HONORABLE WAUGH: No.

21 MR. CHERTOFF: You sent it up to Attorney
22 General Verniero to make that decision, right?

23 HONORABLE WAUGH: Well, if you read my memo,
24 I sent -- I sent it to him and I said in the memo that
25 I thought it should be produced, but I was checking

1 that with Rover.

2 MR. CHERTOFF: And then you --

3 HONORABLE WAUGH: And then -- and as I said,
4 I'm reasonably sure that I asked him once about it and
5 he hadn't made a decision and then I lost track of it.

6 MR. CHERTOFF: So, you clearly sent it up to
7 him, right?

8 HONORABLE WAUGH: Right.

9 MR. CHERTOFF: You told him you thought it
10 should be produced.

11 HONORABLE WAUGH: Right.

12 MR. CHERTOFF: You talked to him about it.
13 You went in and talked to him about it.

14 HONORABLE WAUGH: I asked him -- as I said,
15 I'm reasonably sure I asked him about it once and he
16 said something like I haven't looked at it or something
17 like that. I mean that would not have been the first
18 time I've gone in to an Attorney General and said what
19 about some issue and I've been told, you know, I
20 haven't focused on it, I haven't looked at it yet. So,
21 you know, I'm trying to be careful that I'm not
22 transporting some conversation that I had at another
23 time into this and that's my recollection.

24 MR. CHERTOFF: Well, when you went in to him,
25 did he indicate he knew what you were talking about?

1 What the document was? Or did he say what document?

2 HONORABLE WAUGH: Well, the problem I'm
3 having is I remember going in to him about some
4 document and he said he didn't -- some memo I had sent
5 him, and he said he wasn't sure where it was and he'd
6 find it and, you know, I don't remember whether it was
7 this document or another document.

8 MR. CHERTOFF: Well, what --

9 HONORABLE WAUGH: But I don't -- I don't have
10 a clear recollection of him discussing the document
11 with me, if that's what you're asking me.

12 MR. CHERTOFF: Let me move off this for a
13 second.

14 Was there another document relating to
15 preliminary statistical data having to do with
16 Perryville station that Mr. Rover asked you about
17 producing in early 1997?

18 HONORABLE WAUGH: I know that there is such a
19 document. I don't really remember discussing it with
20 Mr. Rover. It's very possible that if he said to me, I
21 have a document that relates to a roadway other than
22 the Turnpike, and he didn't think it needed to be
23 produced, that I would have agreed with him and that
24 would have been it. If he had told me that the thought
25 it should be produced, then I definitely would have

1 gone to the Attorney General with it.

2 MR. CHERTOFF: And if he didn't take a
3 position, what would you have done, made the decision
4 yourself or gone to the Attorney General?

5 HONORABLE WAUGH: I don't know.

6 MR. CHERTOFF: Given that the Attorney
7 General --

8 HONORABLE WAUGH: I mean it was -- clearly it
9 was my practice to send documents like that if I had
10 them to the Attorney General, which leads me to believe
11 that I never actually had that document. It wasn't in
12 my file.

13 MR. CHERTOFF: If you were told about a
14 document and there was a question about production,
15 would you have gone to the Attorney General about it?
16 Was that your practice?

17 HONORABLE WAUGH: If it -- again, if I was
18 told that it related to a roadway other than the
19 Turnpike, which is what the Justice Department was
20 looking at, it is quite possible that I would have said
21 well, then, I guess it doesn't need to be produced.

22 MR. CHERTOFF: So you would have made that
23 decision on your own?

24 HONORABLE WAUGH: As long as he was agreeing
25 with me.

1 MR. CHERTOFF: And if Rover didn't take a
2 position?

3 HONORABLE WAUGH: Then I don't know what I
4 would have done.

5 MR. CHERTOFF: Would your practice have been
6 to go up to the Attorney General?

7 HONORABLE WAUGH: Mr. Chertoff, I don't know
8 how to answer that question because I don't remember
9 the conversation. What I'm trying to say is that it's
10 perfectly possible that if I was told about a document
11 that related to a roadway other than the Turnpike, that
12 I might have agreed that it didn't need to be produced.
13 Now, you're asking me well, suppose he didn't agree
14 with me? And I just -- since I -- I just don't know.
15 I can't -- I don't know how to answer that question
16 because I don't remember such a conversation.

17 MR. CHERTOFF: I think Mr. Rover's testimony
18 here was not that he thought it didn't need to be
19 produced, but that he went to you and asked you what
20 should happen and you told him he didn't need to
21 produce it. The question was whether that's a decision
22 you would have made yourself or would you run it by the
23 Attorney General?

24 HONORABLE WAUGH: If it was a document that I
25 thought was not relevant because it didn't relate to

1 the roadway that they were looking at, yes, it is
2 conceivable I would have made that decision myself as
3 opposed to a document that did relate to what they were
4 looking at.

5 MR. CHERTOFF: Now, I want to come back to
6 the document of July 29th. Your recollection now is
7 somebody from a different Department or different
8 Division --

9 HONORABLE WAUGH: Right.

10 MR. CHERTOFF: -- came to you with this
11 document, right?

12 HONORABLE WAUGH: Right.

13 MR. CHERTOFF: And they came to you because
14 they said to you in substance, we ran across this and
15 we think it's -- we, although not directly involved in
16 what you're doing, we think it's significant enough
17 that we need to bring it to your attention.

18 HONORABLE WAUGH: That's how I'm
19 reconstructing how I got it.

20 MR. CHERTOFF: So it comes to you with an
21 understanding that even to the untutored eye of someone
22 not deeply involved in the case, they can see it's of
23 some importance, correct?

24 HONORABLE WAUGH: I guess so. I mean, yes,
25 somebody brought it up to me because they thought I

1 should know about it.

2 MR. CHERTOFF: Was that Michael LoGalbo?

3 HONORABLE WAUGH: Who?

4 MR. CHERTOFF: Michael LoGalbo, if you
5 recall?

6 HONORABLE WAUGH: I don't recall knowing that
7 person.

8 MR. CHERTOFF: Okay. You talk it over with
9 Mr. Rover. You both agree it should be produced,
10 right?

11 HONORABLE WAUGH: Right.

12 MR. CHERTOFF: And I take it you would have
13 looked at it, right?

14 HONORABLE WAUGH: I certainly would have
15 looked at the cover memo.

16 MR. CHERTOFF: And just to go through it,
17 because I understand you don't remember the documents,
18 but I want to just go through the substance to see
19 whether this is the kind of thing that was important to
20 you, subject matter that you recognized as being
21 important at that time. You see the first set of
22 documents relates to allegations of profiling that are
23 actually based on complaints from the State Police
24 themselves, right?

25 HONORABLE WAUGH: Right.

1 MR. CHERTOFF: I mean that's a little bit
2 kind of like a man bites dog story. It's a little
3 unusual that the State Police themselves would raise
4 the issue as opposed to some defendant in a criminal
5 case who has a motive obviously to come up with legal
6 arguments. So I take it that's the kind of thing that
7 would have captured your attention, right? At this --
8 by now, by mid-1997.

9 HONORABLE WAUGH: Yeah.

10 MR. CHERTOFF: And then if we go -- and
11 there's a lot of numbers and there's pie charts. And
12 then if you go to the end, the last couple of pages,
13 it's pretty clear that someone has done a statistical
14 review for the year 1995 for the very police station
15 which is the subject of the Soto litigation, right?

16 HONORABLE WAUGH: It's -- well, if you're
17 telling me it's for 1995, I'll accept it.

18 MR. CHERTOFF: Well, it says right on it,
19 "Criminal activities, 1995." The last two pages.
20 "Court searches, 1995. Probable cause searches, 1995."

21 HONORABLE WAUGH: Where is that?

22 MR. CHERTOFF: It's the last two pages.

23 HONORABLE WAUGH: Of the whole document?

24 MR. CHERTOFF: Of the document.

25 HONORABLE WAUGH: Oh, that's not what was on

1 the screen in front of me.

2 MR. CHERTOFF: I'm sorry. I'm looking at
3 July 29, 1997. The last two pages of the document.

4 HONORABLE WAUGH: That's what it says.

5 MR. CHERTOFF: Okay. And if we go to the
6 last page, it actually gets to the issue of searches,
7 right, consent searches? Right?

8 HONORABLE WAUGH: Right.

9 MR. CHERTOFF: And by this time this issue of
10 consent searches and the relationship with Maryland has
11 been not only the topic of a memo from Mr. Rover of a
12 couple months earlier, but actual full-blown discussion
13 in May with the Attorney General and the State Police
14 where the State Police indicate their concern about it,
15 right?

16 HONORABLE WAUGH: Right.

17 MR. CHERTOFF: So would you agree with me
18 that although you don't remember the documents
19 themselves, this is precisely the kind of information
20 that when you reviewed it would have leaped out at you
21 as being of enormous significance?

22 HONORABLE WAUGH: Can I answer the question
23 in my own way?

24 MR. CHERTOFF: Sure.

25 HONORABLE WAUGH: I remember getting the

1 document and I read the document and I concentrated on
2 the beginning of the document and I understood it.
3 What I came away from the document was is as follows:
4 Some minority troopers at the Moorestown station made
5 the allegation that majority troopers were profiling.
6 State Police looked at the issue, came to the
7 conclusion that the activity of the minority and
8 majority troopers was approximately the same and
9 therefore concluded that there was not profiling. That
10 was my understanding of the document. I didn't focus
11 on all the statistics in the back. But as I said in my
12 cover memo, July 29th, I thought it was a document that
13 probably should go to the Department of Justice.

14 MR. CHERTOFF: And when Rover talked to you
15 -- I mean as far as you know, Rover read the document
16 too, because you asked him to look at it for relevance,
17 right? And you'll agree with me the only way you can
18 tell relevance is to look at the document, right?

19 HONORABLE WAUGH: I'd have to assume that he
20 read it.

21 MR. CHERTOFF: So both of you concluded it's
22 relevant. It comes to you in an unusual fashion. You
23 pass it on to the Attorney General. All that's
24 correct, right?

25 HONORABLE WAUGH: Right.

1 MR. CHERTOFF: You go in later. He says he
2 hasn't made a decision yet, correct?

3 HONORABLE WAUGH: I don't know whether he
4 said that or he said he hadn't focused on it yet, but
5 he had not made a decision.

6 MR. CHERTOFF: But there's no question that
7 he was aware that he had gotten it and that you had
8 gone in to personally remind him about it, correct?

9 HONORABLE WAUGH: I went in to remind him
10 about it. You're asking me whether he acknowledged
11 that he had gotten it and I just don't remember that.
12 Obviously if he had looked at me and said I don't have
13 the faintest idea what you're talking about, I probably
14 would have made another copy of the document and given
15 it to him. So at some level, he acknowledged that he
16 knew that there was a document he needed to look at.

17 MR. CHERTOFF: Now, in the upper right-hand
18 corner of the document of the first page -- go back to
19 the first page -- put it up on the -- there's a little
20 scribble there that says "9-4." Is that your
21 handwriting?

22 HONORABLE WAUGH: No, I think it's my
23 secretary's handwriting.

24 MR. CHERTOFF: And was that what you would
25 typically do to tickle yourself in some way to come

1 back to something?

2 HONORABLE WAUGH: Right.

3 MR. CHERTOFF: And so your usual practice
4 then is I guess your secretary would on September 4
5 would give you this and say you wanted me to remind you
6 about this?

7 HONORABLE WAUGH: She would -- I mean she
8 would give it to me on or after September 4th.

9 MR. CHERTOFF: And do you have any reason to
10 believe that she didn't follow her regular practice
11 here?

12 HONORABLE WAUGH: No. And I think that's
13 when I went to talk to the Attorney General about it.

14 MR. CHERTOFF: And after that, you didn't
15 pursue it any further?

16 HONORABLE WAUGH: No.

17 MR. CHERTOFF: And he never got back to you?

18 HONORABLE WAUGH: Correct.

19 MR. CHERTOFF: And although Mr. Rover had
20 asked you a couple of times about it, he dropped it?

21 HONORABLE WAUGH: Correct.

22 MR. CHERTOFF: Now, in connection with the
23 issue of discovery, did you have a conversation with
24 Mr. Rover -- did you have a conversation with Mr. Rover
25 concerning the manner and pace with which you should

1 respond to discovery requests?

2 HONORABLE WAUGH: I had two.

3 MR. CHERTOFF: Tell us about those.

4 HONORABLE WAUGH: The first one was when I
5 asked him to work on the issue and one of the questions
6 he had was whether he needed to drop everything he was
7 doing at the ABC and I told -- I'm sorry, the Division
8 of Alcoholic Beverage Control, and I told him that he
9 didn't. That he, you know, when he got a request he
10 should work on it and he didn't have to drop everything
11 else.

12 At some point in the spring, and I don't
13 recall whether it was in connection with the time that
14 he was sending the patrol logs and documents of that
15 nature, or whether it was later in the spring when he
16 was sending the -- whatever the stop information was
17 for those days that were chosen, I had a conversation
18 with him and I don't remember what he said, but
19 whatever he said led me to believe that he was sort of
20 accumulating documents to go to the Justice Department
21 but not sending them out. And I said, George, why are
22 you doing that? And he said something to me about
23 well, you told me I didn't have to drop everything.
24 And I said, George -- and I don't remember my exact
25 words, but I said, George, this is the Justice

1 Department. If you don't give them what they want,
2 they're going to serve us with a subpoena or they're
3 going to sue us. That's not what I was telling you. I
4 was telling you you had -- you didn't have to drop
5 everything, but when you got something you needed to
6 give it to them. And if I can try to explain it in
7 terms of civil litigation, if you have 90 days -- 60
8 days to respond to interrogatories, what I was telling
9 him or what I was trying to tell him was, if it takes
10 you -- if it takes you a certain number of days to do
11 that, do it. But I wasn't tell him hold onto the
12 documents until the 60th day and then send them in.
13 And I went -- I think I went back -- I think I asked
14 him about it a couple of times afterwards to make sure
15 he was following my instructions.

16 MR. CHERTOFF: I'm going to -- I guess here's
17 my question to you if I stand back and look at the last
18 ten minutes of questions and answers.

19 There was a -- you answered earlier in
20 connection with the May 20th meeting when the question
21 was, what steps were taken to deal with the problem, if
22 there was a problem, in terms of correcting it? Your
23 answer was: "Well, we were working with the Department
24 of Justice. You know, we were assisting them and
25 cooperating with them and that was going to be the

1 solution." And yet in --

2 HONORABLE WAUGH: I --

3 MR. CHERTOFF: Was that --

4 HONORABLE WAUGH: I said that one of the
5 things I had in mind is that we were trying to
6 cooperate with the Department of Justice and they had
7 said that they would look at the stuff and they would
8 get back to us.

9 MR. CHERTOFF: But in doing that cooperation,
10 you'll agree with me, first of all, nobody said let's
11 give them something they don't ask for, let's just give
12 them a lot of stuff and ask for their help. Nobody
13 ever directed that be done, correct?

14 HONORABLE WAUGH: Right.

15 MR. CHERTOFF: The person that you designated
16 and supervised to be responsible for their production,
17 at the very least, misunderstood his obligation to
18 produce and took your instructions as an invitation to
19 drag his feet, is that fair to say?

20 HONORABLE WAUGH: I'm not sure what you mean
21 by "at the very least."

22 MR. CHERTOFF: Well, in other words, you
23 would agree with me that your impression is that Mr.
24 Rover believed you had instructed him to take his time
25 in terms of responding and put things on the back

1 burner.

2 HONORABLE WAUGH: Right.

3 MR. CHERTOFF: And, of course, you left him
4 on in place to do this production even after you
5 cleared up the misconception, right?

6 HONORABLE WAUGH: Yes.

7 MR. CHERTOFF: Likewise, when the memo comes
8 up that's been given to you by someone in another
9 Division who was identified as important and you pass
10 it up to the Attorney General and he doesn't react to
11 it, nothing further happens even though you believe it
12 should be turned over, is that fair to say?

13 HONORABLE WAUGH: Yeah. And it's fair to say
14 I'm deeply embarrassed as I sit here and say that I
15 lost track of a document that I thought should have
16 been produced, but that's what happened.

17 MR. CHERTOFF: But I guess my question is, in
18 your dealings with the Attorney General, did he convey
19 any sense to you that your instructions were to
20 actually actively go out and try to collect material
21 and give it to the Department of Justice in order to
22 get their assistance in dealing with the problem?

23 HONORABLE WAUGH: We -- no. We went down to
24 the Department of Justice -- first was the phone call.
25 Then we went down and talked to them. The

1 understanding was that they would ask us for documents
2 and we would give it to them. There was never any
3 discussion that I recall of us doing anything other
4 than responding to what their requests were.

5 MR. CHERTOFF: And at no point in time during
6 the entire time you were involved in this from the
7 beginning of the review in November of '96 up until
8 your departure, at no time did anybody in the Office of
9 Attorney General talk about conducting an actual review
10 of the problem to determine whether, in fact, the
11 consent-to-search data revealed instances of profiling?
12 Is that fair to say?

13 HONORABLE WAUGH: A separate review, that's
14 correct.

15 MR. CHERTOFF: The entire discussion was in
16 terms of negotiating with the Department of Justice in
17 terms of the scope at their request, right?

18 HONORABLE WAUGH: I'm not sure I understand
19 what you mean.

20 MR. CHERTOFF: The discussion about racial
21 profiling that you participated in was centered upon
22 negotiation and dealing with the Department of Justice
23 in terms of the scope of their request, right?

24 HONORABLE WAUGH: If I understand your
25 question correctly, there was an issue that was raised

1 as to whether the consent-to-search data came within
2 their -- the scope of their original discussion with us
3 or whether it was an expansion.

4 MR. CHERTOFF: But in general --

5 HONORABLE WAUGH: There was a meeting to
6 discuss that. I was of the view, and I think there's a
7 memo where I said something to the Attorney General
8 earlier on, that I was of the view that we should give
9 them generally what they wanted. The State Police
10 didn't want to produce those documents, as I understood
11 their position. And the decision was made that when
12 the Justice Department asked for them again, they would
13 be produced. And they were.

14 MR. CHERTOFF: And wasn't the decision made
15 to produce them, but to produce them with a statement
16 that said that they were only being produced because
17 they might have some relevance to showing your reasons
18 for the initial stop, but not because there was any
19 concession that consent to search was a relevant
20 issue --

21 HONORABLE WAUGH: As I testified at my
22 deposition, that was over-lawyering. You know, you
23 asked me before was there some thought that we would
24 give the Justice Department the documents and say but
25 you can only use them this particular way? Number one,

1 I don't recall such a discussion. And number two, it
2 would have been ridiculous to have such a discussion
3 because you can't ask the Justice Department to do it.
4 And they were being given the documents to do whatever
5 they wanted with and we were over-lawyering and saying
6 well, we're giving it to you because maybe they're
7 relevant to what you said you were looking at. But
8 there was no doubt in my mind and I don't think there
9 was any doubt in anyone else's mind that when they got
10 the documents, they would look at the consent-to-search
11 issue.

12 MR. CHERTOFF: But the idea was to try, as
13 far as possible, to get them to focus away from it,
14 right?

15 HONORABLE WAUGH: No.

16 MR. CHERTOFF: No? Isn't in the letter of
17 November 5th, which I'm going to put up, R-20...

18 Now, it says here, "For this reason, the
19 State would ordinarily object to the production of
20 these documents for use in the inquiry the Justice
21 Department has described to us because they're outside
22 of the scope. However, we've noted the consent-to-
23 search form has a section labeled 'Reason for initial
24 contact narrative' which usually contains an
25 articulation of the reason for the initial stop. Thus,

1 they do contain some ancillary information related to
2 your inquiry and we'll agree to produce these reports
3 solely for that reason."

4 Now, putting aside the fact that it's clear
5 that at the end of the day the Department of Justice
6 could ask for whatever they want to ask for and
7 subpoena it.

8 HONORABLE WAUGH: Right.

9 MR. CHERTOFF: Would you agree with me that
10 the effort of the letter is designed to try, to the
11 extent you can do in a situation of being a recipient
12 of a request, to try to limit the focus and not give
13 any suggestion that you're willing to agree that
14 consent-to-search data could be relevant to something
15 involving profiling?

16 HONORABLE WAUGH: Absolutely not.

17 MR. CHERTOFF: So you think that --

18 HONORABLE WAUGH: The -- I think I said to
19 you when you were taking my deposition that it's like
20 -- there were times when I would answer an
21 interrogatory by saying, you know, I object to the
22 question, blah, blah, blah, notwithstanding the
23 objection. Here's the information. That, in my view,
24 and maybe over the past couple of years that I've
25 gotten a more mature view of it or a different respect

1 of it, that's over-lawyering. But there was no doubt
2 in my mind, and I don't think there was any doubt in
3 anyone's mind, that when the Justice Department got
4 those documents, they were going to do whatever they
5 wanted with them and what that letter said didn't make
6 a damn worth of difference. It was just sort of -- I
7 mean maybe it was just face-saving or maybe it was
8 something like that to say well, you know, we said
9 before we weren't sure it was -- I think Rover said to
10 them he wasn't sure it was relevant to what they were
11 looking at. The bottom line, Mr. Chertoff, is they got
12 the documents and they were going to do whatever they
13 wanted with them. And, you know, it's foolish to think
14 that that letter was an effort to persuade them that
15 they should do something else with it. I mean it's
16 just --

17 MR. CHERTOFF: Well --

18 HONORABLE WAUGH: You wouldn't -- when you
19 were U.S. Attorney, if you got a letter like that, your
20 reaction would have been oh, yeah, I'm going to limit
21 myself to what you tell me, wouldn't it have?

22 MR. CHERTOFF: Well, I don't know if you want
23 me to answer questions here, but let me move to
24 something else.

25 Z-14 is a memo from George Rover to Paul

1 Zoubek which is dated February 26, 1999. And it lists
2 "Numerous documents I have not produced to DOJ,
3 including the following: July 5th, 1996, IAB motor
4 vehicle stop, audited at Moorestown station, Lieutenant
5 Gilbert." Now, that's the document we saw earlier
6 that's contained in the July 29th, 1997 memo.

7 As to that one, you will agree with me that
8 there was essentially -- you believed it should be
9 produced. Mr. Rover believed it should be produced.
10 The Attorney General, it was put in his hands, he did
11 nothing and it was not produced to your knowledge,
12 correct?

13 HONORABLE WAUGH: And I didn't remind him
14 about it.

15 MR. CHERTOFF: IAB -- number six. "Audit IAB
16 Perryville, Washington station. Hunterdon County
17 statistics. Gloucester County data base arrest data."
18 I believe it was Mr. Rover's testimony that with
19 respect to all of the decisions not to turn these
20 documents over, he never made these decisions himself,
21 he always presented them to you and you made the
22 decision. Do you disagree with that?

23 HONORABLE WAUGH: I remember, because we just
24 talked about it, the Perryville, Washington station
25 document, if the Hunterdon County document was a

1 similar document that also dealt with a highway not the
2 Turnpike, it's possible that that could have, you know,
3 I don't know whether he said I have a document or I
4 have documents. And if he asked me about two documents
5 at the same time, then my answer would be what it was
6 before.

7 The Gloucester County data base arrest data,
8 I had seen the document recently, but I don't ever
9 remember seeing that document, and it certainly
10 wouldn't fall under my definition of a document that
11 didn't relate to the Turnpike. And I have absolutely
12 no recollection of telling him not to produce it and I
13 don't think I did.

14 MR. CHERTOFF: Would you agree with me that
15 you -- that you were aware that Mr. Rover was getting
16 statistical information from Sergeant Gilbert or others
17 in the State Police during the time that you supervised
18 Mr. Rover?

19 HONORABLE WAUGH: I was aware that he was --
20 he was getting information from the State Police. I
21 don't know that I would go so far as to say that I
22 definitely knew it was statistical in that -- to go
23 back to the discussion at the May 20th meeting, the
24 discussion as I recall it was that there was a
25 similarity between the numbers that the State Police

1 had and the numbers in Maryland. I don't recall anyone
2 talking about specific statistics and I don't ever
3 remember anyone telling me a specific statistic.

4 MR. CHERTOFF: Did you know that Mr. Rover
5 had also gotten information from the State Police
6 regarding the statistics concerning the individual
7 troopers whose activities were the subject of the Soto
8 case?

9 HONORABLE WAUGH: My understanding is that's
10 the Gloucester County data base, arrest data. I did
11 not know about that though.

12 MR. CHERTOFF: Is it -- is it -- I mean the
13 testimony by Mr. Rover was any statistical information
14 he got essentially he conveyed to you. Is it your
15 position that that's not necessarily the case?

16 HONORABLE WAUGH: Yes. I mean if you'll look
17 at my file, any document I got -- well, there may have
18 been some documents I got that I didn't send to the
19 Attorney General, but virtually every document I got, I
20 sent to the Attorney General. I sent the Moorestown
21 document to the Attorney General. If George had given
22 me the Gloucester County data base, I would have sent
23 that to the Attorney General. None of those documents,
24 six, seven or eight, are in my file and as far as I
25 know, I never had them. Because if I had, one, they'd

1 be in my file; and two, I would have sent them to the
2 Attorney General.

3 MR. CHERTOFF: Suppose he conveyed the
4 information orally to you, it wouldn't be in your file,
5 would it?

6 HONORABLE WAUGH: If, as I think I -- as I
7 think is possible, if not more than possible, you know,
8 likely, documents number six and seven he conveyed
9 orally that he had some documents that related to other
10 roadways as we discussed before, I very well might have
11 told him that I didn't think they needed to be
12 produced.

13 MR. CHERTOFF: Would you have told --

14 HONORABLE WAUGH: The Gloucester County data
15 base, if he had said I have a document that relates to
16 the southern end of the Turnpike, I would have wanted
17 to get that document and I would have sent it to the
18 Attorney General and I certainly wouldn't have told him
19 not to produce it.

20 MR. CHERTOFF: Did you know whether he was
21 getting ongoing data -- or when did you actually leave
22 the Department to become a Judge?

23 HONORABLE WAUGH: I actually left in January,
24 but it was, as I think I explained in my deposition, it
25 was probably early to mid-November that one, I started

1 working on the process of filling out forms and going
2 to interviews and all that stuff. And two, my father
3 was having chemo -- not chemotherapy, radiation
4 treatments and I was taking time off to go to that.

5 MR. CHERTOFF: What year are we talking --

6 HONORABLE WAUGH: And from my --

7 MR. CHERTOFF: What year are we talking
8 about, October of --

9 HONORABLE WAUGH: '97.

10 MR. CHERTOFF: Okay.

11 HONORABLE WAUGH: No, not October, November.
12 So the last document in my file, as I recall,
13 was my memo to the Attorney General forwarding the two
14 drafts of the letter to the Justice Department.

15 MR. CHERTOFF: So to the --

16 HONORABLE WAUGH: And then I know I went on
17 vacation for a week after that.

18 MR. CHERTOFF: So to the extent there were,
19 for example, documents relating to statistical studies
20 of stops or searches for six months in '97 and six
21 months in '98, ending in October of both years, you
22 would have been gone by the time that material was
23 generated, is that fair to say?

24 HONORABLE WAUGH: Well, I certainly would
25 have been gone by the time anything having to do with

1 '98 was generated. And if the '97 information was
2 generated in '98, I was gone then.

3 MR. CHERTOFF: So -- but with respect to
4 documents or statistics that were generated before, the
5 only thing you specifically remember is the Moorestown
6 statistics that we've talked about, correct?

7 HONORABLE WAUGH: I specifically remember
8 that and I have a very general recollection of a
9 discussion of one or two documents that related to
10 other roadways.

11 MR. CHERTOFF: Now -- and, of course, you
12 were present at the May 20th meeting where the issue of
13 consent-to-search statistics was discussed, at least in
14 general, if not in specific numbers, correct?

15 HONORABLE WAUGH: Well, you use the word
16 "statistics" and statistics to me suggests numbers and
17 my recollection of the discussion was that it was not a
18 number discussion as much as similarity discussion.
19 But with that caveat, yes.

20 MR. CHERTOFF: In other words, they didn't
21 use a specific number, but it was clear they were
22 talking about numbers or percentages being similar,
23 correct?

24 HONORABLE WAUGH: They were concerned that
25 their numbers were similar to Maryland's.

1 MR. CHERTOFF: Now, in connection with that
2 meeting on May 20th or any other meeting where you
3 participated, did you ever give the Attorney General
4 advice that consent-to-search data was not legally
5 sufficient to establish at least a prima facie case of
6 racial profiling or selective enforcement?

7 HONORABLE WAUGH: I don't recall -- I don't
8 recall saying that.

9 MR. CHERTOFF: Did the Attorney General ever
10 in any meeting you attended turn to you and ask you for
11 advice about what, if anything, he should do in terms
12 of following up on consent-to-search numbers that had
13 been talked about in the May 20th meeting?

14 HONORABLE WAUGH: Not that I recall.

15 MR. CHERTOFF: Were you --

16 HONORABLE WAUGH: He did ask -- I think he
17 did ask me what I thought about the issue of providing
18 the consent-to-search documents to the Justice
19 Department, but I --

20 MR. CHERTOFF: I'm not talking about --

21 HONORABLE WAUGH: But if that's not your
22 question, if you're talking about following up on
23 statistics --

24 MR. CHERTOFF: I'm asking you, not in his
25 capacity as someone asking what should be turned over

1 to a litigation adversary, namely the Department of
2 Justice, but in his capacity as manager and supervisor
3 and constitutional officer designated to be over the
4 State Police, in your presence or to your knowledge,
5 did he ever ask anybody for advice regarding whether
6 the consent-to-search data was significant in terms of
7 establishing the existence of racial profiling?

8 HONORABLE WAUGH: I don't want to quibble
9 with you, but he wasn't -- the answer to your question
10 is no, but he wasn't in the habit of differentiating
11 what hat he was wearing when he asked a question.

12 MR. CHERTOFF: Okay. In any respect --

13 HONORABLE WAUGH: But if your question is,
14 did the Attorney General ever ask that question in my
15 presence that I recall, my answer is no.

16 MR. CHERTOFF: And you certainly never
17 advised him that the consent-to-search data was too
18 inconclusive or too irrelevant to follow up upon in
19 terms of determining whether there was selective
20 enforcement?

21 HONORABLE WAUGH: I don't recall such a
22 discussion.

23 MR. CHERTOFF: As a matter of fact, let me
24 just turn back to one document which is that July 29th,
25 document. And let me ask you now, using what you know

1 now, would you agree with me that if one saw that of
2 the 144 people stopped on the Turnpike who were asked
3 to consent to search, 62 percent were minority and 30
4 (sic) percent were non-minority, in your mind would
5 that be a sufficient disparity to warrant at the very
6 least further examination of the facts to determine if
7 there was some selective enforcement?

8 HONORABLE WAUGH: Knowing what I know now, I
9 think I would agree with that.

10 MR. CHERTOFF: In fact, as the state of the
11 law was back in 1997, would you agree with me that the
12 statistical disparity, 62 percent and 38 percent, would
13 be prima facie enough to warrant further inquiry with
14 respect to racial profiling?

15 HONORABLE WAUGH: I don't know that I know
16 what the state of the law was at that time. I knew
17 what -- I knew what the legal arguments were in the
18 Soto appeal.

19 MR. CHERTOFF: And you understand that in the
20 Soto appeal as the law was laid out, once you came
21 forward and showed a statistical disparity, the burden
22 then shifts to establish or to explain away or to give
23 a valid reason why that disparity occurs. Was that the
24 state of the law at that time?

25 HONORABLE WAUGH: Mr. Chertoff, I haven't

1 recently read the Soto brief and I'm not a criminal
2 lawyer, so if that's what you're telling me, I'll take
3 your word for it, but whatever the brief said. I was
4 more familiar with it maybe then than I am now. I just
5 don't remember.

6 MR. CHERTOFF: Let me ask it this way.
7 Certainly, as of 1997 you were not in a position to say
8 to the Attorney General of New Jersey that he could
9 ignore the consent-to-search data or not pursue it
10 further because in and of itself it didn't really,
11 wasn't probative with respect to the issue of selective
12 enforcement?

13 HONORABLE WAUGH: Well, you're asking me a
14 question about something that I didn't think of and so
15 it's hard for me to answer the question knowing what I
16 -- thinking of only what I knew in 1997. In hindsight,
17 I wish I had done a lot of things differently.

18 MR. CHERTOFF: But you certainly never
19 advised him that consent-to-search data was not
20 probative?

21 HONORABLE WAUGH: I don't recall having any
22 such discussion.

23 MR. CHERTOFF: Did he ask you or anybody in
24 your presence?

25 HONORABLE WAUGH: I don't recall it being

1 discussed.

2 MR. CHERTOFF: Now, after this Senate inquiry
3 was announced, you had -- you did have conversations
4 with Mr. Verniero concerning the matters that are the
5 subject of this review, correct?

6 HONORABLE WAUGH: I had many -- I had
7 discussions with Peter Verniero on a regular basis and
8 there were times when we discussed the subject matter
9 of the inquiry.

10 MR. CHERTOFF: And I believe you told us in
11 the deposition that at least as of that point in time
12 you had a conversation about the May 20th meeting in
13 which Mr. Verniero indicated he didn't remember making
14 a comment about the train tracks.

15 HONORABLE WAUGH: Right.

16 MR. CHERTOFF: And you told me you did
17 remember it?

18 HONORABLE WAUGH: Right.

19 MR. CHERTOFF: And did he also discuss with
20 you when matters concerning racial profiling
21 "crystalized" in his mind?

22 HONORABLE WAUGH: I don't know that he used
23 the word "crystalized" when he was talking to me, but I
24 do recall that he said that his view of the issue
25 changed in 1998 after the Turnpike shooting.

1 MR. CHERTOFF: And how did he come to say
2 that to you in these conversations that I guess
3 occurred since the fall of last year? How did it come
4 up?

5 HONORABLE WAUGH: I don't remember.

6 MR. CHERTOFF: Since the deposition, which I
7 guess was a few weeks ago, did you have any further
8 conversation with him?

9 HONORABLE WAUGH: I've talked to him on the
10 telephone three times and we did not mention the
11 subject of this inquiry at all.

12 MR. CHERTOFF: And just one question with
13 respect to the conversations you had concerning the
14 train tracks and his testimony, did those occur before
15 or after you were identified on the witness list as a
16 potential witness in the case?

17 HONORABLE WAUGH: The witness list, I
18 believe, came out in February? January? If it came
19 out in 2001, it was before.

20 MR. CHERTOFF: So it would have been 2000.

21 HONORABLE WAUGH: Yeah. It was -- it was
22 when the documents came out, I think.

23 MR. CHERTOFF: I have nothing further, Mr.
24 Chairman.

25 SENATOR GORMLEY: Jo. Go ahead.

1 MS. GLADING: Judge Waugh, when Peter
2 Verniero arrived at the Department of Law and Public
3 Safety, did you bring him up to speed on the Soto
4 decision or brief him on it in that transition?

5 HONORABLE WAUGH: I don't -- I don't believe
6 I did. I can't guarantee you 100 percent that I
7 didn't, but I don't recall having done it.

8 MS. GLADING: Do you know who else might
9 have?

10 HONORABLE WAUGH: Well, it could have been --
11 I mean I assume he had transition discussions with
12 Attorney General Poritz. I don't recall whether there
13 was a transition book or if I saw it but it would not
14 have been unusual for a transition book to have
15 something like that in it. I think once he -- once he
16 got there I would have talked to him about the areas of
17 my responsibility, but I don't think I would have
18 talked to him about this issue because it was sort of
19 outside the area of my general responsibility.

20 MS. GLADING: Okay. Before Peter Verniero
21 arrived in April of '96 when Mr. Fahy sent you the memo
22 about reporting on the -- or he copied you on the memo
23 reporting on various suppression motions around the
24 state and the status of those motions, that memo also
25 mentioned the development of an auditing process. Do

1 you recall that in the memo? We discussed it during
2 your deposition.

3 HONORABLE WAUGH: I'll take your word for it.

4 MS. GLADING: Okay. Did you have any
5 discussions with Mr. Fahy or Mr. Rover about their
6 participation in the committee that was chaired by
7 Lieutenant Colonel Littles?

8 HONORABLE WAUGH: No. I was really a little
9 -- it's possible that I knew about it, but I was really
10 a little surprised at the deposition when I learned
11 that there was such a committee. And I don't know
12 whether it was because I just didn't know about it or
13 because I had forgotten about it.

14 MS. GLADING: So you would not -- would you
15 have briefed Mr. Verniero on the existence of this
16 committee and the work that it had done and any reforms
17 it had proposed?

18 HONORABLE WAUGH: No.

19 MS. GLADING: Who might have, do you know?

20 HONORABLE WAUGH: I don't know.

21 MS. GLADING: Would Mr. Rover or Mr. Fahy
22 have done that? Would they have gone directly to him
23 with something?

24 HONORABLE WAUGH: Well, I don't recall -- I
25 mean --

1 MS. GLADING: I'm sorry, Mr. Susswein or Mr.
2 Fahy?

3 HONORABLE WAUGH: Susswein might have or Fahy
4 might have. I just don't know.

5 MS. GLADING: If it was known as early as
6 January of '97 in the draft of the letter to Loretta
7 King that the stop rates were running about the same as
8 the level in Soto and higher than other State Police
9 stations, and there was discussion in that letter about
10 the need to do a violator survey, what's your
11 understanding of why a violator survey was not done?

12 HONORABLE WAUGH: I think the violator survey
13 has always been something of an intractable problem
14 because a simplistic violator survey on the Turnpike
15 would probably show that 99 or 100 percent of the
16 people are violating the speed limit, especially when
17 it was 55, and therefore everyone would fall into the
18 category and the thought was that there ought to be
19 some way or we maybe wished or hoped that some way
20 could be found to quantify types of violations and
21 seriousness of violations. I mean as a general
22 proposition, if you -- back then when the Turnpike
23 speed limit was 55, if you were going 55, everyone was
24 passing you. And if everyone is passing you at 55,
25 then everyone is a violator.

1 MS. GLADING: So was the idea of a violator
2 survey not necessarily a valid one to refute the
3 statistics that the State was seeing?

4 HONORABLE WAUGH: No, it is a valid idea, but
5 my understanding was, and I'm not a social scientist or
6 a statistician, that it's not all that easy to come up
7 with one that's meaningful. And, in fact, it's my
8 understanding that one hasn't been done. Although I
9 think I read in the newspaper that a user survey has
10 been done in the last year or so.

11 MS. GLADING: And is it your understanding
12 that the premise of a violator survey is that it would
13 potentially refute high minority stop rates or consent
14 search rates because it could show that minorities
15 violate traffic laws more frequently or more
16 egregiously?

17 HONORABLE WAUGH: Well, I don't know about --
18 I don't know whether I thought that. I think the idea
19 was that it would give you a better idea of what the
20 population of people who could be stopped was.

21 MS. GLADING: Well, doesn't that mean people
22 who could be --

23 HONORABLE WAUGH: Yes, if that's what you
24 found, I suppose your answer would be correct. I don't
25 know that that's what you would find.

1 MS. GLADING: But that would be the reason --

2 HONORABLE WAUGH: But the issue was you want
3 to find out what the -- they wanted to find out what
4 the violators -- what a good violator survey would
5 show.

6 MS. GLADING: All right. Let me clarify my
7 question. And I'm not suggesting that that's what
8 would be found. What I'm saying -- what I'm asking you
9 is, wouldn't the only reason to do a violator survey be
10 to determine that the numbers are not disparate in
11 terms of the rate of which minorities are being stopped
12 because minorities are breaking the law more frequently
13 or more egregiously, traffic laws?

14 HONORABLE WAUGH: I'm having trouble with
15 breaking the law because you could -- you could have
16 one category of people stopped would be people whose
17 taillights are out. And, you know, I suppose
18 technically that's breaking the law and you could make
19 the argument maybe that since minorities in our society
20 are typically in the lower socioeconomic class because
21 of past histories of discrimination or -- that they are
22 more represented in that class of people.

23 MS. GLADING: We could determine that --

24 HONORABLE WAUGH: I mean I don't know that I
25 can think of all the possibilities that you could have.

1 MS. GLADING: Actually that kind of a
2 violator survey of non-moving violations, you could do
3 right now based upon tickets, right?

4 HONORABLE WAUGH: No, because -- because the
5 idea of a violator survey is to come up with the people
6 who could be stopped, not the people who were stopped.

7 MS. GLADING: Okay. In the January 3rd, 1997
8 letter, did Peter Verniero ever ask you about the
9 existence of ongoing statistical analyses as was
10 indicated must exist in that letter?

11 HONORABLE WAUGH: In the letter to Loretta
12 Kind?

13 MS. GLADING: Um-hmm.

14 HONORABLE WAUGH: I don't recall that we
15 discussed it.

16 MS. GLADING: Did he have any discussion with
17 you subsequent to that letter about the continuing high
18 rate at which minorities were being stopped?

19 HONORABLE WAUGH: We may have, but I don't
20 recall a specific discussion.

21 MS. GLADING: Can you tell me why George
22 Rover was selected to be the liaison with the
23 Department of Justice and the State Police?

24 HONORABLE WAUGH: Yes. Jack Fahy was the
25 person who had handled this issue for a number of years

1 and I don't remember exactly when, but certainly by the
2 time the Legal Affairs unit was disbanded, he went back
3 to CJ and he was in the State Grand Jury unit and that
4 was a good opportunity for him. It was something he
5 wanted to do and I think that he was sort of burned out
6 on profiling. So then the issue became well, if it's
7 not going to be Jack, who's it going to be? If the
8 Legal Affairs unit in the Office of the Attorney
9 General had still been there, then it would have gone
10 to somebody else in that unit because if it wasn't, I
11 had to try to think of someone else. George Rover was
12 a DAG that I had hired into the Legal Affairs unit when
13 I was the Director and at some point he left Legal
14 Affairs I think before it was disbanded and went over
15 to ABC, but he would come and visit me on a regular
16 basis and say, you know, I'd really like to get back in
17 OAG, is there something you can use me for? And when I
18 had to think of somebody to do this, he occurred to me
19 and I think I asked him if he would be in a position to
20 do it. And if you look at -- there's one draft letter
21 that he sent me where under his signature he put
22 "Special Assistant to the Attorney General" and I
23 crossed it out --

24 MS. GLADING: I saw that.

25 HONORABLE WAUGH: -- and I said nice try,

1 because that's what he wanted to be, he wanted to be a
2 Special Assistant to the Attorney General and that's
3 not what I was offering him. I mean if -- what he
4 really would have liked is for me to -- if somebody had
5 said to me, you can hire somebody to be your assistant,
6 I think he would have liked to come back into the OAG.
7 That's not what I had to offer, but I did have this
8 project for him to work on.

9 MS. GLADING: So he was not selected because
10 of his expertise in criminal law or in Civil Rights
11 law, right?

12 HONORABLE WAUGH: No. He did, as I
13 understood it, when he was hired have experience in
14 litigation.

15 MS. GLADING: I want to clarify something you
16 testified to earlier. You said that you had your
17 second conversation with Mr. Rover about what he
18 interpreted to mean that he should drag his feet on
19 producing documents to DOJ sometime in the spring. I
20 assume you meant the spring of '97, right?

21 HONORABLE WAUGH: Yes.

22 MS. GLADING: He -- the documents indicate
23 that -- well, at that point he was collecting documents
24 for the 30 sample days, is that correct?

25 HONORABLE WAUGH: No. What I don't remember

1 is there were -- early on there were some patrol logs
2 and other things that were requested by the Justice
3 Department and he gathered them up and was sending them
4 out.

5 MS. GLADING: The examples, you mean, that
6 Justice wanted to look at before they made their actual
7 formal request?

8 HONORABLE WAUGH: Right. So it was either in
9 connection with that or it was later in connection with
10 the -- the information for the -- was it 30 days?

11 MS. GLADING: The 30 days, right.

12 HONORABLE WAUGH: Yeah.

13 MS. GLADING: Well, he didn't actually start
14 sending information for the 30 days until June 17th.
15 So if he was accumulating a box of information and not
16 sending it and it was the 30 days, it would have been
17 later than the spring, right?

18 HONORABLE WAUGH: What day in June?

19 MS. GLADING: June 17th.

20 HONORABLE WAUGH: Doesn't summer start on
21 June 21st?

22 MS. GLADING: My point is that he was sending
23 -- he just began sending documents on that day, but --
24 oh, when you had the second conversation with him he
25 hadn't sent anything?

1 HONORABLE WAUGH: No. No, that's not what
2 I'm saying. I don't remember exactly what it was that
3 he said that sparked this conversation. And so that's
4 why I'm saying it was either in connection with the
5 first set of things or the second set of things. My
6 sort of general recollection is it was in the spring
7 but, you know, I don't know that I can be more specific
8 than that.

9 MS. GLADING: Okay. Do you have any
10 explanation for why then, according to Sergeant
11 Gilbert's testimony, George Rover had most of the
12 documents that were responsive by October and he sent
13 them out over the course of the next seven months and
14 finished sending them in May? Was that the --

15 HONORABLE WAUGH: May of '98?

16 MS. GLADING: Correct.

17 HONORABLE WAUGH: No, I don't have any
18 explanation for that at all.

19 MS. GLADING: At the May 20th meeting, you
20 testified I think that you knew that the State Police
21 were concerned about the consent-to-search numbers but
22 that nobody actually asked what the numbers were,
23 right?

24 HONORABLE WAUGH: That's my recollection.

25 MS. GLADING: Okay. And that Peter Verniero

1 made a comment suggesting that if remedial action -- if
2 there was a sense that remedial action -- that the DOJ
3 would seek remedial action, that he would consider
4 that, is that right?

5 HONORABLE WAUGH: Yeah.

6 MS. GLADING: What prompted the discussion of
7 remedial action? Was there any sense by individuals --

8 HONORABLE WAUGH: It was the discussion of
9 the consent decree. In other words --

10 MS. GLADING: Let me ask the question this
11 way.

12 HONORABLE WAUGH: Okay.

13 MS. GLADING: Was there any sense by the
14 people in the room that remedial action and a consent
15 decree were a very real possibility in this case?

16 HONORABLE WAUGH: My understanding of the
17 State Police concern, as I think I testified, is that
18 they -- their concern was that their numbers had some
19 approximation to the Maryland numbers and therefore
20 that the Justice Department would look for a consent
21 decree. The Attorney General didn't just say no
22 consent decree, period, end of discussion. He said
23 what I said he said, and I don't remember his exact
24 words, and that is that if the Justice -- and he told
25 the Justice Department the same thing when we were down

1 there, if they were asking for remedial measures, he
2 would consider it but he wasn't inclined to sign a
3 consent decree. And then there must have been some
4 further discussion and that's when he talked about
5 being tied to whatever it is he said he would have to
6 be tied to.

7 MS. GLADING: Okay. Then let me ask this.
8 If he would consider remedial actions, was there an
9 understanding that remedial actions might be necessary
10 or appropriate?

11 HONORABLE WAUGH: The understanding that I
12 think we had was that it was the position of the State
13 Police that there was not a major problem with racial
14 profiling and that they were enforcing all of the
15 things that had been done in the years before,
16 beginning with the Dintino reforms up until the things
17 that I -- it's my understanding were suggested after
18 the Soto case came down, some of which were just making
19 sure that the Dintino reforms were followed.

20 MS. GLADING: Well, if there was a sense that
21 there was no problem and there was -- and everyone in
22 the room felt secure in that representation, why would
23 the State take the position that it would engage in
24 remedial action if they didn't think it was needed?

25 HONORABLE WAUGH: Because maybe the Justice

1 Department would think it was needed. I mean that's --
2 that was the discussion down in Washington, that they
3 were going to look into the issue. In fact, if you
4 look at my notes from the discussion with Mr.
5 Rosenbaum, he said that they would look at the issue,
6 then they would get back to us and they might talk
7 about pre-litigation resolutions. And so when the
8 Attorney General went down, he said if, you know, if
9 when you're done you think there are remedial actions
10 that need to be taken that we haven't taken already,
11 and I don't know whether he phrased it exactly this
12 way, we will very seriously consider them, but I have
13 to tell you I'm not really that interested in a consent
14 decree.

15 MS. GLADING: Okay. At this point at May
16 20th I guess you had the 30 dates.

17 HONORABLE WAUGH: Yes.

18 MS. GLADING: Was there any sense there was a
19 need to go and look at the data? New Jersey needed to
20 look at its own data to determine whether or not it had
21 a problem and the information that it was going to be
22 sending to DOJ?

23 HONORABLE WAUGH: I don't recall any
24 discussion like that.

25 MS. GLADING: In the memo that George Rover

1 sent you on April 22nd, he has a lengthy -- he engages
2 in a lengthy discussion about the need to perhaps
3 educate DOJ about the conflicting messages coming from
4 Civil Rights and from Drug Enforcement Agency. Do you
5 recall that discussion?

6 HONORABLE WAUGH: I do.

7 MS. GLADING: In your deposition you
8 testified that -- and he attached some information I
9 think from DEA. You testified that "I don't think I
10 read this information that carefully because I wasn't
11 really particularly persuaded that this was something
12 we should be doing."

13 HONORABLE WAUGH: That's right.

14 MS. GLADING: I'm wondering why then you list
15 it as an item of discussion on the May 20th agenda?

16 HONORABLE WAUGH: Because he had suggested it
17 and therefore it was an item that needed to be
18 considered.

19 MS. GLADING: So was it discussed?

20 HONORABLE WAUGH: I don't recall a discussion
21 of it, but I would have to assume that we probably went
22 down the agenda and I certainly know or at least I'm
23 pretty sure, that we never did that. And whether that
24 decision was made at that meeting or not, I don't know.

25 MS. GLADING: Okay. And earlier when you

1 testified about Justice not sending a target letter.
2 You had actually engaged in a conversation with
3 Justice about them not sending a letter, right?

4 HONORABLE WAUGH: Well, I don't know that
5 they refer to it as a target letter, but at -- I
6 called, I assume Mr. Rosenblum, because he is the
7 person I had spoken to, and said the Attorney General
8 has asked me -- you know, I don't remember the
9 dialogue exactly, but I would have said something
10 like, the Attorney General has asked me to call you.
11 He wants to come down and meet with the Justice
12 Department, and he's asking that you not send out any
13 sort of letter, until that's been done. And, his
14 answer was, fine.

15 MS. GLADING: Okay. And then, you advised
16 the Attorney General, in an E-mail, on November 18th,
17 "Please tell Peter that the U.S. Department of Justice
18 is willing to defer sending a letter confirming that
19 they are investigating profiling by State Police, in
20 order to meet with Peter, to discuss the
21 investigation." And then, they had asked for possible
22 meeting dates. Is that correct?

23 HONORABLE WAUGH: I did send that E-mail to
24 his secretary.

25 MS. GLADING: When you left the Department,

1 I understand that your transition out was a little bit
2 non-traditional because of other issues. But, did you
3 brief anyone, or bring anyone up to speed on the
4 status of the Department of Justice investigation?

5 HONORABLE WAUGH: I don't think so. And,
6 And, I think the reason for that was not so much my
7 personal circumstances as that I was leaving, and I
8 know, at some point, I learned that the First
9 Assistant Attorney General was leaving. And, I don't
10 think we knew who was taking our place. So, I don't
11 think there was anyone to talk to. That, at least, is
12 my recollection.

13 MS. GLADING: Did you subsequently ever
14 receive a phone call from David Hespe, asking for --
15 to be updated on the status of the investigation?

16 HONORABLE WAUGH: No. I don't think I've --
17 well, I'm pretty sure I've never talked to David Hespe
18 on the phone. And, I'm not sure that I've ever talked
19 to him in person, other than maybe saying "Hello."

20 MS. GLADING: Did you talk with Rover before
21 you went on vacation in November, to advise him that
22 you were leaving, and probably not returning?

23 HONORABLE WAUGH: I wasn't leaving, and not
24 returning.

25 MS. GLADING: You were --

1 HONORABLE WAUGH: When I went on vacation, I
2 did not know that I was going to be nominated.

3 MS. GLADING: Okay.

4 HONORABLE WAUGH: After, when I got back --
5 see, I don't know how long an answer you want. My
6 father used to do judicial evaluations for various
7 governors. In August, he --

8 MS. GLADING: Not that long.

9 HONORABLE WAUGH: All right.

10 MS. GLADING: When --

11 HONORABLE WAUGH: He got a letter from the
12 governor, and I don't know whether -- and, that said
13 that she was going to nominate me. And, I don't know
14 whether he got it when I was in Europe, and he called
15 me, or he got it after I was in Europe, and he spoke
16 to me. But, when I went on vacation, I did not know
17 that I was going to be nominated.

18 MS. GLADING: Okay. Did you ever have a
19 conversation with George Rover, telling him that you
20 were not going to be his supervisor on this issue, any
21 longer?

22 HONORABLE WAUGH: I assume that I must have.
23 He's --

24 MS. GLADING: Okay. Do you recall --

25 HONORABLE WAUGH: He went to my farewell

1 party, and he -- you know, everyone knew what was
2 going on. So, I must have had some discussion with
3 him.

4 MS. GLADING: So, how did you leave it, at
5 that point? Was he going to be reporting directly to
6 the Attorney General, on this issue?

7 HONORABLE WAUGH: I don't really remember
8 that discussion. Maybe he was, because I really don't
9 know -- I really don't know when the decision was
10 made, as to who were going to be the new -- that the
11 people replacing me and Ms. Mintz. And, in fact, I
12 think that they didn't -- I don't think anyone was
13 called Executive Assistant, Attorney General, after I
14 left.

15 MS. GLADING: I don't have anything else,
16 Mr. Chairman.

17 SENATOR GORMLEY: Senator Robertson, then
18 Senator Lynch, then Senator Girgenti.

19 SENATOR ROBERTSON: Thank you, Mr. Chairman.
20 Good afternoon, Judge.

21 HONORABLE WAUGH: Good afternoon.

22 SENATOR ROBERTSON: How many lawyers are
23 there in the Division of Law and Public Safety,
24 Department of Law and Public Safety?

25 HONORABLE WAUGH: Now?

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SENATOR ROBERTSON: I'm --
HONORABLE WAUGH: I'm sorry. There are hundreds.
SENATOR ROBERTSON: There are hundreds?
HONORABLE WAUGH: Right.
SENATOR ROBERTSON: So, in essence, it's a very large law firm, really?
HONORABLE WAUGH: Yes.
SENATOR ROBERTSON: And, you had an executive position in this very large law firm. Now, normally -- I don't know, you were engaged in private practice until about April of 1989, correct?
HONORABLE WAUGH: Right.
SENATOR ROBERTSON: In what sort of a firm was that?
HONORABLE WAUGH: It's a sort of a general -- it's called Smith, Stratton, Wise, Heher, and Brennan. It was in -- it's in Princeton, and it does litigation, business-type stuff, trusts and estates. I did the litigation.
SENATOR ROBERTSON: Okay. So, there were various departments within the law firm?
HONORABLE WAUGH: Right.
SENATOR ROBERTSON: And, when you're dealing with a law firm that has various departments, isn't it

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customary that when a problem comes in the door, you send it to the right department? If an anti-trust matter comes in the door, you don't send it to trusts and estates. Doesn't that sound correct?
HONORABLE WAUGH: I would agree with that.
SENATOR ROBERTSON: As a matter of fact, there was even a -- there's even a canon of ethics, as I recall, that said that you're not supposed to take on a case, or a responsibility, as an attorney, if, in fact, you don't have the background for it. If you're a real estate attorney, for instance, you shouldn't be doing murder cases, things of that sort. Regardless of the canon of ethics, is that your understanding, however?
HONORABLE WAUGH: Yes.
SENATOR ROBERTSON: The reason I ask question is because it concerns me that the Department of Justice came in with what might have been an important investigation as to what was going on in the State Police, in the State of New Jersey. Your response was to farm that out to a fellow whose experience -- had no criminal experience, and was in the Alcohol -- Alcoholic Beverage Control area. In retrospect, do you think it would have been better to bring in somebody who would have had some experience

1 in the criminal law area?

2 HONORABLE WAUGH: In retrospect, yes. But,
3 I have to qualify that by saying that, I guess, to
4 some extent, I didn't view it as criminal litigation.
5 I mean, certainly, the Soto appeal was. But, a --
6 something like this, with the Civil Rights Division of
7 the Justice Department, is really a civil litigation.
8 But, I certainly agree with you that it would have
9 been much better, especially in hindsight, to have
10 someone with some criminal law background.

11 SENATOR ROBERTSON: Well, what was your
12 assessment, at the time, as you began to know more
13 about the types of numbers that might be out there, or
14 even the possibility that there existed some sort of a
15 survey, or study, that had been done, within the State
16 Police? What was your -- what was your determination,
17 if any, with respect to the possible liability to the
18 State of New Jersey, with respect to the obligation to
19 make discovery in the Soto case?

20 HONORABLE WAUGH: I really didn't think of
21 it. I wasn't focused on that issue. I -- yes, I did
22 edit the Soto brief, because one of my concerns was to
23 make it clear, in the Soto brief, that we weren't,
24 one, defending -- primarily, that we were not
25 defending racial profiling, as a practice. In other

1 words, it was not our position that you can profile.
2 And, because it was being circulated, and if somebody
3 circulates something to me, I'll edit it. But, I
4 wasn't involved in the -- I wasn't an attorney on the
5 Soto case, as far as I was concerned. And, it just
6 never occurred to me. I mean, I heard Mr. Buckman
7 testify today. And, that's really the first time that
8 it registered with me that, gee, maybe there's an
9 issue, because maybe the discovery issues in a
10 criminal case are some -- are different than they are
11 in a civil case.

12 SENATOR ROBERTSON: And, you hadn't really
13 had a background in the criminal law, as such?

14 HONORABLE WAUGH: No.

15 SENATOR ROBERTSON: And, I take it, to the
16 best of your knowledge, it hadn't occurred to
17 Mr. Rover, either? Is that correct?

18 HONORABLE WAUGH: He certainly never
19 discussed it with me.

20 SENATOR ROBERTSON: All right. And, he
21 didn't have any background in criminal law either --

22 HONORABLE WAUGH: None.

23 SENATOR ROBERTSON: -- before this
24 assignment?

25 HONORABLE WAUGH: Not that I know of.

1 SENATOR ROBERTSON: Now, the Office of the
2 Attorney General, among other things, is the lawyer
3 for the State of New Jersey. Is that correct?

4 HONORABLE WAUGH: I don't want to quibble
5 with you. The -- there's the Department of Law and
6 Public Safety. And, the Department of Law and Public
7 Safety has a number of divisions. One of those
8 divisions is the Division of Law. And, as a general
9 proposition, the Division of Law is -- provides
10 counsel to the State, and State government agencies.
11 The Office of the Attorney General is sort of the
12 Attorney General's personal staff, and some
13 administrative people. And, there was, at one time,
14 an entity called Legal Affairs. And, that entity
15 provided legal advice to the Department, as an
16 employer, or as an entity that might contract with
17 people, and to the State Police. And, I don't want to
18 get caught up in -- you know, people say the Office of
19 the Attorney General -- and, generally, by that, they
20 just mean, you know, all those people over in the
21 Justice Department, the Justice Complex. To me,
22 Office of the Attorney General is a more confined
23 group of people. So, I don't want to get hung up on
24 that.

25 SENATOR ROBERTSON: Did it ever occur to

1 you, as you began seeing some of the data, or hearing
2 some of the numbers, that the State of New Jersey
3 might be exposed to civil liability, in the form of a
4 class action, or some other form of lawsuit, on behalf
5 of innocent motorists, who had been stopped and
6 searched under circumstances --

7 HONORABLE WAUGH: I don't --

8 SENATOR ROBERTSON: -- that might be
9 considered racial profiling?

10 HONORABLE WAUGH: I don't remember thinking
11 that.

12 SENATOR ROBERTSON: Did it occur to you, or
13 to Mr. Rover, to anyone else, to call up the Division
14 of Law, and have someone come in and make that
15 assessment?

16 HONORABLE WAUGH: I can't tell you what
17 occurred to other people. I can tell you that it did
18 not occur to me.

19 SENATOR ROBERTSON: Is it your experience,
20 in private practice, that when a matter comes in to a
21 large law firm, whether or not it's transactional in
22 nature, or civil in nature, or criminal in nature,
23 that as these -- excuse me, that as questions arise,
24 it's common for the attorney in charge to pick up the
25 phone and contact the different, other departments

1 within the law firm, to find out if anything can, or
2 should be done, with respect to particular questions?

3 HONORABLE WAUGH: I'm familiar with doing
4 that. I mean, your prior question was, did it occur
5 to me that there were issues of liability? And, I
6 think my answer was, "No." And, therefore, it didn't
7 occur to me to ask someone to look into it. If it had
8 occurred to me, then I might have.

9 SENATOR ROBERTSON: See, the reason I'm
10 asking these questions is that one of the things that
11 we have to be concerned about, as Senators, and
12 representing the people, representing taxpayers, is
13 the extent to which all those folks over in the Hughes
14 Justice Complex, are talking to each other enough, to
15 keep the State of New Jersey out of trouble. Whether
16 it's liability with respect to the Division -- to the
17 Department of Justice in Washington, or liability in a
18 Civil Court, in a class action, or otherwise. That's
19 the reason I was asking these things. Drawing your
20 attention to the May 20, 1997 meeting, as you began to
21 hear some of the statistics that came in, whether it
22 was at that meeting, or subsequently, did you develop
23 an opinion as to whether or not racial profiling was
24 happening on the Turnpike?

25 HONORABLE WAUGH: I don't believe that I

1 ever came to the conclusion, at that time, that racial
2 profiling was a pervasive problem. I think, there was
3 always the issue of whether there were some troopers
4 who weren't doing what they were supposed to be doing.
5 But, in terms of it being a pervasive practice, or, I
6 think, what the attorney -- what Attorney General
7 Verniero eventually concluded, in the interim report,
8 no, I didn't reach that conclusion. I think, if I
9 had, I would have spoken up.

10 SENATOR ROBERTSON: At the time, what, if
11 anything, was the most troubling statistic, or fact,
12 that crossed your desk, or crossed your mind, or
13 happened at a meeting?

14 HONORABLE WAUGH: I don't know if I can
15 answer that question.

16 SENATOR ROBERTSON: Did you take note of the
17 fact that there was such a high incidence of consent
18 searches done on minority drivers, as opposed to non-
19 minority drivers, during the period of time?

20 HONORABLE WAUGH: I -- I knew that there was
21 the concern about the -- that number that was talked
22 about at the May 20th meeting. I don't know that I
23 ever saw any statistics, unless that is -- there is
24 some statistics that address that. And, the document
25 that's attached to W-30 --

1 SENATOR ROBERTSON: Um-hmm.

2 HONORABLE WAUGH: But, as I said, if you
3 read the document the way I read it, which was the
4 cover memo, and I'm not a numerate person, so I really
5 didn't look at all the attachments in terms of
6 statistics. But, if you read that -- the theory, as I
7 understood it, of that memo, was that there were
8 minority State Troopers who said the majority troopers
9 are profiling, and, presumably, we're not. And, State
10 Police went out and looked into it. And, I don't know
11 whether they did just stops, or they also looked at
12 consents to search. And, they concluded that there
13 was no significant statistical difference. And,
14 therefore, they concluded that there wasn't a problem.
15 There's a certain logic to that, whether on -- in
16 hindsight, and pouring over the document, the way
17 we've been doing, people have been doing, for the past
18 however many months, that logic disappears. But, you
19 know, on July 29th, 1997, that's how I read the
20 document.

21 SENATOR ROBERTSON: Well, we can certainly
22 understand the concern, in the Committee here, because
23 we're pouring over the documents a lot -- let's put it
24 this way, the documents have been in our hands a lot
25 less time, than those documents were in the hands of

1 the Attorney General's Office. We're involved in this
2 in a matter of weeks, when Mr. Fahy was involved in
3 this for a matter of years. So, that's why we have a
4 concern about the conclusions that are being drawn
5 from these documents by everybody, up and down the
6 line. Can you, as you sit there, now, and observing
7 what you've had an opportunity to observe, with
8 respect to the numbers, as they came in, can you tell
9 us why there was no investigation as to whether or not
10 racial profiling existed?

11 HONORABLE WAUGH: I think the answer to
12 that, and in hindsight, it may not be an entirely
13 satisfactory answer, are two things. One, the State
14 Police kept assuring us that there was not a problem.
15 And, two, and I understand that this statement could
16 be looked at with some skepticism, but it's the truth.
17 And, it's what I felt. That ultimately, the Justice
18 Department was going to get the documents that they
19 were asking for. And that, if they felt that there
20 was a problem, they would come back to us. Now,
21 there's this -- I'll call it schizophrenic
22 relationship, where you're the agen -- you know, we're
23 the agency, and we're also the lawyer for a sub-
24 agency. And, you know, I can see how, in this
25 particular case, that relationship didn't work

1 particularly well. But, my view, at the time, was
2 that the -- that ultimately, the Justice Department
3 was going to get the documents. And, if you look at
4 what was sent to them in November, or what -- I don't
5 know when it was sent. But, what we said, in the
6 November -- I guess I don't have it. The November,
7 1997 letter, where we said we would send them, or we
8 did send them the consent to search documents, that --
9 those were documents which, if analyzed, presumably
10 would have come up with the same numbers that were in
11 some of these other reports, and therefore, the
12 Justice Department was getting that information.

13 SENATOR ROBERTSON: Well, but if you're at a
14 meeting in May of 1997, and you're being told by
15 people who have looked, in more detail, at these
16 documents, that the numbers are on a par with the
17 State of Maryland, which had already to be found to be
18 engaging in some --

19 HONORABLE WAUGH: I don't -- I don't want to
20 -- I'm sorry. I'm interrupting.

21 SENATOR ROBERTSON: No, that's okay. I was
22 just going to say that, why, then, doesn't that
23 suggest to you that there's a serious question to get
24 to the bottom of?

25 HONORABLE WAUGH: I can answer that question

1 as follows: One, and this -- I don't want to quibble,
2 again, but the -- my understanding is that Maryland
3 was never found to have been engaged in a racial
4 profile. There was a lawsuit, and they entered into a
5 consent decree. I don't know why. I never, you know,
6 talked to anyone in Maryland. I never participated.
7 So, I don't know why they did that. But, certainly,
8 they did that. But, the State Police continually
9 represented that profiling was not a major problem,
10 and that they were addressing the issue in the way
11 that had been set out by various procedures, starting
12 with what I'll call the Dintino reforms, through when
13 -- after the Soto decision came down, I think there
14 was a -- the State Police Superintendent sent out a
15 document that everyone had to read and sign, and there
16 were training programs. And, that's what we were
17 being told. In hindsight, which is always 20/20, I
18 certainly wish that I or -- you know, it would have
19 been nice if it could be me, because then I could be
20 the hero. But, somebody else had said, gee, maybe we
21 should go beyond what the State Police is telling us,
22 and we should find some independent way of doing that.
23 I wish that had been done. But, it wasn't.

24 SENATOR ROBERTSON: People who were brought
25 in to take a look at this matter, the team that was

1 brought in, one of the things that strikes me, and
2 maybe my -- maybe my recollection isn't correct on
3 this -- was there anybody of color among the team?
4 Anybody who might be able to sit in a meeting, and
5 say, hey, gee, guys, you know what, maybe it's not
6 just about surviving the next letter from the Justice
7 Department. Maybe it's not just about surviving the
8 next appeal in the Soto case. Maybe it's about
9 whether or not it's fair for folks to be driving on
10 the Turnpike, and worry about being searched.

11 HONORABLE WAUGH: Well, one, I was concerned
12 about that issue, and I think other people were
13 concerned about that issue. But, obviously, I'm not a
14 person of color. To answer your question more
15 specifically, it -- I'm not sure what committee, or
16 group, you're talking about. The group that was set
17 up by, I guess, Attorney General Poritz, or somebody
18 at her request, that Mr. Fahy participated in, was
19 chaired, as I understand it, by Major Littles, who is
20 an African-American. And, I know that I have seen
21 some indication that Assistant Attorney General Ramey
22 was involved in some discussions, after I left. And,
23 he is of African-American descent.

24 SENATOR ROBERTSON: You talked, before,
25 about the initial meeting with the Department of

1 Justice, and the fact that they had given you sort of
2 a blank letter, and said, these are the kinds of
3 documents that we normally request in reviews of this
4 sort. Do you remember that?

5 HONORABLE WAUGH: Right.

6 SENATOR ROBERTSON: Was that blank letter
7 from the Department of Justice considered, by New
8 Jersey, to be a request for information?

9 HONORABLE WAUGH: I think, to some extent,
10 that was somewhat amorphous, and it probably -- I
11 mean, maybe it shouldn't have been. But, the way --
12 the way things happened, as I understand it, is that
13 we received that document, and the letter from
14 Ms. King was sent back from the Attorney General, and
15 that enclosed some documents. And then, a course of
16 conduct developed, whereby -- between Mr. Posner and
17 Mr. Rover, that the Justice Department would ask for
18 specific information of the type that was on that
19 document. And, it went on like that through -- from
20 things that I've seen, I think, in 1998 they
21 specifically requested -- well, that's -- it's not a
22 document. But, at some point, they specifically
23 requested permission to speak to troopers. And, they
24 requested copies of audits.

25 SENATOR ROBERTSON: So, I take it, then --

1 it was a question of these are the sorts of -- is this
2 a fair statement of the position of the Department?
3 Well, these are the sort of documents that you
4 request, generally? And, when you request them, we
5 will comply?

6 HONORABLE WAUGH: Senator, I don't think
7 anyone phrased it quite like that. I think it was --
8 but, I think that's the way it happened, that the
9 Justice Department asked for information in bits. You
10 know, they -- first they -- they asked for some
11 preliminary information. Then they wanted the stop
12 information. Then, ultimately, they came back to
13 asking for the consent to search data. And, I don't
14 know what they asked for, specifically, after I left.
15 Although, I've read that they asked for audits.

16 SENATOR ROBERTSON: With respect to the
17 Department of Justice, what was the State's position
18 between the time that they first became aware of the
19 Department of Justice's concern, all the way up until
20 the release of the interim report? What was the
21 State's position, with respect to the existence, or
22 non-existence, of racial profiling?

23 HONORABLE WAUGH: I can't speak, after I
24 left.

25 SENATOR ROBERTSON: Okay.

1 HONORABLE WAUGH: But, my understanding of
2 the position was, one, that racial profiling was not
3 to be done. Two, that there was no official policy of
4 racial profiling. Three, that as far as we knew,
5 there was no pattern and practice of racial profiling.
6 Is that three?

7 SENATOR ROBERTSON: I think.

8 HONORABLE WAUGH: And, four, there is always
9 the possibility that there are troopers who are not
10 following orders. And, that was something that the
11 State Police need to be vigilant about. My
12 understanding is, from having read the interim report,
13 I think, at the time it came out, that that position
14 changed, based upon, you know, the reasons that were
15 expressed in the report.

16 SENATOR ROBERTSON: You indicated that you
17 left the Department, finally, in January of '98. When
18 had you been notified of the Governor's interest in
19 nominating you for a judgeship?

20 HONORABLE WAUGH: Sometime in November.

21 SENATOR ROBERTSON: Of '97?

22 HONORABLE WAUGH: Yes.

23 SENATOR ROBERTSON: So, between November of
24 '97, and January of '98, two months later, you were
25 able to fill out the Gubernatorial questionnaire? You

1 were interviewed by the Counsel's Office?

2 HONORABLE WAUGH: I don't know that I was
3 interviewed by the Counsel's Office.

4 SENATOR ROBERTSON: Oh. Okay.

5 HONORABLE WAUGH: I have -- I don't know how
6 relevant this is, but I think I've had four four-ways.
7 One when I was hired, and three judicial four-ways. I
8 was -- I went through the whole process, but was never
9 nominated during the Florio administration. I went
10 through the process, to some extent, I think,
11 including a four-way, when Attorney General Poritz was
12 the Attorney General. And then, finally, in 1997 and
13 '98, they were finally able to nominate me.

14 SENATOR ROBERTSON: And, just finally,
15 Mr. Chairman, one little area, here, about the
16 Violator Survey. You had indicated, before, that you
17 had wished, or hoped, that some way could be found to
18 put that sort of a survey together. One of the things
19 I'm perplexed about, as I listen to the same thing
20 being said by a number of people, about how important
21 the survey is, is why is a baseline survey so
22 difficult to do? I mean, and this is, if you happen
23 to know. I'm not saying that you had the
24 responsibility for it. But, why is a baseline survey
25 so difficult to do, that statisticians, or experts in

1 the field can't come up with a model that can be used?

2 HONORABLE WAUGH: My understanding, and I'm
3 not a statistician, I'm not a numerate person, is that
4 a -- what I'll call a simplistic base survey would be,
5 you know, count the number of people that are
6 speeding.

7 SENATOR ROBERTSON: Well, you can count the
8 number of people going 55, 65, 75, 85, and so forth.

9 HONORABLE WAUGH: Well, that's -- my
10 understanding is that's when it becomes more
11 complicated about how you're going to do that, how
12 you're going to work in the people who have other
13 violations, who were, you know, tailgating, who were
14 riding in the left lane. That's really the extent of
15 my knowledge.

16 SENATOR ROBERTSON: Okay. Thank you, Judge
17 Thank you, Mr. Chairman.

18 SENATOR GORMLEY: Senator Lynch?

19 SENATOR CAFIERO: He's not here.

20 SENATOR GORMLEY: Girgenti's here?

21 SENATOR GIRGENTI: Thank you very much. I
22 just have a few questions. Good afternoon, Judge.
23 Regarding the July 29th memo, you said that you'd
24 articulated to your secretary, to remind you of the
25 memo on September 4th?

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HONORABLE WAUGH: Right.

SENATOR GIRGENTI: As indicated by the 9/4 written on the cover sheet? Why did you decide to let five weeks laps until the memo was again brought to your attention?

HONORABLE WAUGH: Because I sent out the memo at the end of July. And, I know there was some period of time, and it was four or five days, not too long after that, when the Attorney General was on vacation.

SENATOR GIRGENTI: It was --

HONORABLE WAUGH: Then -- there's --

SENATOR GIRGENTI: Go ahead.

HONORABLE WAUGH: Then, after the Attorney General came back from vacation, a Deputy Attorney General who reported to me, and who was also -- happened to be my wife's best friend, died very suddenly. And, that was a -- it was -- it took up some time. And, that -- I mean, that's the best answer I can give you.

SENATOR GIRGENTI: Yes, because I was just -- when I looked at it, it seemed to be an inordinate amount of time to ignore a document of that importance. You know, a five-week period. And, you said, around that time, I believe it was September

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4th, you went to the Attorney General's Office to remind him of the document?

HONORABLE WAUGH: That's -- that's my recollection. As I said earlier, I've gone to the Attorney -- to various Attorney General's Office, to remind them of various things, where I was looking for an answer. And, I always have a concern that I'm remembering one thing, when it should be another. But, I'm pretty sure that I went -- that I spoke to him on at least one occasion, and said something like, "We need to make a decision about this document." And, he said, "I haven't focused on it." Or, something like that. "I'll get back to you."

SENATOR GIRGENTI: Did his lack of attention to the document disturb you any?

HONORABLE WAUGH: No, because I -- there are times when there is a lot of stuff going on in the Attorney General's Office, and people are focused on a lot of stuff. And, it's not that -- it's not really all that rare, when you have to go back. What disturbs me is that I didn't keep going back.

SENATOR GIRGENTI: Okay. Now, regarding your hiring, I think it was touched on, before, of George Rover. You were concerned that he had a reputation of freelancing, as you said before? Can

1 you elaborate about that? And, how did he develop
2 that reputation?

3 HONORABLE WAUGH: I don't have -- I don't
4 know if I can answer that, exactly. There -- when he
5 worked for me, he worked on a situation involving
6 Belmar, and there were times when I thought that I
7 would have liked him to know a little bit more -- I
8 would have liked for him to be letting me know a
9 little bit more of what was going on, and that's why,
10 when I spoke to him, I really wanted to make it clear
11 that I wanted to know what was going on.

12 SENATOR GIRGENTI: So -- but, he did have
13 that reputation? Or, is that your personal --

14 HONORABLE WAUGH: It was a -- I mean, to
15 some extent, it was a joke between us. But, yes, he
16 did have that. And, I think he -- I don't want to be
17 unfair to him. But, he was someone who sometimes
18 liked to go out and shmooze. And, I wanted him -- I
19 wanted to make sure that he knew that I wanted to know
20 what was going on.

21 SENATOR GIRGENTI: All right. Had you
22 worked with Rover on other matters prior to the D.O.J.
23 inquiry?

24 HONORABLE WAUGH: He worked for me when I
25 was Director of Legal Affairs. And, in fact, I hired

1 him.

2 SENATOR GIRGENTI: All right. And then, so,
3 why was Rover transferred from the Office? I believe
4 you might have said that, before. The Attorney
5 General, to ABC?

6 HONORABLE WAUGH: I believe that he was not
7 happy in Legal Affairs, at the time, and that he knew
8 John Hall, who was then the Director of ABC, or the
9 Acting Director of ABC, and that he talked to him
10 about a position.

11 SENATOR GIRGENTI: And then, why was he
12 eager to return? You said that he wanted to come back
13 and work with --

14 HONORABLE WAUGH: I think he liked to be --
15 I want to say I think he liked to be close to the
16 flame. I think he wanted to come back and be in
17 O.A.G.

18 SENATOR GIRGENTI: All right. And then,
19 just finally, you may have covered this, earlier, when
20 you spoke. Just -- you were talking about the January
21 3rd, 1997 draft of the D.O.J. letter. And, you said
22 you did not recall any discussion with Verniero about
23 the continuing high minority stop rate, I believe.

24 HONORABLE WAUGH: Right.

25 SENATOR GIRGENTI: And, or about why

1 Verniero wanted to delete that passage that was
2 pointed out to you. Did you ever find out why it was
3 deleted? Or, did you ever question it? Or --

4 HONORABLE WAUGH: I don't recall discussing
5 it, at all, with him, which would not be unusual in
6 the sense of how it would happen is that we would send
7 drafts back and forth. And, if he didn't want to
8 discuss it with me, it might just -- you know, it
9 would arrive in my in box, and I would tell my
10 secretary to re-type it.

11 SENATOR GIRGENTI: But, you didn't have a --

12 HONORABLE WAUGH: If your question is, did I
13 ever -- did I look at it, see the change, and go to
14 him and say, "Why did you do this?" I don't remember
15 doing that.

16 SENATOR GIRGENTI: And, you had no reaction
17 when you saw it? Did you, at that time, realize that
18 that had been deleted? Or --

19 HONORABLE WAUGH: I don't remember having a
20 reaction. But, it was four years ago. And, I just
21 don't remember.

22 SENATOR GIRGENTI: Okay. Thank you.

23 SENATOR CAFIERO: Senator Zane?

24 SENATOR ZANE: Yes. Judge Waugh, I think at
25 the opening of your testimony, you indicated that

1 Justice Verniero, then Attorney General Verniero, had
2 said to you, handle the issue regarding racial
3 profiling. Isn't that correct? At the beginning of
4 your testimony.

5 HONORABLE WAUGH: Yeah. I -- I think, after
6 we met with the Justice Department, he told me he
7 wanted me to coordinate the providing of the
8 information. Not that I was going to do it myself. I
9 was going to get somebody else to do it. And, I would
10 keep him informed as to what was going on.

11 SENATOR ZANE: And, that was when?

12 HONORABLE WAUGH: That would have been,
13 probably, in December of '96.

14 SENATOR ZANE: And, the issue was racial
15 profiling, correct?

16 HONORABLE WAUGH: Correct.

17 SENATOR ZANE: You indicated, at the Justice
18 Department meeting, that then Attorney General
19 Verniero indicated to the people from the Federal
20 government that were present that there was no
21 official position proving racial profiling. Isn't
22 that what you testified to, earlier today?

23 HONORABLE WAUGH: I'm sorry. I'm not sure I
24 understand your question. If --

25 SENATOR ZANE: Did you tes --

1 HONORABLE WAUGH: -- if you're asking me to
2 draw a distinction between, there's no official
3 position approving it, and it's disapproved, I
4 wouldn't have drawn that distinction. I think it was
5 made clear, to the State Police, through a number of
6 methods, that racial profiling is disapproved. Is
7 that what you're asking me?

8 SENATOR ZANE: Judge, what I wrote down,
9 when you were asked the question by Mr. Chertoff,
10 there were about three or four points that you
11 mentioned, that Justice Verniero wanted to accomplish
12 at that meeting. I was only able to write down about
13 two of them. One had, Verniero wanted the Justice to
14 know about the Soto appeal. Do you recall saying
15 that?

16 HONORABLE WAUGH: Right.

17 SENATOR ZANE: And, I don't know what the
18 others were. But then, you also said that Verniero
19 wanted -- Attorney General Verniero wanted the Justice
20 Department that there was no official position, in New
21 Jersey, approving racial profiling. In other words,
22 this wasn't a policy. This wasn't a --

23 HONORABLE WAUGH: Right. Yeah. I'm sorry.
24 I --

25 SENATOR ZANE: Is that correct?

1 HONORABLE WAUGH: When you asked me the
2 question, before, I didn't catch the "approving."

3 SENATOR ZANE: Okay. You indicated that Fahy
4 worked for, and reported to you, as early as 1993. Am
5 I correct?

6 HONORABLE WAUGH: When, when I was Legal
7 Affairs Director, Jack Fahy was in Legal Affairs, and
8 he reported to me. So, that would have been sometime,
9 I think, in 1990 -- through 1993, when I became
10 Executive Assistant Attorney General. After that, I
11 wouldn't be entirely comfortable with he reported to
12 me. He would come up -- sometimes he would come up
13 and vent. Sometimes he would come up and ask me a
14 question, or tell me what was going on. But, I was
15 not his direct supervisor, because as long as he was
16 in Legal Affairs, whoever was the Legal Affairs
17 Director was his supervisor.

18 SENATOR ZANE: When were you no longer Legal
19 Affairs Director?

20 HONORABLE WAUGH: It would have been August
21 or September of 1993.

22 SENATOR ZANE: During that period of time,
23 the litigation was going on in Gloucester County. Is
24 that correct?

25 HONORABLE WAUGH: Right.

1 SENATOR ZANE: And, he was reporting back to
2 you, telling you what was going on?

3 HONORABLE WAUGH: Not on a regular basis.
4 But, he was doing it periodically.

5 SENATOR ZANE: You also indicated that you
6 read the Soto decision, correct?

7 HONORABLE WAUGH: Yes.

8 SENATOR ZANE: You indicated that there were
9 several areas that you disagreed with. I think that's
10 what you said. And, that they would be subject to
11 appeal. Am I correct?

12 HONORABLE WAUGH: Right.

13 SENATOR ZANE: You indicated that the Judge
14 shifted the burden to the State, and away from the
15 moving parties. Am I correct?

16 HONORABLE WAUGH: Right.

17 SENATOR ZANE: That was one of your reasons.
18 But, you understood that that case was about racial
19 profiling, did you not?

20 HONORABLE WAUGH: Yes.

21 SENATOR ZANE: Senator Robertson asked you a
22 couple -- a number of questions. And, one made
23 reference to the May 20th, 1997, meeting. And, in
24 essence, what you said was, I'm not going to say
25 crystallized, but in essence, that's when you began to

1 realize that racial profiling was going on in New
2 Jersey. Am I correct?

3 HONORABLE WAUGH: The May 20th meeting?

4 SENATOR ZANE: Yeah.

5 HONORABLE WAUGH: No, I didn't say that.

6 SENATOR ZANE: What did you say? Well, let
7 me ask you this way. When did you say it became
8 somewhat clear to you that racial profiling was going
9 on in New Jersey, and it wasn't just a few troopers
10 not doing what they were supposed to do?

11 HONORABLE WAUGH: I'm sorry. I don't
12 remember Senator Robertson asking me that question.
13 But -- so -- but, let me try to answer your question.

14 SENATOR ZANE: Okay.

15 HONORABLE WAUGH: When I heard, subsequent
16 to my leaving the office, that there were State
17 Troopers, and I don't know whether it's ever been
18 determined how many, who were deliberately indicating,
19 in their logs, that they were stopping non-minorities,
20 when in fact, they were stopping minorities, that, to
21 me -- I mean, when you -- when you put down data
22 that's not correct, that indicates, to me, that you
23 know you're doing something wrong, and you're trying
24 to hide it. And, that changed the way that I viewed
25 the issue.

1 SENATOR ZANE: And, that was when, Judge?

2 HONORABLE WAUGH: Whenever the publicity
3 came out about what had been discovered. I mean, I
4 don't know whether -- I know it was part of the
5 investigation of the Turnpike shooting that took place
6 in '98. I don't know when it hit the newspaper --
7 that, that particular issue.

8 SENATOR ZANE: So, it wasn't clear to you
9 that racial profiling was going on until after the
10 shooting incident in 1998? Is that correct? Is that
11 your testimony?

12 HONORABLE WAUGH: In terms of it being more
13 pervasive than just a limited number of troopers who
14 weren't doing what they were supposed to.

15 SENATOR ZANE: Did you have an opportunity
16 to read Justice Verniero's transcript, when he
17 appeared before this Committee, approximately two
18 years ago?

19 HONORABLE WAUGH: No.

20 SENATOR ZANE: You've heard the reference
21 made to when it crystallized with Justice Verniero,
22 have you not?

23 HONORABLE WAUGH: Yes.

24 SENATOR ZANE: Do you happen to know when
25 that was, that he has said it crystallized?

1 HONORABLE WAUGH: Do I know?

2 SENATOR ZANE: Do you know when it was that
3 he said it crystallized in his mind?

4 HONORABLE WAUGH: I think -- I mean, my
5 recollection is that he said it crystallized in his
6 mind after the Turnpike shooting.

7 SENATOR ZANE: The same as your
8 recollection, correct?

9 HONORABLE WAUGH: I don't know that, because
10 the particular fact that I focused on, Senator, was
11 the information that there was -- there were troopers
12 who were changing their records. And, I don't know
13 whether that information was available in '98, or
14 whether it wasn't available until '99.

15 SENATOR ZANE: Judge, what did you think was
16 going on, on the New Jersey Turnpike, that people were
17 bringing suit for, in Gloucester County, that minority
18 troopers were complaining about, that individuals were
19 complaining about, that statistics that you had
20 already seen referenced, and showed the number of
21 stops? What did you think that was?

22 HONORABLE WAUGH: I thought that there were
23 troopers who were not doing what they were supposed to
24 be doing, and that that was not supposed to happen,
25 and that the State Police were supposed to be doing

1 something about it.

2 SENATOR ZANE: But you still didn't think
3 that was racial profiling? Is that what you're
4 saying, here, today?

5 HONORABLE WAUGH: No, I'm not saying that,
6 Senator.

7 SENATOR ZANE: Well, then, did you think it
8 was racial profiling?

9 HONORABLE WAUGH: What, what I said was,
10 that I didn't think it was a pervasive problem.
11 Obviously, if one trooper stops one motorist because
12 that motorist is a minority, that's racial profiling.
13 I never said that I thought there was no racial
14 profiling. And, if I said that, then let me correct
15 the record. Because that's not my position. What I
16 said was that it was my belief, at that time, that
17 racial profiling was not a pervasive problem, but that
18 there was always the possibility that there were
19 individual troopers who were not supposed to -- not
20 doing what they were supposed to be, and that would be
21 racial profiling. And, that wasn't supposed to
22 happen. And, the State Police, throughout the time
23 that I was there, were taking various remedial
24 measures to prevent that, starting with Colonel
25 Dintino.

1 SENATOR ZANE: Prior to the shooting
2 incident on the Turnpike, had you read statistical
3 data that indicated that minorities in numbers that
4 ranged from 34 to 50 percent, depending upon, I guess,
5 who's study, and what year, were being stopped on the
6 New Jersey Turnpike?

7 HONORABLE WAUGH: I read the document that's
8 attached to W-30.

9 SENATOR ZANE: Is that answer, then, yes,
10 you did?

11 HONORABLE WAUGH: If -- I believe that that
12 document shows those numbers.

13 SENATOR ZANE: And, it still didn't occur to
14 you that that was racial profiling?

15 HONORABLE WAUGH: As I explained, my under
16 -- what I took away, from my reading of that document,
17 and -- at the time, was that minority troopers had
18 made the allegation that majority troopers were
19 profiling. And, I assumed that the -- their
20 allegation was included, and were not, and the State
21 Police did an analysis, and they came up with
22 statistics that said that the numbers were,
23 essentially, the same for majority and minority
24 troopers. And, that's why I took away from that
25 document. Now, I'm willing to admit that, in

1 hindsight, maybe I should have taken away more, from
2 that document. But, that's what I took away from it,
3 at the time.

4 SENATOR ZANE: Judge, did you attend the
5 meeting, I think, May 21st, 1996, when Sergeant
6 Gilbert was present?

7 HONORABLE WAUGH: I would have to know more
8 about the meeting, because I don't know that I knew
9 Sergeant Gilbert, at the time. Where was the meeting,
10 and who else was there?

11 SENATOR ZANE: The Attorney General's
12 Office, I think, if I have the right date. Were you
13 -- did you attend the meeting on December the 24th,
14 1996, in the Attorney General's Office?

15 HONORABLE WAUGH: Yes.

16 SENATOR ZANE: And, was Sergeant Gilbert at
17 that meeting?

18 HONORABLE WAUGH: I don't know. I don't
19 know that I -- I knew who Sergeant Gilbert was. But,
20 as I think I testified at my deposition, if he -- if
21 he came in, I'm not sure I would know -- although, I
22 suppose, recently I've seen his picture in the paper.

23 SENATOR ZANE: Do you have a recollection?

24 HONORABLE WAUGH: I mean, I know -- I know
25 the Colonel was there. And, it's unusual for the

1 Colonel to come to a meeting by himself. But, I don't
2 know who was with him.

3 SENATOR ZANE: And, you were present, also?
4 Is that correct?

5 HONORABLE WAUGH: On December 24th?

6 SENATOR ZANE: Yes.

7 HONORABLE WAUGH: Yes.

8 SENATOR ZANE: And, the Attorney General was
9 present?

10 HONORABLE WAUGH: Yes.

11 SENATOR ZANE: And, Mr. Fahy was present?

12 HONORABLE WAUGH: I believe so. Yes.

13 SENATOR ZANE: And, possibly, Mr. Rover?

14 HONORABLE WAUGH: I doubt Mr. Rover was
15 there, because I don't think I had gotten him involved
16 until after that.

17 SENATOR ZANE: And, you recall no discussion
18 at that time, from Jack Gilbert -- from Sergeant
19 Gilbert, who's name happens to be Tom, regarding
20 statistical data that he had, and he presented at that
21 meeting? You have no recollection of that?

22 HONORABLE WAUGH: No.

23 SENATOR ZANE: When Senator Robertson asked
24 you the question again that I referred to, about the
25 May 20th meeting, and you didn't really know what was

1 going on -- racial profiling, that you didn't really
2 know it was going on until after the Turnpike
3 shooting, you also said the two reasons why you didn't
4 know it was, one of the things you said is the State
5 Police kept assuring you that there was no problem.
6 Do you recall saying that?

7 HONORABLE WAUGH: Yes, I do.

8 SENATOR ZANE: And, isn't that not the
9 truth, if, in fact, Sergeant Gilbert provided data,
10 from the State Police, at that meeting on the 24th?
11 Because, he testified here, that he did.

12 HONORABLE WAUGH: Well, I don't remember him
13 -- I don't remember him doing -- presenting such
14 statistics, so I don't remember what the statistics
15 were. And, I don't know whether he said, at that
16 meeting, that he thought there was a problem of racial
17 profiling. It's my recollection, from things that
18 I've read, and I don't know whether I looked at his
19 transcript. I don't think I looked at his transcript
20 on the -- oh, I think it was from -- at some point, I
21 got the -- I got the understanding, and maybe I'm
22 wrong, that it was Sergeant Gilbert's position that he
23 -- that although he had certain statistics, he did not
24 feel that racial profiling was a problem in the sense
25 that it was determined to be, when the interim report

1 came out. Now, if I'm wrong about that, I don't know
2 what to say, because I don't remember very much about
3 what happened at the meeting on the 24th.

4 SENATOR ZANE: You do remember him saying
5 that? Is that what you're suggesting? Do you
6 remember -- do you remember anything --

7 HONORABLE WAUGH: No. What I'm saying is, I
8 don't remember if he was at the meeting. I don't
9 remember what he said at the meeting. But, to answer
10 your question, which was, am I incorrect, or is not
11 the truth, I think is what you said, that the State
12 Police had always said that racial profiling was not a
13 significant problem. I would have to know what it is,
14 exactly, that he said he said at that meeting.
15 Because, I can't emphasize this enough, Senator. I'm
16 not saying that we were told by the State Police that
17 there was absolutely no trooper who was profiling.
18 What we were told was that it was not a pervasive
19 problem, that there were some troopers who were not
20 doing what they were supposed to be. And, they were
21 taking steps to make sure that that didn't happen.

22 SENATOR ZANE: Wasn't the meeting on the
23 24th of December regarding a consent order similar to
24 the one that Maryland had entered into? Do you recall
25 that?

1 HONORABLE WAUGH: I don't recall the meeting
2 that way. I'm sure that the issue of a consent order
3 came up, because I'm pretty sure that the Attorney
4 General would have related his conversation with the
5 Justice Department. And, as I testified before, what
6 he told the Justice Department was, when you're done,
7 if there are remedial actions that you want us to
8 take, we'll seriously consider them. But, I'm not
9 inclined to enter into a consent order. I don't
10 remember the issue of a consent order in terms of
11 Maryland, until the period of time leading up to the
12 May, 1997, meeting. But, because I don't remember
13 exactly what happened at the December 24th meeting, I
14 can't answer the question better than that.

15 SENATOR ZANE: You have no recollection,
16 then, at that meeting, there being a discussion
17 regarding there being a consent order of any kind?

18 HONORABLE WAUGH: No, I'm not trying to say
19 that, Senator. I'm saying that it's quite likely that
20 in the context of reporting on what was discussed with
21 the Justice Department, the Attorney General would
22 have said, "I told them that we would consider
23 remedial measures, but that I was not inclined to
24 enter into a consent order."

25 SENATOR ZANE: Judge, do you also recall one

1 of your reasons for not believing that racial
2 profiling was happening in New Jersey, as of May 20th,
3 1997, that you also indicated that the Department of
4 Justice was going to get the documents. And, if they
5 think there's a problem, they will get back to us. Do
6 you remember saying that?

7 HONORABLE WAUGH: I remember saying the
8 second part of that. I don't believe that that was
9 one of my reasons for thinking that there -- that
10 racial profiling was not a pervasive problem.

11 SENATOR ZANE: You weren't suggesting that
12 the Federal government wasn't that serious about it,
13 why should we be?

14 HONORABLE WAUGH: No. I had no belief that
15 the Federal government wasn't serious about it.

16 SENATOR ZANE: What were they serious about,
17 if he didn't believe it existed, at that time?

18 HONORABLE WAUGH: They were serious about
19 finding out whether it did exist.

20 SENATOR ZANE: One last question. What
21 suddenly made it clear to you, in 1998, after the
22 shooting, that racial profiling was apparently
23 happening, here in New Jersey?

24 HONORABLE WAUGH: Senator, that's not my
25 testimony. My testimony is that my view of the issue

1 changed when I learned that there were troopers who
2 were falsifying, or alleged to have falsified their
3 call-ins, or their logs, to say that they had stopped
4 non-minorities, when they stopped minorities, because
5 I believe that that practice would indicate that they
6 knew they were doing something wrong. When I read the
7 interim report, and all the reasons that were set
8 forth in the interim report, is when I first had
9 knowledge of everything that had been done, and the
10 conclusions that were reached. All I'm saying is that
11 I believe that the facts that came out, at some point,
12 and I don't know whether it was '98 or '99, that
13 troopers were altering their documents, was something
14 that changed the way I looked at it.

15 SENATOR ZANE: All right. It changed the
16 way you looked at it. You said it changed your view.
17 What was your view, prior to the Turnpike shooting
18 incident, about the issue of racial profiling, in your
19 own words?

20 HONORABLE WAUGH: My view was that there was
21 no -- let me phrase it differently. I accepted the
22 representations of the State Police, that there was no
23 pervasive racial profiling.

24 SENATOR ZANE: Judge, with all due respect,
25 let me interrupt you. I am not concerned with what

1 you expected from the State Police. Tell me what you
2 thought.

3 HONORABLE WAUGH: I'm answering your
4 question, Senator.

5 SENATOR ZANE: Go ahead.

6 HONORABLE WAUGH: I accepted the
7 representation of the State Police, that there was no
8 pervasive practice of racial profiling, and that there
9 were individuals troopers who might not be following
10 orders. That was my understanding of the situation.
11 In retrospect, maybe it was not correct, because a lot
12 of stuff has been discovered since then, that is
13 included in the report. You asked me what my
14 understanding was, at the time, and that's what I'm
15 telling you.

16 SENATOR ZANE: I asked you what your view
17 was. I have no further questions.

18 SENATOR GORMLEY: Senator Lynch?

19 SENATOR LYNCH: Judge Waugh, in 1996, as
20 Executive Assistant to the Attorney General, did you
21 have a defined scope of responsibilities?

22 HONORABLE WAUGH: Yes. And, I don't want to
23 quibble with you, Senator, but my title was Executive
24 Assistant, Attorney General.

25 SENATOR LYNCH: I'm sorry. Executive

1 Assistant, Attorney General. And, you had a written
2 scope of responsibilities?

3 HONORABLE WAUGH: Oh, no. I don't believe
4 so.

5 SENATOR LYNCH: Then, was there an
6 organization chart that you fit into?

7 HONORABLE WAUGH: I'm sure there was. There
8 were --

9 SENATOR LYNCH: And, do you know --

10 HONORABLE WAUGH: There were organization
11 charts that changed on a regular basis.

12 SENATOR LYNCH: But, I'm asking you about
13 '96. Let's go to December of '96.

14 HONORABLE WAUGH: My area of responsibility,
15 as I understood it, under both -- well, from DeVesa to
16 Verniero, was that my primary area of responsibility
17 was civil enforcement matters, which would include the
18 Division of Consumer Affairs, the Division on Civil
19 Rights. It didn't usually include the ABC. And, it
20 didn't usually include racing, although sometimes
21 racing came in or out of my purview. I was -- I had
22 tort claims, act settlement authority, I believe, up
23 to \$1 million. So, I was sometimes asked to either
24 approve, or look for approval, of settlements. I got
25 involved with a number of issues that the Division of

1 Law might be working on, from time to time. I was --
2 it was also part of my responsibility to oversee the
3 Department's Affirmative Action Officer, and to work
4 on the -- what we call discrimination appeals, which
5 were complaints or appeals from employees who felt
6 they had been the subject of discrimination. And,
7 from time to time, I also did, or arranged for
8 training of Department personnel on EEO/AA issues.

9 SENATOR LYNCH: I assume that under the
10 heading of civil rights matters, that that is why you
11 were involved in going to Washington in December of
12 '96, with the Attorney General?

13 HONORABLE WAUGH: I don't -- I don't know,
14 Senator. I think, in some ways, it was because I was
15 the guy that took the call. And, I --

16 SENATOR LYNCH: And, do you have --

17 HONORABLE WAUGH: And, I had had some prior
18 involvement with it, because I was involved in the
19 discussions to do the Soto brief.

20 SENATOR LYNCH: And, I assume that beyond
21 the relatively defined scope of responsibility, the
22 Attorney General, from DeVesa, to Verniero, would,
23 from time to time, give you tasks to perform, that
24 might not be within that purview?

25 HONORABLE WAUGH: That was part of the job,

1 generally referred to as special projects.

2 SENATOR LYNCH: Whatever you got, you did?

3 HONORABLE WAUGH: Whatever I was asked to
4 do, I did.

5 SENATOR LYNCH: Prior to getting the call
6 from Rosenbaum -- blum, whatever it was, did you --
7 had you ever had any discussion with the Attorney
8 General, or anyone else, at the -- at your Department,
9 regarding the potential for a Department of Justice
10 inquiry/investigation?

11 HONORABLE WAUGH: No.

12 SENATOR LYNCH: So, that phone call to you
13 came out of the blue, as far as you were concerned?

14 HONORABLE WAUGH: Correct.

15 SENATOR LYNCH: Prior to that time, in your
16 responsibilities, had you, over the years, developed a
17 relationship, rapport, with higher echelon of the
18 State Police?

19 HONORABLE WAUGH: I generally had some sort
20 of relationship with higher echelon of the State
21 Police. And, sometimes it was a good relationship,
22 and sometimes it was not.

23 SENATOR LYNCH: Would you go to the State
24 Police Headquarters fairly frequently, to meet with
25 Troop Commanders, and the Superintendent, and others?

1 HONORABLE WAUGH: At different times that I
2 was there, I went to Division Headquarters quite
3 frequently. At other times, I went rarely. When I
4 was Legal Affairs Director, I tried to meet with
5 Colonel Dintino -- I don't know whether we ever
6 managed, really, to have weekly meetings, but bi-
7 weekly, or periodic meetings. I think I also
8 neglected to mention that I was sort of in overall
9 charge of the 9-1-1 program. And, that required me to
10 go to meetings at State Police --

11 SENATOR LYNCH: Now, with regard to Soto --

12 HONORABLE WAUGH: Right.

13 SENATOR LYNCH: Judge Ciancia testified, at
14 his deposition, that they were not locked into the
15 moving forward on the lead to appeal, until they were
16 to read the transcripts. Is that your recollection?

17 HONORABLE WAUGH: I don't recall it being
18 discussed, but certainly, you can always withdraw an
19 appeal, up until -- I mean, you can always withdraw an
20 appeal, up until, like I guess, it's decided. I don't
21 remember a specific discussion that way. But, I think
22 there were discussions that I was involved in, and
23 discussions that I wasn't involved in. So, I would
24 have to know when he said that discussion took place.

25 SENATOR LYNCH: Were you aware of the --

1 strike that. I believe that you, maybe, testified
2 earlier that you weren't aware of the Littles
3 Committee that was formulated --

4 HONORABLE WAUGH: I don't --

5 SENATOR LYNCH: -- Soto.

6 HONORABLE WAUGH: I don't recall being aware
7 of it. And, there were some documents that I was
8 shown, in my deposition, or there was at least one,
9 where something was going to Jim Ciancia, and not to
10 me. And, I certainly don't recall ever having met
11 with that committee.

12 SENATOR LYNCH: Did you ever have any
13 discussion with Fahy, or Susswein, about it?

14 HONORABLE WAUGH: It's not impossible that I
15 would have discussed it with Fahy. But, I don't
16 remember. I had very little interaction with A.A.G.
17 Susswein.

18 SENATOR LYNCH: Did you -- did you ever find
19 out, prior to your leaving the Attorney General's
20 Office, that there was an audit, or an attempt at an
21 audit, of the arrest data available for the 19
22 troopers involved in Soto?

23 HONORABLE WAUGH: I think I testified,
24 before, that I had no recollection of ever having been
25 told about that document. It wasn't in my file. If I

1 had received it, I would have given it to the Attorney
2 General. And, my best recollection is that I never
3 knew about that document.

4 SENATOR LYNCH: I'm not talking about a
5 document. I'm asking you --

6 HONORABLE WAUGH: I'm sorry.

7 SENATOR LYNCH: -- if you had ever heard
8 about such an audit, prior to your leaving the
9 Attorney General's Office, in December or so, of 1997?

10 HONORABLE WAUGH: Not that I recall. I'm
11 sorry. I thought you were asking me, specifically,
12 about that document.

13 SENATOR LYNCH: You indicated earlier that
14 when the bells and whistles went off, it was after the
15 audits in -- that were announced on falsification of
16 records by the State Police, or certain members of the
17 State Police.

18 HONORABLE WAUGH: I don't know that I
19 testified to bells and whistles. I -- my testimony,
20 Senator, is that when I heard about that, that really
21 changed the way I thought about the issue.

22 SENATOR LYNCH: Did you know that one of the
23 problems in Soto was that they didn't have a gray spot
24 on the patrol charts?

25 HONORABLE WAUGH: No, I don't think I recall

1 that as an issue. I know that one of the issues in
2 Soto was that there were not -- there were a lot of
3 people for whom there was no statistic. And, I -- my
4 understanding was that Superintendent put out a lot of
5 stuff to make sure that that information was being
6 provided.

7 SENATOR LYNCH: Well, let me suggest, the
8 record says that while in Soto, that they may have had
9 33, 35 percent of the radio log information available
10 regarding race. They had no information with regard
11 to the patrol charts, because it wasn't designated to
12 be put there. And, that it took two-and-a-half years,
13 until the fall of 1998, before it was incorporated
14 into the patrol charts. Does that refresh your
15 recollection?

16 HONORABLE WAUGH: I don't -- I don't recall
17 that being an issue.

18 SENATOR LYNCH: Did you ever have
19 conversations regarding Soto, with Fahy, or anyone
20 else, about the defense seeking data from the State,
21 regarding consent to search information?

22 HONORABLE WAUGH: No. My understanding had
23 always been that that was not an issue.

24 SENATOR LYNCH: And, who gave you that
25 understanding?

1 HONORABLE WAUGH: I think I got it,
2 somewhat, from reading the decision. I mean, I --
3 back, a long time ago, I had a lot of -- I would have
4 discussions with Jack Fahy. And, I can't guarantee
5 you, Senator, that he never mentioned that as being an
6 issue. But, I was -- as I said, my understanding of
7 that case was that it focused on stops, and not
8 consents to search.

9 SENATOR LYNCH: When did you first to learn
10 who Tommy Gilbert was? You said you found out,
11 somewhere, who he was.

12 HONORABLE WAUGH: I -- Senator, I just -- I
13 really don't remember. I don't know that I ever met
14 with him. I knew that Jack Fahy and George Rover was
15 -- were meeting with someone. If -- Senator Zane
16 asked me if he was at the December 24th meeting. If
17 he was, I'm sure I would have met him, then. I just
18 don't recall when I first was aware of his existence.

19 SENATOR LYNCH: At some point, did you
20 become aware of his existence? Did you have a
21 conscious -- do you have a conscious recollection of
22 when you first became aware of the existence of
23 Sergeant Tom Gilbert?

24 HONORABLE WAUGH: No. I mean, if he was at
25 a meeting that I was at, the general custom was

1 everyone would get introduced. But, if you're asking
2 me, four or five years later, when did I first know
3 that there was a Sergeant Gilbert? I can't answer
4 that question.

5 SENATOR LYNCH: How long did you -- prior to
6 December of '96, how long had you known Mr. Rover?

7 HONORABLE WAUGH: Well, I stopped being
8 Legal Affairs Director in '93. And, I hired him to
9 work in Legal Affairs, and I think it was fairly -- it
10 was probably the first half of my tenure there, rather
11 than the second. So, I probably knew him in '96, did
12 you say?

13 SENATOR LYNCH: I'm saying, how long before
14 December of '96 had you known Mr. Rover?

15 HONORABLE WAUGH: Probably four or five
16 years.

17 SENATOR LYNCH: Did you know him --

18 HONORABLE WAUGH: I don't know whether
19 there's a document that says when he was hired to work
20 in Legal Affairs. I interviewed him, and I hired him.

21 SENATOR LYNCH: I'm not asking you about
22 documents. I'm asking you, based upon your
23 recollection, today, how long did you know Gilbert
24 before -- I mean, Rover, before December of '96?

25 HONORABLE WAUGH: When -- I knew him from

1 the time that I hired him to work at Legal Affairs.

2 SENATOR LYNCH: And, you think that was some
3 four years before that, or better?

4 HONORABLE WAUGH: I think it probably was.

5 SENATOR LYNCH: And, did you develop a
6 personal relationship, social relationship, with
7 Rover, over the years?

8 HONORABLE WAUGH: Not a social relationship.
9 He was somebody who worked for me. And, I tried to be
10 friendly with the people who worked for me.

11 SENATOR LYNCH: But, you had some history
12 with him which demonstrated that he was capable of
13 having -- freelancing. Is that right?

14 HONORABLE WAUGH: I had that concern.

15 SENATOR LYNCH: Now, when you get this call
16 from the Department of Justice in late November, early
17 December, 1996 -- early November, I'm sorry, 1996,
18 you, of course, immediately communicate that to the
19 Attorney General?

20 HONORABLE WAUGH: Right.

21 SENATOR LYNCH: And, you're -- you have
22 concerns that this call could trigger some problems
23 for the Department, correct?

24 HONORABLE WAUGH: I guess so. I mean -- I
25 don't mean to quibble with you, Senator --

1 SENATOR LYNCH: I mean, it wasn't a --
2 HONORABLE WAUGH: It wasn't a social call.
3 It was a call saying they wanted to do something.
4 And, they wanted me to relay that information.
5 SENATOR LYNCH: All right.
6 HONORABLE WAUGH: That's what I did. And,
7 obviously, it was a subject of concern. It was a
8 significant issue.
9 SENATOR LYNCH: And then, there are memos,
10 and discussions leading up to a meeting on December
11 the 24th, 1996, in the Attorney General's Office, in
12 which you are present, along with the Superintendent
13 of the State Police, and others.
14 HONORABLE WAUGH: You said -- I'm sorry.
15 What was the date?
16 SENATOR LYNCH: December 24, 1996.
17 HONORABLE WAUGH: Right. I was at that
18 meeting.
19 SENATOR LYNCH: And, the purpose of that
20 meeting was to review the format that had been
21 provided in Washington, by the Department of Justice,
22 as to the kind of information they were looking at?
23 HONORABLE WAUGH: I would say that the
24 purpose of the meeting was broader. The purpose of
25 the meeting was to report on the trip to Washington,

1 the meeting with the Justice Department, to tell them
2 about what was said, and to start thinking about how
3 we were going to interact with the Justice Department,
4 and supply them with what they were going to ask.
5 SENATOR LYNCH: Would you characterize that
6 as the beginning of a strategy as to how this would be
7 handled?
8 HONORABLE WAUGH: I don't think I would use
9 the word strategy, but --
10 SENATOR LYNCH: Why don't you use your own
11 term, then.
12 HONORABLE WAUGH: I think it was the
13 discussion to talk about how we were going to handle
14 the Justice Department inquiry, and how their requests
15 for information were going to be responded to.
16 SENATOR LYNCH: And, was it discussed, on
17 that day, that who would interface with the Department
18 of Justice?
19 HONORABLE WAUGH: I'd have to assume it was
20 -- and, as I said, there was some time when the
21 decision was made, that Jack Fahy was go -- was not
22 going to be the one, and whether --
23 SENATOR LYNCH: Was Fahy at this meeting, on
24 December the 24th?
25 HONORABLE WAUGH: He may have been. I don't

1 remember. He -- it would be likely that he was,
2 because he was still involved, and he had gone to
3 Washington.

4 SENATOR LYNCH: And, he would have been the
5 natural, because he was familiar with the racial
6 profiling issues, and the discrimination cases filed
7 by troopers, as well?

8 HONORABLE WAUGH: Right. Yes.

9 SENATOR LYNCH: And, he had a history,
10 dating back, with you, into the early 1990's, in
11 handling those kinds of cases?

12 HONORABLE WAUGH: Well, I don't -- yes, I
13 guess so. I mean, he certainly had a history with me,
14 in that he worked for me at Legal Affairs.

15 SENATOR LYNCH: But, you knew he was
16 handling those kinds of cases.

17 HONORABLE WAUGH: I knew that he -- from
18 time to time, he did.

19 SENATOR LYNCH: So, because of his
20 experience, he would have been the natural one to
21 handle this?

22 HONORABLE WAUGH: Yes.

23 SENATOR LYNCH: And, once you -- it became
24 determined that there was -- that Fahy could not, or
25 should not handle this, because he had moved on to

1 handling the grand jury, and he was burnt out, or
2 whatever, on racial profiling issues, was a discussion
3 held as to who would become that interface with the
4 Department of Justice, in retrieving information, and
5 communicating with them, and working with you?

6 HONORABLE WAUGH: Yes.

7 SENATOR LYNCH: Who did you have that
8 discussion with?

9 HONORABLE WAUGH: I don't remember
10 specifically the discussion. But, I'm sure it was
11 with the Attorney General. And, he would have said,
12 at some point, if Jack Fahy's not going to do this,
13 who is going to do it?

14 SENATOR LYNCH: Okay. So, now you have an
15 Attorney General who, admittedly, and of record, has
16 no background in the criminal law, or in -- having any
17 familiarity with what a consent to search is, or what
18 probable cause is, to search, and so forth. And, you
19 have an Executive Assistant, Attorney General who also
20 has no familiarity. And, your first choice would have
21 been Fahy, but your second choice becomes a third
22 person, namely Rover, who has no familiarity,
23 whatsoever, with the criminal law, consent to search,
24 probable cause issues that are inherent, here?

25 HONORABLE WAUGH: Right. That's how it

1 happened.

2 SENATOR LYNCH: Of course, it's just
3 coincidental that he's not in the Department of Law,
4 or in Criminal Justice, correct?

5 HONORABLE WAUGH: Yes.

6 SENATOR LYNCH: How many people did you
7 have, to select from, who had familiarity with, and
8 had clear backgrounds in the criminal law, and with
9 the issues that are inherent in this inquiry?

10 HONORABLE WAUGH: I can't give you an exact
11 number. But, certainly, there would have been quite a
12 few people.

13 SENATOR LYNCH: Scores of them, correct?

14 HONORABLE WAUGH: I would say, at least.

15 SENATOR LYNCH: Now, you tell Rover, in a
16 memo, that you don't want him freelancing?

17 HONORABLE WAUGH: Right.

18 SENATOR LYNCH: And, you had some history of
19 him freelancing?

20 HONORABLE WAUGH: Right.

21 SENATOR LYNCH: Did you tell him that I want
22 to be copied on everything that you send to
23 Washington? Or, that you communicate to anyone, in
24 this matter, so that I can see it?

25 HONORABLE WAUGH: I don't remember phrasing

1 it that way. I may have. I made it clear to him that
2 I wanted to know what was going on.

3 SENATOR LYNCH: Well, then, you found out
4 later that year, mid-year sometime, that he was
5 accumulating data, and not sending it along to the
6 Department of Justice, correct?

7 HONORABLE WAUGH: I had that feeling. And,
8 I told him that that's not what he was supposed to
9 do.

10 SENATOR LYNCH: And, do you recall when that
11 was? Was that July?

12 HONORABLE WAUGH: As I said to, I think it
13 was Ms. Glading, I don't remember whether it was in
14 connection with the documents that were being sent
15 out, in terms of preliminary documents, or the
16 documents that were sent out in terms of these six --
17 thirty days that they were asking about. It was one
18 of those two times.

19 SENATOR LYNCH: So, now, armed with the idea
20 that Rover had proven to you, pre-December '96, that
21 he was capable of freelancing, and now that he's not
22 following your instructions during the course of 1997,
23 when you talked to him, did you say, "I want to be
24 copied on everything you receive, and everything you
25 send out"?

1 HONORABLE WAUGH: Senator, I don't remember
2 phrasing it in those words. But, I let him know that
3 I wanted to know what was going on.

4 SENATOR LYNCH: It seems pretty clear, from
5 the record, that -- nobody wants to get written copies
6 of everything. They want to know what's going on, but
7 they don't reduce it to memos, as to the fact that
8 they want to be copied on whatever it is you receive,
9 and send out. Is that clear to you?

10 HONORABLE WAUGH: I'm not sure I understand
11 your question. Is it your ques --

12 SENATOR LYNCH: Well, we have something
13 that's important to you, and to the Attorney General,
14 and clearly, to the State of New Jersey, regarding a
15 Department of Justice inquiry that begins with a phone
16 call to you in November of 1996. Correct?

17 HONORABLE WAUGH: Yes.

18 SENATOR LYNCH: It's important that there be
19 a clear exchange of information, insofar as you were
20 concerned, if you were going to cooperate, as you
21 suggested that you and the Attorney General had agreed
22 upon, in the meeting in Washington, in December --
23 November or December of 1996. Correct?

24 HONORABLE WAUGH: Yes.

25 SENATOR LYNCH: Now, why do we not see a

1 memo from you, or the Attorney General, saying to
2 Rover, and others, I want to be copied on whatever it
3 is you receive regarding the Department of Justice
4 inquiry, and whatever you send out to the Department
5 of Justice?

6 HONORABLE WAUGH: Because it never occurred
7 to me to send that sort of a memo. I made it clear to
8 --

9 SENATOR LYNCH: Even though you're faced
10 with the fact that Rover had freelanced before
11 December of '96? And, was freelancing in the middle
12 of '96 -- '97?

13 HONORABLE WAUGH: Senator, I didn't send him
14 that memo, and it didn't occur to me. I made it clear
15 to him, on several occasions, what I wanted.

16 SENATOR LYNCH: So, we know that the
17 Attorney General and you understood, in December of
18 '96, that this was something that was important to
19 you, and to the State, correct? This Department of
20 Justice inquiry?

21 HONORABLE WAUGH: Correct.

22 SENATOR LYNCH: And, at some point in time,
23 over the period of months between memos and meetings,
24 you had a clear understanding that as far as the
25 Attorney General was concerned, and I expect --

1 suspect, you, that not only was this important, but it
2 was clear that the Attorney General didn't want it to
3 be called in investigation, but rather, something like
4 an inquiry, correct?

5 HONORABLE WAUGH: That was my understanding.

6 SENATOR LYNCH: And, it's also clear, at
7 least by May of 1997, that the Attorney General didn't
8 want this to become a -- translate into a consent
9 decree?

10 HONORABLE WAUGH: That was clear to me, when
11 we met with the Justice Department, that he -- that he
12 was not -- he told them he was not inclined to a
13 consent decree. Senator, can I explain that?

14 SENATOR LYNCH: Which is why he indicated
15 that he wanted to cooperate, to the fullest, correct?

16 HONORABLE WAUGH: Can I explain my answer?

17 SENATOR LYNCH: Sure.

18 HONORABLE WAUGH: A consent decree has a
19 talismanic meaning in State government. No State
20 government agency wants to have a consent decree. It
21 was -- that's why the Attorney General said that we
22 would be more than happy to discuss remedial measures.
23 But, he was not inclined to have a consent decree.

24 SENATOR LYNCH: We don't want to -- we don't
25 want it called an investigation. We don't want a

1 consent decree. And, there was an alternative to a --
2 alternative to a consent decree, and that would have
3 been the filing of a suit by the Department of
4 Justice, and a contest by the State of New Jersey,
5 correct? If you believe there wasn't any profiling
6 going on. Isn't that correct?

7 HONORABLE WAUGH: I don't understand.

8 SENATOR LYNCH: In other words --

9 HONORABLE WAUGH: If, if they had --

10 SENATOR LYNCH: In other words, you don't
11 need a consent decree for some action to be initiated,
12 here. The State doesn't have to voluntarily do
13 anything. The State could say, we don't have any
14 racial profiling going on, through our State Police,
15 on the Southern end of the New Jersey Turnpike, and
16 you can go ahead and file a suit, and we'll contest
17 that action. You could do that, couldn't you?

18 HONORABLE WAUGH: Sure.

19 SENATOR LYNCH: So, that was an option?

20 HONORABLE WAUGH: Sure.

21 SENATOR LYNCH: And, you did learn sometime
22 -- and you --

23 HONORABLE WAUGH: Well, I don't -- Senator,
24 yes, it was an option. But, it was not an option that
25 I ever considered, or anyone else considered.

1 SENATOR LYNCH: Well, if you had firm -- if
2 you were convinced, other than with some anecdotal
3 information from the hierarchy in the State Police,
4 that there wasn't any racial profiling going on --

5 HONORABLE WAUGH: Senator, that --

6 SENATOR LYNCH: -- if you were convinced
7 that there wasn't, wouldn't you say to them, it's not
8 happening. Go ahead and file your suit.

9 HONORABLE WAUGH: Why would I do that? That
10 would be a stupid thing to do, Senator. In the first
11 place, I never testified that there was no racial
12 profiling. I testified that it was not a pervasive
13 problem. There was always the issue as to whether
14 there were some individual troopers who were
15 profiling. That's number one.

16 SENATOR LYNCH: And, regardless of --

17 HONORABLE WAUGH: Can I finish my answer?

18 SENATOR LYNCH: Sure.

19 HONORABLE WAUGH: And, number two, the
20 Justice Department calls up. They said, we're
21 concerned about this issue. We want to work with you.
22 We want to look at the statistics, the documents.
23 And, we'll do an analysis. And, we'll come back to
24 you. And, we may discuss, with you, a pre-litigation
25 resolution. And, it would have -- under no

1 circumstances would I even contemplate saying to the
2 Justice Department, well go stick it. Why don't you
3 sue us?

4 SENATOR LYNCH: And, I agree with you on
5 that. So -- but, I just wanted to point out, for
6 purposes of this record, that the consent decree was
7 not the only option. The other one was intolerable,
8 namely, the filing of a suit by the Justice
9 Department. Correct?

10 HONORABLE WAUGH: Well, Senator, I don't
11 want to quibble with you, but you can't -- my
12 understanding is, you can't have a consent decree
13 unless there is an action in which the consent decree
14 is filed. So, if you agree --

15 SENATOR LYNCH: That can be done on the same
16 day that you've had your agreement --

17 HONORABLE WAUGH: Right.

18 SENATOR LYNCH: -- which we -- you know,
19 just let's not go through splitting hairs. The fact
20 is, if you had a consent decree, yes, technically,
21 you'd have to file an action. But, you'd announce the
22 consent in advance of the action being technically
23 filed. Correct?

24 HONORABLE WAUGH: That would -- that's the
25 way it would usually be done.

1 SENATOR LYNCH: So, we don't want in
2 investigation, at least being characterized an
3 investigation. Because, at this point in time,
4 there's nothing in the public domain. And, when I
5 say, this point in time, I mean, the middle of 1997.
6 We don't want an investigation.

7 HONORABLE WAUGH: What do you mean by
8 nothing in the public domain?

9 SENATOR LYNCH: There's no newspaper
10 accounts of the inquiry by the Department of Justice.

11 HONORABLE WAUGH: That's correct.

12 SENATOR LYNCH: And, no such thing happened
13 until February of '99, to the best of your knowledge,
14 correct?

15 HONORABLE WAUGH: No such thing happened
16 while I was in the Attorney General's Office.

17 SENATOR LYNCH: So, you don't want an
18 investigation. You certainly don't want to enter into
19 a consent decree, and God forbid, you don't want an
20 action filed -- a contentious action filed, by the
21 Department of Justice. So, you have these meetings
22 and these memos exchanged. And then, you have a
23 meeting in May, with the Attorney General, and others,
24 including yourself, which essentially is another
25 strategy meeting, isn't it?

1 HONORABLE WAUGH: Well, Senator, you're
2 using the word strategy. And, I'm not sure exactly --

3 SENATOR LYNCH: Well, you characterize it
4 for me, Judge.

5 HONORABLE WAUGH: Senator, it was -- there
6 were a number of issues that needed to be resolved.
7 And, it was a meeting to resolve those issues. And,
8 as far as I was concerned, the primary issue that
9 needed to be discussed was the issue of the consent to
10 search data.

11 SENATOR LYNCH: And, it was clear that
12 nobody in that room was anxious to send along consent
13 to search data, that maybe currently existed in the --
14 in the Department of Law, or in the Division of State
15 Police. Nobody was anxious to send that along to the
16 Department of Justice?

17 HONORABLE WAUGH: It was clear to me, at the
18 meeting, that the State Police was not anxious to have
19 that information produced. And, it was the result of
20 the meeting, as I understood it, that the information
21 would be produced when it was asked for, again.

22 SENATOR LYNCH: So, you were aware, then, a
23 that meeting --

24 HONORABLE WAUGH: But, to answer --

25 SENATOR LYNCH: -- that the Division of

1 State Police had information regarding consent to
2 search?

3 HONORABLE WAUGH: I was aware that the
4 Division of State Police had documents that were
5 consent to search documents, that could be supplied to
6 the Justice Department. Yes.

7 SENATOR LYNCH: Did you ask anyone how long
8 it would take them to retrieve all of the consent to
9 search documents for the last 36 months?

10 HONORABLE WAUGH: No.

11 SENATOR LYNCH: Did anyone?

12 HONORABLE WAUGH: Not that I recall.

13 SENATOR LYNCH: Did they ask them how long
14 it would take to retrieve consent to search documents
15 for two months?

16 HONORABLE WAUGH: No.

17 SENATOR LYNCH: Or, any length of time?

18 HONORABLE WAUGH: No.

19 SENATOR LYNCH: And then, after that May
20 meeting, sometime in June, there was some, apparently,
21 there's -- in the record, there's an agreement between
22 the Justice Department and the Attorney General's
23 Office, that on 30 random dates, that would be
24 selected for doing, retrieving information. Is that
25 correct?

1 HONORABLE WAUGH: My recollection is that
2 the 30 random dates were identified before the May
3 meeting. But --

4 SENATOR LYNCH: But, not agreed upon?

5 HONORABLE WAUGH: Well --

6 SENATOR LYNCH: Wasn't one of the
7 discussions at the meeting as to one -- some of the
8 concerns that there might be for what those random
9 dates were? Whether there were some idiosyncracies
10 about them that might be -- there might be a pattern
11 about, with regard to the Department of Justice?

12 HONORABLE WAUGH: I remember that being
13 something that Mr. Rover brought up. But, I didn't
14 think it was an issue any longer, by the May 20th
15 meeting.

16 SENATOR LYNCH: Now, at this point in time,
17 by May 20th, 1997, has the Attorney General,
18 Mr. Verniero, expressed to you, or to others, to your
19 knowledge, that he has some concerns about the
20 politics of this inquiry, by the Department of
21 Justice?

22 HONORABLE WAUGH: When the call first came
23 in, which would have been November of 1996, he
24 expressed that concern to me. I told him I didn't
25 think that there was -- that that was an issue. And,

1 my understanding that -- was that after we went down
2 and met with the Justice Department, he no longer had
3 that concern. So, that was -- yes, that was
4 discussed. But, it was a non-issue, as far as
5 everyone was concerned, as far as I understood, by the
6 end of December of 1996, by the time we had met with
7 the Justice Department.

8 SENATOR LYNCH: Suppose the -- May 20, 1997
9 meeting, from the record, it appears as if information
10 was doled out slowly, over the next 12 months, to the
11 Department of Justice. Do you have knowledge of that?

12 HONORABLE WAUGH: No. I mean, other than
13 that I think somebody else asked me that question.

14 SENATOR LYNCH: How -- how about during the
15 months of January, February, March, April, May, June?
16 How frequently would you talk to Mr. Rover, on the
17 phone, or in person?

18 HONORABLE WAUGH: Um -- I don't know. You
19 know, it would depend on whether there was a specific
20 issue that was being discussed. That might be a
21 couple times a week. If there was no issue pending,
22 it might be less.

23 SENATOR LYNCH: Do you have your calendar
24 from 1997?

25 HONORABLE WAUGH: No.

1 SENATOR LYNCH: Did you keep your calendar
2 in the Law Diary, like Mr. Zoubek?

3 HONORABLE WAUGH: No.

4 SENATOR LYNCH: Who kept your calendar?

5 HONORABLE WAUGH: My secretary.

6 SENATOR LYNCH: What happened to it?

7 HONORABLE WAUGH: I don't know. If you're
8 asking me about meetings with Mr. Rover, most of the
9 time, he either called, or he stopped by, so it would
10 be unlikely that they'd be reflected on my calendar.
11 I didn't -- I didn't have the sort of formal calendar
12 that the Attorney General did.

13 SENATOR LYNCH: The first six months of
14 1997, would you say that you talked to Rover more than
15 a dozen times?

16 HONORABLE WAUGH: Oh, I would think so.

17 SENATOR LYNCH: Much more?

18 HONORABLE WAUGH: I wouldn't be surprised.

19 SENATOR LYNCH: And, the record also
20 indicates that then they began sending information --
21 Rover started sending information to the Department of
22 Justice, and ultimately, getting to R-20, which, if we
23 could put it up --

24 MS. GLADING: R-20?

25 HONORABLE WAUGH: Is that a document I

1 already have?
2 SENATOR LYNCH: I believe so.
3 MS. GLADING: Yes, it's also W-32.
4 HONORABLE WAUGH: Oh, yes. I have it.
5 SENATOR LYNCH: Would you identify that
6 document?
7 HONORABLE WAUGH: It's a copy of a letter
8 that was sent by George Rover to Mr. Posner dated
9 November 5, 1997.
10 SENATOR LYNCH: Which -- not to be talking
11 political, what happens to be the day after the
12 election of November of 1997, correct?
13 HONORABLE WAUGH: If you say so, I was --
14 SENATOR LYNCH: If I said it was November the
15 4th, you would accept that, I guess, wouldn't you?
16 HONORABLE WAUGH: I was on -- I left for
17 vacation, I think, before the letter was sent.
18 SENATOR LYNCH: Well, in this ultimate letter
19 that goes out to Mark Posner from Mr. Rover, which is
20 not indicated as having a copy to anyone, it defines a
21 consensual motor vehicle search, does it not?
22 HONORABLE WAUGH: Which paragraph? Are you
23 talking about the second paragraph?
24 SENATOR LYNCH: Yes.
25 HONORABLE WAUGH: Yes.

1 SENATOR LYNCH: Is that an accurate depiction
2 of what a consent search is?
3 HONORABLE WAUGH: I think it may be
4 inaccurate. I think that it's not probable cause. I
5 think it's reasonable suspicion.
6 SENATOR LYNCH: And this -- and this -- this
7 ultimate letter that went out to Posner from Rover had
8 been the subject of at least two drafts prior to this
9 going out on November the 5th, correct?
10 HONORABLE WAUGH: Right.
11 SENATOR LYNCH: And those drafts were
12 reviewed by Attorney General Verniero?
13 HONORABLE WAUGH: Yes.
14 SENATOR LYNCH: So, now you have --
15 HONORABLE WAUGH: Well, wait a minute. There
16 were two drafts that were sent in at the same time.
17 There was not, as I understand it, a redraft that then
18 went in. I sent in Rover's version. I sent in my
19 version. I recommended that he send out my version.
20 And that's what was authorized.
21 SENATOR LYNCH: So, you have a version that's
22 dated November the 3rd, 1997, and Rover has the version
23 dated October 31, 1997, which are drafts, I take it.
24 HONORABLE WAUGH: Which -- which exhibit is
25 that?

1 SENATOR LYNCH: Your draft was November the
2 3rd, 1997 and Rover's was October the 31st, 1997?

3 MS. GLADING: That's W-31.

4 HONORABLE WAUGH: Do I have that?

5 MS. GLADING: W-31.

6 HONORABLE WAUGH: Yes, there were two drafts.
7 And I don't think I have the document so I can't tell
8 you what the dates were. But I received his draft, and
9 then I think I did another draft. So they may have
10 different dates.

11 SENATOR LYNCH: Now, leading up to this memo,
12 even though you testified earlier that you knew
13 ultimately that the Department of Justice would seek
14 out whatever data they really wanted, but leading up to
15 this memo, there is exchanges with you and Rover and
16 others as to why we shouldn't be sending out consent to
17 search information, correct?

18 HONORABLE WAUGH: There were -- there were
19 memos and discussions about that issue.

20 SENATOR LYNCH: And since you didn't want an
21 investigation -- characterize it investigation, and
22 since you didn't want a consent decree, and since you
23 didn't want a formal complaint filed, I suggest to you
24 that your strategy was you had to fend off consent to
25 search data, is that not correct?

1 HONORABLE WAUGH: I don't think so, Senator.
2 I think that the decision was that when they asked for
3 it again, they would get it.

4 SENATOR LYNCH: And you -- but you knew at
5 this point in time, certainly by October of 1997, that
6 the foundation for the Maryland consent decree was
7 consent to search.

8 HONORABLE WAUGH: Right.

9 SENATOR LYNCH: And you knew that our
10 information had been characterized, at least
11 anecdotally, as similar to Maryland.

12 HONORABLE WAUGH: Right.

13 SENATOR LYNCH: Yet, the day after the
14 election in 1997, a letter is sent to Posner which
15 clearly mis-describes what a consent to search is. And
16 I suggest to you that's a clear indication that you
17 wanted to differentiate the New Jersey consent to
18 search problem from the Maryland consent to search
19 problem, is that not correct?

20 HONORABLE WAUGH: No.

21 SENATOR LYNCH: Are you suggesting to me that
22 neither you nor the Attorney General nor Rover knew
23 what a consent to search was?

24 HONORABLE WAUGH: I can't speak for Mr. Rover
25 and I can't speak for the Attorney General.

1 SENATOR LYNCH: How about you?

2 HONORABLE WAUGH: I can tell you that I did
3 not catch that error. And if your question to me is
4 was it a deliberate error, I have no basis to believe
5 that.

6 SENATOR LYNCH: Let me read your draft of
7 November the 3rd, 1997, which I take it you have in
8 front of you.

9 HONORABLE WAUGH: Right.

10 SENATOR LYNCH: Well, first let me do this,
11 let me read the Rover draft, which is October 31. In
12 the draft from Rover, October 31, 1997, on the second
13 paragraph, it says, "In New Jersey, consensual motor
14 vehicle searches must based upon a written consent
15 executed by the motorists before the search of his or
16 her vehicle. Such requests are only obtained after a
17 motorist has been stopped and only if the law
18 enforcement officer thereafter," underlined,
19 "determines that there is probable cause to believe
20 that there may be contraband in the vehicle." Is that
21 correct?

22 HONORABLE WAUGH: That's what it says.

23 SENATOR LYNCH: Now, what two words are
24 underlined?

25 HONORABLE WAUGH: After and thereafter.

1 SENATOR LYNCH: So, we're emphasizing that we
2 have to go through this arduous procedure in order to
3 do a consent to search, correct?

4 HONORABLE WAUGH: That's what it says.

5 SENATOR LYNCH: Right. And then you did a
6 draft on November the 3rd in which the same language is
7 employed and the emphasis remains the same on, "Such
8 requests are only obtained after," emphasized, "a
9 motorist has been stopped and only if the law
10 enforcement officer thereafter," emphasized,
11 "determines that there is probable cause to believe
12 that there may be contraband in the vehicle," correct?

13 HONORABLE WAUGH: That's what it says.

14 SENATOR LYNCH: Do you understand what the
15 significances -- the significance was at that point in
16 time of emphasizing these two words?

17 HONORABLE WAUGH: I don't really recall, and
18 I doubt that I paid much attention to it. I changed
19 two sections of the letter and I indicated there that I
20 had changed them and that is what I was anticipating.

21 SENATOR LYNCH: And what did you change?

22 HONORABLE WAUGH: I -- I think I could
23 generally characterize it as I softened the letter
24 because I think Rover's version was -- you know, we
25 told them that we would consider objecting or something

1 like that. And I just changed it.

2 SENATOR LYNCH: He employed the harsher
3 language that suggested that the State would seriously
4 consider objecting to the production of these documents
5 and you changed that to -- you changed that to the
6 State would ordinarily object to the production of
7 these documents, correct?

8 HONORABLE WAUGH: Correct.

9 SENATOR LYNCH: And that's the form that went
10 out into the -- to Posner.

11 HONORABLE WAUGH: That's my understanding.

12 SENATOR LYNCH: Wasn't this a pretty
13 carefully edited letter?

14 HONORABLE WAUGH: Not carefully enough
15 because I didn't catch the error with respect to the
16 difference between probable cause and reasonable
17 suspicion.

18 As I testified before --

19 SENATOR LYNCH: It doesn't say anything about
20 reasonable suspicion. It says, in effect, it defines a
21 consent search as not only requiring a written consent
22 but also requiring probable cause, which would be a
23 more difficult test than a probable cause search,
24 wouldn't it?

25 HONORABLE WAUGH: That's what I said. I said

1 that I didn't catch the error with respect to probable
2 cause and reasonable suspicion.

3 SENATOR LYNCH: It wasn't being disingenuous
4 at all, correct? There was no intent to being
5 disingenuous and push them away from the relationship,
6 the similarity between New Jersey and Maryland?

7 HONORABLE WAUGH: No, certainly not on my
8 part. And I -- I doubt that there was -- very strongly
9 doubt that there was on Mr. Rover's part. I think he
10 just didn't understand the difference the way I didn't
11 understand it.

12 SENATOR LYNCH: And the Attorney General, who
13 saw all three of these --

14 HONORABLE WAUGH: Right.

15 SENATOR LYNCH: -- you think he
16 misunderstood, as well?

17 HONORABLE WAUGH: You'll have to ask him that
18 question. But, Senator, if what you're asking me is do
19 I have any knowledge of any sort that would support the
20 notion that this letter was deliberately misdrafted to
21 deliberately misstate the law, my answer is
22 categorically, no. I have no such information.

23 SENATOR LYNCH: How do you rationalize having
24 the three of you handling such a significant inquiry in
25 providing significant documentation to the U.S.

1 Department of Justice and none of the three of you even
2 understand what you're talking about?

3 HONORABLE WAUGH: What do you mean by
4 rationalize? I mean --

5 SENATOR LYNCH: How can you --

6 HONORABLE WAUGH: How do I explain it?

7 SENATOR LYNCH: How can the three of you --
8 putting these drafts together to send this letter to
9 Posner at the U.S. Department of Justice --

10 HONORABLE WAUGH: Because none of us--

11 SENATOR LYNCH: -- when you don't even know
12 what you're talking about as a far as a consent search?

13 HONORABLE WAUGH: Because none of us had
14 criminal justice experience. And if we had had
15 criminal justice experience, we would have caught the
16 error.

17 SENATOR LYNCH: If you had -- if somebody on
18 this team had criminal justice experience, you would
19 have known what a consent search was and you would have
20 been able to retrieve all that data for the Department
21 of Justice long before it ultimately went there,
22 wouldn't you?

23 HONORABLE WAUGH: I don't follow the
24 connection. Do you want -- can you explain what you
25 mean, Senator?

1 SENATOR LYNCH: I'll withdraw it.

2 (Pause)

3 SENATOR LYNCH: When were you sworn in on the
4 Superior Court?

5 HONORABLE WAUGH: January 23rd, I believe,
6 1998.

7 SENATOR LYNCH: And to your knowledge, who
8 took your place as Executive Assistant Attorney?

9 HONORABLE WAUGH: My understanding is that no
10 one got that title, that that title was not continued.
11 But I think a lot of my duties were inherited by Nancy
12 Kaplen.

13 SENATOR LYNCH: Who?

14 HONORABLE WAUGH: Nancy Kaplen.

15 SENATOR LYNCH: And did you call her to walk
16 through what you had left behind?

17 HONORABLE WAUGH: I don't recall. She -- she
18 certainly -- I mean she may have called me, I may have
19 called her. But I don't remember any discussions. I
20 think my understanding is that she didn't get this
21 issue.

22 SENATOR LYNCH: Who did?

23 HONORABLE WAUGH: I know that -- from what
24 I've seen, that at some point, Mr. Hesse had the issue.
25 But --

1 SENATOR LYNCH: When did you learn that?

2 HONORABLE WAUGH: I think I saw his name
3 mentioned in testimony.

4 SENATOR LYNCH: With your leaving toward the
5 end of 1997 and Rover having freelanced on you before
6 in another context and then, again, and during the
7 course of 1997, didn't you think it incumbent upon you
8 to notify the Attorney General or someone who was going
9 to be taking your place that that was a concern of
10 yours?

11 HONORABLE WAUGH: I don't think I thought of
12 it at the time, but certainly in hindsight, I should
13 have.

14 SENATOR LYNCH: No further questions.

15 SENATOR GORMLEY: Senator Matheussen?

16 SENATOR MATHEUSSEN: Judge, I just have a
17 couple of questions for you.

18 You had indicated before -- actually you
19 testified before that State Police said they didn't
20 want to produce the documents, do you recall saying
21 that? And if you can recall it, can you put us in a
22 time frame of when you were talking about that?

23 HONORABLE WAUGH: My understanding from the
24 May 20th meeting --

25 SENATOR MATHEUSSEN: May 20th?

1 HONORABLE WAUGH: 1997.

2 SENATOR MATHEUSSEN: Okay.

3 HONORABLE WAUGH: -- was that -- that -- and
4 going up to that meeting was that there was an issue as
5 to whether these documents should be produced.

6 SENATOR MATHEUSSEN: Can you tell me
7 specifically what documents you were talking about?

8 HONORABLE WAUGH: The consent to search
9 documents.

10 SENATOR MATHEUSSEN: Okay.

11 HONORABLE WAUGH: That there was a question
12 as to whether they were -- went beyond the scope of
13 what the Justice Department was looking at. That the
14 purpose of the meeting in significant part was to
15 discuss that issue.

16 The State Police had a lot of concern about a
17 consent decree. And my understanding after the meeting
18 was that the decision was that if the Justice
19 Department asked for them again, they would get them.

20 SENATOR MATHEUSSEN: Was there a legal
21 opinion that stemmed from that May 20th meeting with
22 regard to the consent to search documents?

23 HONORABLE WAUGH: No.

24 SENATOR MATHEUSSEN: Did anybody in your
25 office, including yourself, have a legal opinion as to

1 what those consent to search documents meant with
2 regard to where the Department of Justice might be
3 going with their inquiry into this matter?

4 HONORABLE WAUGH: Did I have an opinion or
5 did I ask somebody to write an opinion?

6 SENATOR MATHEUSSEN: Did you have an opinion?
7 Did you have a legal opinion?

8 HONORABLE WAUGH: Well, I -- I mean clearly
9 they were looking at the issue of consents to search.

10 SENATOR MATHEUSSEN: And did you have a legal
11 opinion about what would have been the ramifications of
12 those documents?

13 HONORABLE WAUGH: Those documents
14 specifically, no. But I was aware that a selective
15 prosecution or profiling, I guess, type of case could
16 be made from those documents, as well as the stop
17 issue.

18 SENATOR MATHEUSSEN: Who specifically in the
19 State Police said that they were unwilling to give
20 those documents over to Department of Justice?

21 HONORABLE WAUGH: I can't say that somebody
22 said that they were unwilling. But what I understood
23 is that they were very concerned about it. And I think
24 I have the sense that they really didn't want them
25 produced, but I don't know that anyone said that

1 specifically. I'm --

2 SENATOR MATHEUSSEN: So, then before --

3 HONORABLE WAUGH: I don't remember, Senator.
4 You know, dialogue from a meeting that took place four
5 years ago, except for the couple of --

6 SENATOR MATHEUSSEN: I understand.

7 HONORABLE WAUGH: -- things that I testified
8 about that stuck out. But my understanding of the
9 meeting was the issue was should they be produced.

10 SENATOR MATHEUSSEN: Okay. Well, it is -- I
11 don't want to quibble with you, but I think there is a
12 very important distinction to be made. State Police
13 concerned that these documents were damaging as opposed
14 to State Police saying we don't want to give-up these
15 documents are very, very different things. I mean you
16 could be a defendant in the case and be concerned about
17 the testimony that's against you or you could be a
18 defendant in the case and not want to give that
19 testimony. There's a big difference. And I think
20 we're talking about --

21 HONORABLE WAUGH: I understand that.

22 SENATOR MATHEUSSEN: And I think we're
23 talking about the integrity of the State Police at this
24 point in time.

25 My question to you is you gave testimony

1 before, and I wrote it down. The quote was that State
2 Police said they didn't want to produce the documents.

3 Now, is it not your statement that it was --
4 they didn't want to produce the documents or was it
5 that they felt the documents would be damaging? Which
6 is it?

7 HONORABLE WAUGH: Well, looking at the
8 question and the way you've asked it, I'm not sure.
9 You can not want to produce documents without asking
10 that they not be produced.

11 There -- there was an issue, Senator, as to
12 whether the documents should be produced. I know that
13 State Police was concerned about it.

14 And looking at the distinction that you've
15 drawn for me, I can't sit here today and say that
16 somebody from State Police definitely said they didn't
17 want to produce those documents.

18 SENATOR MATHEUSSEN: Let's go up --

19 HONORABLE WAUGH: So, to the extent that I
20 did testify to that, then I'd like to correct my
21 testimony.

22 SENATOR MATHEUSSEN: So, it's that they knew
23 that they were concerned about the documents.

24 HONORABLE WAUGH: Right.

25 SENATOR MATHEUSSEN: Was that concern also

1 shared by the people in the Attorney General's Office?

2 HONORABLE WAUGH: I don't think it was shared
3 in the same way that the State Police have.

4 SENATOR MATHEUSSEN: Well, how then --

5 HONORABLE WAUGH: Because --

6 SENATOR MATHEUSSEN: How then did the
7 Attorney General's Office view these documents? Did
8 they view them as being damaging?

9 HONORABLE WAUGH: I think we accepted -- I
10 accepted what State Police seemed to be saying, and
11 that is that they felt that there was a similarity
12 between those documents and the ones from Maryland.
13 And consequently, they could raise an issue.

14 But as to whether the documents would
15 actually be damaging, I don't know that we have an
16 opinion. And I don't know that the -- I don't know
17 that that was relevant to the issue of whether they
18 should be produced. Because the decision, as I said,
19 is when they were asked for, they would be produced.

20 SENATOR MATHEUSSEN: Okay. Senator Zane
21 asked you before what was your view of what was going
22 on. In other words, did you actually think profiling
23 was going on, not just on perhaps a very selected basis
24 of a few State Troopers, but did you actually believe
25 that profiling was going on?

1 HONORABLE WAUGH: I did not.
2 SENATOR MATHEUSSEN: You did not?
3 HONORABLE WAUGH: I -- other than -- I think
4 you said a selected basis.
5 SENATOR MATHEUSSEN: On a very -- yeah, on a
6 very small scale.
7 HONORABLE WAUGH: Right.
8 SENATOR MATHEUSSEN: There was some troopers
9 who --
10 HONORABLE WAUGH: I don't think at that time
11 I thought that there was a pervasive problem of racial
12 profiling.
13 SENATOR MATHEUSSEN: Was that decision
14 relative to the time of May 20th when we had these
15 consent to search documents or was that sometime before
16 or sometime after the May 20th consent to search
17 document meeting?
18 HONORABLE WAUGH: I -- I don't think that I
19 can answer that question because I think, to some
20 extent, that was always my understanding. I mean there
21 was an issue as to whether it was more pervasive, and
22 that's what the Justice Department was looking at.
23 But if I had felt that it was more pervasive
24 based upon what I knew at the time, I think I would
25 have been more aggressive or suggested that we do

1 something more than we were doing.
2 SENATOR MATHEUSSEN: And that was in spite of
3 what you learned at the May 20th meeting?
4 HONORABLE WAUGH: Right.
5 SENATOR MATHEUSSEN: What was the opinion
6 perhaps of D.A.G. Rover at that time?
7 HONORABLE WAUGH: I don't know.
8 SENATOR MATHEUSSEN: Did you ever ask him his
9 opinion?
10 HONORABLE WAUGH: I didn't -- I didn't ask
11 him that question as such. But I think that in
12 conversations that he and I had, he probably expressed
13 the view that he did not think that profiling was a
14 pervasive problem.
15 SENATOR MATHEUSSEN: How about --
16 HONORABLE WAUGH: I mean if he had -- if he
17 had told me that, that would have been something that
18 would have caught my attention and I think I certainly
19 would have reported that to the Attorney General that
20 the person who's involved in the production of
21 documents thinks that it's a pervasive problem.
22 SENATOR MATHEUSSEN: About -- how about
23 D.A.G. Fahy, what was his view of it?
24 HONORABLE WAUGH: I -- I don't know. I mean
25 I think the answer would be the same with respect to

1 him. If he had -- if anyone had told me that was
2 working on it that they felt that there was really a
3 significant problem here and that it went beyond just
4 individual troopers, I would have certainly brought
5 that to the attention of the Attorney General.

6 SENATOR MATHEUSSEN: Is it my understanding
7 that you knew of Sergeant Gilbert, but you do not
8 recall being in meetings with him?

9 HONORABLE WAUGH: I knew of Sergeant Gilbert,
10 and people have told me that I was at meetings with him
11 and I have no basis to dispute that. But he was not
12 one of the people that I really knew at the State
13 Police. And I don't know how else to answer that. I
14 don't recall ever interacting with him directly other
15 than whatever conversation might have taken place at a
16 meeting.

17 SENATOR MATHEUSSEN: The May 20th meeting,
18 the consent to search -- I'll call it the consent to
19 search meeting. The statistics that were talked about,
20 where did those statistics, in your opinion, at that
21 time, come from?

22 HONORABLE WAUGH: Well, I don't believe that
23 there were specific statistics discussed. I think what
24 the State Police said was they felt their numbers were
25 similar to, or however it was phrased, the numbers that

1 come from -- that were involved in the Maryland case.
2 And I assume --

3 SENATOR MATHEUSSEN: Well, did D.A.G. Rover -
4 -

5 HONORABLE WAUGH: And I assume that that
6 information came from State Police as opposed to
7 someplace else.

8 SENATOR MATHEUSSEN: And who specifically at
9 the State Police?

10 HONORABLE WAUGH: That I don't remember. If
11 -- if Sergeant Gilbert was the one who addressed that
12 issue at the meeting, it might have been him, if it was
13 one of the, um, other officers who was there.

14 SENATOR MATHEUSSEN: But you did know that --
15 you testified earlier you did know that Sergeant
16 Gilbert was the contact person in State Police for
17 D.A.G. Rover.

18 HONORABLE WAUGH: Right.

19 SENATOR MATHEUSSEN: Who, in turn, directly
20 reported to you.

21 HONORABLE WAUGH: Right.

22 SENATOR MATHEUSSEN: But no one at the
23 meeting of May 20th revealed or concluded that sergeant
24 Gilbert had, in fact, produced these consent to search
25 documents.

1 HONORABLE WAUGH: Right. I'm sorry, produced
2 the consent to search documents?

3 SENATOR MATHEUSSEN: Produced the numbers,
4 the statistics for the consent to search.

5 HONORABLE WAUGH: I didn't know that there
6 were specific statistics.

7 SENATOR MATHEUSSEN: You knew that the
8 Department of Justice had this inquiry, gone to
9 Washington, you had gotten the initial phone call. In
10 your own mind, where did you think this was going to
11 lead?

12 HONORABLE WAUGH: I thought it was going -- I
13 thought that the Department of Justice would have
14 gotten back to us sooner than they did, and said either
15 we looked at this and we don't think there's a problem
16 or we've looked at this and we think it's more of a
17 problem than you do, and these are specific things that
18 we think need to be done in order to address the
19 problem.

20 And then there would have been a discussion
21 as to whether that was going to be done through a
22 consent decree or whether we would reach some sort of
23 agreement short of a consent decree as to how that
24 would be done.

25 SENATOR MATHEUSSEN: Were you more concerned

1 about the D.O. -- the Department of Justice actually
2 finding something wrong or were you more concerned,
3 what you said before, about the issue? Meaning
4 profiling.

5 HONORABLE WAUGH: I was more concerned about
6 the issue.

7 SENATOR MATHEUSSEN: Do you think that was
8 also the same concern that was shared by D.A.G. Rover?

9 HONORABLE WAUGH: As far as I know.

10 SENATOR MATHEUSSEN: And how about Attorney
11 General Verniero?

12 HONORABLE WAUGH: As far as I know.

13 SENATOR MATHEUSSEN: But yet -- I'll ask you
14 the same -- I'll tell you what I asked D.A.G. Rover a
15 couple of days ago why was New Jersey willing to accept
16 the Department of Justice's pace, were the words he
17 used, pace, why didn't we proceed at our own pace in
18 uncovering or trying to go back and taking a look at
19 the issue of racial profiling? Why we were accepting
20 what the D.O.J. wanted and not what we wanted to do?

21 HONORABLE WAUGH: The short -- I'd like to
22 give a short answer and a longer answer. And the short
23 answer is I don't think anyone ever considered trying
24 to accelerate the pace. And the reason that I think
25 that that was the case is because the Justice

1 Department had called up. They said they wanted to
2 look at the issue. They were going to make it as
3 unobtrusive as possible. I think that's reflected in
4 my notes. You know, we went down and met with them.
5 The procedure was put in place.

6 As far as I knew, the documents were
7 produced. And I don't think it occurred to anyone to
8 say to them, gee, maybe you ought to be doing this more
9 quickly than you are. And I think probably the reason
10 is because it was our understanding that it was not a
11 pervasive problem, that it was -- that it was what I --
12 you characterized it before as -- you had a term, and I
13 can't remember what it was -- selective. And so it
14 didn't occur to -- it certainly didn't occur to me.

15 SENATOR MATHEUSSEN: But yet there was a
16 conscious decision, and you mentioned it before, too,
17 that if -- if we had come across documents or
18 statistics that showed that racial profiling or
19 something was going on on other roads other than the
20 New Jersey Turnpike, we would not have -- and you would
21 have not allowed under your direction the D.O.J. to
22 have those documents, isn't that correct?

23 HONORABLE WAUGH: I don't think I would
24 characterize it that way. And I understand that I --
25 there is -- there may be an inconsistency here. If I

1 -- as I recall correctly, Mr. Rover told me that there
2 were some documents that related to another roadway and
3 I said -- or agreed with him, I don't remember which, I
4 guess they don't need to be produced, if we had that
5 conversation.

6 SENATOR MATHEUSSEN: Did he say --

7 HONORABLE WAUGH: And -- um -- and maybe
8 later on, I would have taken a different decision. And
9 certainly in hindsight, I probably should have. But
10 that's -- that's what I think I said at the time, that
11 they related to something different.

12 SENATOR MATHEUSSEN: Did he say those
13 documents were damaging?

14 HONORABLE WAUGH: No. If he had said that --
15 if he had told me that there were documents that were
16 damaging, I would have wanted the documents and I would
17 have sent them to the Attorney General.

18 SENATOR MATHEUSSEN: To the Attorney General?
19 I have no further questions.

20 SENATOR GORMLEY: Okay. Senator Furnari?

21 SENATOR FURNARI: Judge, I just have a few.
22 And I know you've heard very similar questions go
23 around this over and over, and I think it's because we
24 have a very difficult time comprehending how this --
25 how this all fits. And I've read in the paper recently

1 that people seem to confuse the issue. And I think you
2 characterized it as the schizophrenic relationship of
3 the Attorney General's Office with the State Police.

4 But I think every first year law student
5 knows that the obligation of a Government lawyer is
6 justice, that's the first thing.

7 HONORABLE WAUGH: I would agree with that.

8 SENATOR FURNARI: Okay. So, how is it that
9 we seem to get lost or there seems to be, at least from
10 what I'm reading, with this confusion about
11 representing or wanting to go along with what the State
12 Police believes even though maybe that isn't the best
13 thing in pursuit of justice.

14 HONORABLE WAUGH: If you're asking me about
15 the production of the consent to search data, my view
16 was that those should be produced.

17 The decision, as I understood it, was that
18 when they were asked for again, they would be produced.
19 And they were produced.

20 SENATOR FURNARI: Okay. But the problem
21 with that is, again, -- and as I understood your
22 testimony before, it was you felt some degree of
23 comfort that the Department of Justice would be
24 investigating this issue. This issue that we've all
25 agreed from the very beginning was an extremely

1 important issue for the State of New Jersey. And that
2 is racial profiling.

3 So, then we come to a crucial time where they
4 make a request for a document, the most -- the highest
5 ranking officials in the State of New Jersey meet and
6 say, all right, we'll give it to them, quote, unquote,
7 if they ask it again which, as I understand, means
8 we're not going to give it to them right now.

9 HONORABLE WAUGH: Right.

10 SENATOR FURNARI: So, what we're saying is
11 you weren't giving it. You were refusing to give a
12 document. If they never got it, then how could they
13 pursue justice?

14 HONORABLE WAUGH: Because, Senator, I'm aware
15 of the fact that there is an inconsistency here. And
16 all I can say is that it was my view that the Justice
17 Department would come back and ask for the documents
18 and that they would be produced.

19 In hindsight, there were a lot of things I
20 wish had been done differently. This situation is what
21 I would say is a -- is a public official's worse
22 nightmare. It's a -- it's something that happened as
23 it happened and now it's being put under a microscope.
24 And in the basis of hindsight, I see, and I'm sure
25 other people see things that should have been done

1 differently. And you wish -- I wish that I had done
2 them differently. But I'm telling you the way it
3 happened.

4 SENATOR FURNARI: So, the problem for us, I
5 think, is -- is that -- is that is that, in retrospect,
6 what it is? In these -- these things don't look, to
7 me, very much like things that only become clear under
8 a microphone scope. You know, usually what I think if
9 the Department of Justice sent in a request for a
10 document and I was in pursuit of justice, the first
11 thing I would say is, okay, well, we have to give it,
12 not if they sometime in the future ask us again, we'll
13 give it. Because if they don't, then I've defied my
14 obligation to give it.

15 That's all I -- that's all I have.

16 SENATOR GORMLEY: Senator O'Connor?

17 SENATOR O'CONNOR: Judge, I have you
18 testifying at this point just under five hours. So,
19 it's my obligation to stretch this out so we can get to
20 that point. I'm kidding. That's an attempt at humor.

21 I heard you testify, Judge, that it was your
22 position all along that the Department of Justice
23 should get the documents that they were requesting,
24 right?

25 HONORABLE WAUGH: yes.

1 SENATOR O'CONNOR: That was probably five
2 hours ago that you said that.

3 Did you hear or did you read of Deputy
4 Attorney General Rover's testimony in which he said
5 that at one point, when -- in his role as the person
6 who was responding to document requests, he went to you
7 with one such request and what he was told to convey
8 back to the Department of Justice was that you were
9 working on something -- not you, but the A.G.'s office
10 was working on something and that he should -- he would
11 get back to them when that was prepared. And that not
12 to do anything unless the Department of Justice
13 repeated the request and then to let you know about
14 that.

15 Have you read about that or --

16 HONORABLE WAUGH: That wasn't me, that was
17 somebody else.

18 SENATOR O'CONNOR: Okay. That was not you.

19 HONORABLE WAUGH: I think that was something
20 that happened in November or December of '98, as I
21 recall what I've read.

22 SENATOR O'CONNOR: And you testified that at
23 least as far as Mr. Rover was concerned, you had
24 frequent meetings with him, correct? And he reported
25 back to you what was given to him by the State Police.

1 HONORABLE WAUGH: I -- I would -- I don't
2 want to quibble, Senator, and I've said that. And I'm
3 not sure I know what you mean by frequent. I mean
4 every time he wanted to talk to me, he either called or
5 he'd drop by. There were certainly a lot of meetings.
6 And he was telling me what his interaction with the
7 Justice Department was.

8 And I don't want to, you know, in the grand
9 scheme of things, I suppose they were frequent as
10 opposed to seldom.

11 SENATOR O'CONNOR: And you testified also
12 that you had instructed him that he wasn't to do any
13 freelancing.

14 HONORABLE WAUGH: Right.

15 SENATOR O'CONNOR: So, that what he did
16 basically was under your direction?

17 HONORABLE WAUGH: What he was supposed to do
18 was under my direction.

19 SENATOR O'CONNOR: Okay. And then can you
20 tell us then, is there an explanation as to why, given
21 your position, that the Department of Justice wasn't
22 getting the documents they were looking for, why it
23 took such a long period of time, or whatever it was
24 that was produced for them. Why it came over such a
25 long period of time.

1 HONORABLE WAUGH: No.

2 SENATOR O'CONNOR: There's no explanation.

3 HONORABLE WAUGH: As I've testified before, I
4 had that conversation with him and I don't remember
5 exactly when it was, but it was in one of two time
6 periods. And I had the sense that he was holding
7 things before he sent them out, and I told him clearly
8 and unconditionally that -- clearly and categorically,
9 I guess, that he was supposed to send stuff out when it
10 was ready to be sent out.

11 And if he -- if he wasn't doing that, I was
12 not aware of it.

13 SENATOR O'CONNOR: Thank you.

14 SENATOR GORMLEY: We are going to take a ten-
15 minute break. We're going to come back and then we
16 have MR. Zoubek to testify.

17 Just for the record, Senator -- on another
18 matter, Senator Lynch and I are going to be reviewing
19 the four-way on the nominee to be State Treasurer, but
20 at approximately -- well, what we'll do is we'll -- at
21 the end of -- we'll have to inform the Governor's
22 Office, we'll do that review at the end of Mr. Zoubek's
23 testimony. I just wanted that on the record just so
24 people understand that that's another matter that's
25 pending and we'll be doing that review. But obviously

1 we have -- we'll ask them to wait until the end of the
2 witness' testimony and then we'll go over and do that
3 review. We'll take a break right now, we'll be right
4 back.

5 HONORABLE WAUGH: Senator?

6 SENATOR GORMLEY: Yes?

7 HONORABLE WAUGH: Do I understand correctly
8 from what you've said that you're finished with me?

9 SENATOR GORMLEY: You're finished.

10 HONORABLE WAUGH: Thank you. I --

11 SENATOR GORMLEY: Thank you.

12 (Recess)

13 SENATOR GORMLEY: Mr. Zoubek, would you
14 please stand for the oath? Raise your right hand.

15 P A U L Z O U B E K, SWORN

16 SENATOR GORMLEY: Mr. Chertoff?

17 MR. CHERTOFF: Good evening.

18 MR. ZOUBEK: Good evening.

19 MR. CHERTOFF: Mr. Zoubek, you're currently
20 the First Assistant Attorney General.

21 MR. ZOUBEK: I am.

22 MR. CHERTOFF: Now, when did you come over to
23 the Department of Law and Public Safety?

24 MR. ZOUBEK: I started with the Department of
25 Law and Public Safety on July 21st, 1997.

1 MR. CHERTOFF: And what was your assignment
2 at that point in time?

3 MR. ZOUBEK: I was asked to come into the
4 Attorney General's Office and the Office of the
5 Attorney General as an Assistant Attorney General
6 focusing on health care fraud issues based on some of
7 the work I had done in the U.S. Attorney's Office.

8 MR. CHERTOFF: Did there come a time that
9 your position changed?

10 MR. ZOUBEK: Yes. On December 8th, 1997, I
11 left the Office of the Attorney General and I was sworn
12 in as a Director of the Division of Criminal Justice.

13 MR. CHERTOFF: And when did you become First
14 Assistant?

15 MR. ZOUBEK: I was sworn in as First
16 Assistant Attorney General on March 22nd, 1999.

17 MR. CHERTOFF: All right. Let me direct your
18 attention to your tenure as head of the Division of
19 Criminal Justice.

20 First of all, were you involved up until
21 February, 1999, were you involved in dealing with the
22 Department of Justice in connection with a review or
23 investigation by the Civil Rights Division of the issue
24 of racial profiling? Again, before February of 1999?

25 MR. ZOUBEK: No.

1 MR. CHERTOFF: Who, to your knowledge, was
2 responsible for dealing with that?

3 MR. ZOUBEK: I came to learn in February of
4 1999 that Deputy Attorney General George Rover had been
5 involved in document production issues. And I came to
6 learn also that over the years, perhaps David Hesse,
7 former First Assistant, Alex Waugh, Executive Assistant
8 General and Jack Fahy, along with Attorney General
9 Verniero may have touched that issue.

10 MR. CHERTOFF: But, again, just to be
11 completely clear for the record, before February, 1999,
12 this was not part of your responsibility?

13 MR. ZOUBEK: No, it was not.

14 MR. CHERTOFF: All right. Now, was the Soto
15 appeal -- for processing of the Soto appeal part of
16 your responsibility before February, 1999?

17 MR. ZOUBEK: As the Director of the Division
18 of Criminal Justice, any and all appeals I'm ultimately
19 responsible for criminal appeals out of the Division of
20 Criminal Justice. But there were no decision points
21 for me in the Soto matter until sometime in February of
22 1999 -- January or February of 1999.

23 MR. CHERTOFF: Now, in 1998, did there come a
24 time there was a shooting on the Turnpike?

25 MR. ZOUBEK: Yes, in the early morning hours,

1 April 23rd, 1998.

2 MR. CHERTOFF: Okay. And as one of the
3 follow-ons from that, did you get involved with
4 something that became known as the Troop D audit?

5 MR. ZOUBEK: After some time and the
6 involvement of the -- what has been called the Hogan
7 and Kenna investigation regarding the incident on the
8 Turnpike near Exhibit 7A, there did come a time where
9 there was another audit that was developed which this
10 Committee has referred, and others have referred to as
11 the Troop D Audit.

12 MR. CHERTOFF: Who instructed that that audit
13 be commenced?

14 MR. ZOUBEK: I had discussions with
15 Lieutenant Colonel Robert Dunlop of the State Police.
16 When I was Director of Division of Criminal Justice, he
17 was the investigative, if you will, Lieutenant Colonel,
18 and he's the person at the State Police I dealt with
19 most frequently. And I believe that that was a
20 suggestion that Lieutenant Colonel Dunlop had,
21 consulted with me and it went forward.

22 MR. CHERTOFF: Now, the focus of that -- what
23 we'll call the Troop D Audit -- and just to be clear
24 for the record, that's the audit that was actually
25 headed by Lieutenant Sachetti?

1 MR. ZOUBEK: I came to learn that he worked
2 on that, yes.

3 MR. CHERTOFF: All right. That focused on
4 the issue of falsification of records as it relates to
5 racial profiling, correct?

6 MR. ZOUBEK: It was to focus on falsification
7 of records with respect to the issue of race.

8 MR. CHERTOFF: And did you receive regular
9 reports from somebody about the progress of that?

10 MR. ZOUBEK: I did receive reports. I
11 wouldn't say that they were weekly or monthly. I did
12 have a number of meetings and discussions with
13 Lieutenant Colonel Dunlop, and then a couple of
14 specific meetings with respect to that audit.

15 MR. CHERTOFF: All right. Well, tell us --
16 again, I want to keep you in 1998. In 1998, what were
17 the -- what was the content of the conversations you
18 had with Lieutenant Colonel Dunlop concerning the
19 audit?

20 MR. ZOUBEK: Well, periodically checking on
21 the status and whether the matter was moving forward.
22 That was an audit that both Lieutenant Colonel Dunlop
23 and I were focused on and wanted to make sure it moved.
24 And at some time during the fall, I was concerned about
25 the movement of that audit and asked to have a meeting.

1 And I believe I had a meeting with Lieutenant Colonel
2 Dunlop and others involved in the audit. My first full
3 briefing as to their progress sometime in the middle of
4 December of 1998.

5 MR. CHERTOFF: Now, what concerned you? Why
6 did you call the meeting?

7 MR. ZOUBEK: I called the meeting because I
8 wanted to see how we were progressing with the Troop D
9 Audit.

10 The issue of falsification of records with
11 respect to race I felt was a major concern, and it was
12 something I wanted to see how it was progressing.

13 MR. CHERTOFF: Now, did you regularly -- I
14 want to focus you on the period of time before this
15 meeting, December, 1998. Did you regularly report to
16 Attorney General Verniero concerning this audit?

17 MR. ZOUBEK: I informed him that the audit
18 was occurring. I informed him that we had also seized
19 records on the Turnpike to enable us to do the audit.
20 And then periodically, I would update him that it was
21 in progress.

22 But it was a substantial audit and I received
23 a more substantial briefing sometime in December of
24 1998.

25 MR. CHERTOFF: Again, before December, 1998,

1 did you report to anybody else besides the Attorney
2 General concerning that audit?

3 MR. ZOUBEK: The Attorney General is who I
4 reported to. So, that would have been the only person
5 I would have reported to.

6 MR. CHERTOFF: You didn't go through
7 Commissioner Hesper?

8 MR. ZOUBEK: I -- there are times at which
9 Mr. Hesper may have been present. But my -- I
10 considered myself as Director of the Division of
11 Criminal Justice to be direct to the Attorney General.

12 MR. CHERTOFF: In any of the conversation you
13 had with Mr. Verniero, until the middle of December of
14 1998, did Mr. Verniero ever indicate to you either that
15 he would or that you should convey to anybody working
16 with the Department of Justice, review any information
17 relating to this audit or even the existence of the
18 audit?

19 MR. ZOUBEK: During 1998, there was no
20 discussion that I had with respect to information going
21 to the Justice Department.

22 MR. CHERTOFF: And you had no idea what the
23 Justice Department was looking for.

24 MR. ZOUBEK: I wouldn't say that. I think I,
25 at some point in time, whether it was after the

1 shooting, I was aware that there as a Justice
2 Department inquiry investigation as it related to
3 issues of racial profiling in the wake of the Soto
4 case.

5 MR. CHERTOFF: But other than that general
6 awareness, you were not, again, involved in any of the
7 dealing with the discovery requests?

8 MR. ZOUBEK: I was not.

9 MR. CHERTOFF: That was Mr. Rover, right?

10 MR. ZOUBEK: I came to learn that.

11 MR. CHERTOFF: And by the same token, nobody
12 assigned Mr. Rover to be part of what you were doing in
13 terms of the Troop D Audit so that he could get the
14 benefit or be aware of that.

15 MR. ZOUBEK: No, and I think it's important
16 to understand that at that time, as Director of the
17 Division of Criminal Justice, as a prosecutor, I
18 reviewed the Troop D Audit as the beginning of a
19 process for possible examination of matters that may or
20 may not need to be prosecuted. And Mr. Rover was not
21 in the Division of Criminal Justice. So, there was no
22 need for me to consult with him at all.

23 MR. CHERTOFF: Now, also Mr. Fahy was
24 involved during this point in time from time-to-time in
25 dealing with the Soto appeal, correct?

1 MR. ZOUBEK: He -- he had tried the Soto
2 case. There was another lawyer, Jerald Sims, in our
3 Appellate Bureau who handled that. And he, at times,
4 was consulted by Mr. Sims as it related to issues in
5 the appeal. And I also came to learn was consulted at
6 times through 1998 by Attorney General Verniero on
7 issues with respect to racial profiling.

8 MR. CHERTOFF: And so, again, with respect to
9 the work that your subordinate Mr. Fahy was doing as it
10 related to Soto and racial profiling, he would report
11 to the Attorney General directly outside of your chain
12 of command.

13 MR. ZOUBEK: Well, I think I'd have to break
14 that up between the racial profiling in general, the --
15 and the Soto case. The Soto case was an Appellate
16 matter within the Appellate Bureau and he would,
17 therefore, have provided assistance to the Deputy
18 Attorney General handling that case.

19 As it relates to the racial profiling and the
20 Justice Department, Mr. Fahy did, at times, directly
21 work with the Attorney General on that issue.

22 MR. CHERTOFF: So, it's fair to say that with
23 respect to that profiling responsibility of Mr. Fahy,
24 you were out of the loop on that?

25 MR. ZOUBEK: I mean he would -- he had a

1 practice of sending me -- if he was sending a memo to
2 the Attorney General on issues, so I'd know what he was
3 doing, in addition to his responsibilities in the State
4 Grand Jury, he may, at times, forwarded me a copy of a
5 document.

6 MR. CHERTOFF: But generally, you were not
7 part of the meetings of the discussion, is that fair to
8 say?

9 MR. ZOUBEK: I was not.

10 MR. CHERTOFF: Is it fair to say based on
11 your experience at the time that in 1998 the only
12 person in the Department of Law and Public Safety with
13 an overview of the Troop D Audit, the racial profiling
14 discussion for the Department of Justice, the Soto
15 appeal and other matters with -- dealing with racial
16 profiling was, in fact, the Attorney General himself?

17 MR. ZOUBEK: That would be correct.

18 MR. CHERTOFF: Everything else was -- all
19 those individual parts of things were compartmentalized
20 among various different people, but only one person had
21 an overview?

22 MR. ZOUBEK: As Attorney General responsible
23 for all those matters, yes, the Attorney General would
24 have been in the position to have that overview.

25 MR. CHERTOFF: And to your knowledge, the

1 Attorney General didn't bring anybody else in to the
2 center to take a comprehensive view of all these
3 different issues, Soto, racial profiling, the
4 Department of Justice and the Troop D Audit in 1998?

5 MR. ZOUBEK: I didn't understand that
6 question?

7 MR. CHERTOFF: As far as you know, other than
8 the Attorney General, there was no one in the
9 Department of Law and Public Safety who was situated to
10 have an overview of all of these various threads of
11 activity that related to racial profiling.

12 MR. ZOUBEK: As Director of Division of
13 Criminal Justice, I did have purview over portions of
14 that. But, no, there was not anyone else assigned in
15 the Office of the Attorney General other than, at
16 times, David Hesse did have contact with respect to the
17 racial profiling issue and at times issues with respect
18 to the Justice Department.

19 MR. CHERTOFF: By the way, in the course of
20 the conduct of the Troop D Audit in 1998, again before
21 December -- mid-December, did you have conversations
22 with Debra Stone concerning the Troop D Audit and the
23 impact it might have on the Soto appeal?

24 MR. ZOUBEK: I had a number of conversations
25 during 1998 with Debra Stone, who is one of the Deputy

1 Directors in the Division of Criminal Justice moving
2 forward, as we were examining issues in the Hogan and
3 Kenna case and Troop D to make sure that we were paying
4 attention to the impact that it may have on the Soto
5 case.

6 MR. CHERTOFF: Did she express opinions to
7 you about whether the Troop D Audit was reviewing facts
8 that might affect the wisdom of going forward with Soto
9 in 1998?

10 MR. ZOUBEK: We had a number of conversations
11 that -- and I don't think they were ever really divided
12 up Troop D Audit versus Hogan and Kenna. So, we did
13 have a number of those discussions. And she did
14 identify issues with respect to the concerns that she
15 had regarding the Soto appeal.

16 MR. CHERTOFF: Did you convey those to
17 Attorney General Verniero?

18 MR. ZOUBEK: I did in the latter part of 1998
19 and more 1999, which would have been consistent with
20 getting more of a completed review of that case.

21 MR. CHERTOFF: In the latter part of 1998
22 when you conveyed these concerns to the Attorney
23 General, what was his response?

24 MR. ZOUBEK: There was a discussion as it
25 related to his understanding as to the reasons why an

1 appeal was taken in Soto and why it was being
2 maintained. Many of those issues have been discussed
3 before this Committee, such as the reliability of the
4 underlying analysis done by the defense in the Soto
5 case. The issue of the shifting of the burden of proof
6 in that case.

7 And in particular, the determination by Judge
8 Frances that there was not a need for an individualized
9 hearing to determine in a particular case whether
10 racial profiling had occurred with respect to that
11 single defendant.

12 MR. CHERTOFF: Well, I want to come back to
13 the particular concerns raised by Ms. Stone in 1998.
14 Did she -- and did you pass on to Attorney General
15 Verniero her view that some of what was emerging
16 factually from the Troop D Audit suggested perhaps it
17 was inadvisable to push forward with the appeal because
18 of facts about profiling might, in fact, be more
19 unfavorable for the State than was previously thought?

20 MR. ZOUBEK: Well, I think it's important to
21 put into context -- and I think she's testified this,
22 too, at her deposition. She expressed to me that she
23 had been opposed to the appeal originally and that she
24 advised me that that was her position and that things
25 were occurring in those investigations were

1 strengthening that view.

2 MR. CHERTOFF: And the things that were
3 occurring were new facts coming out suggesting
4 falsification and things of that sort, correct?

5 MR. ZOUBEK: Yes. And I believe Ms. Stone is
6 on record extensively in a couple of memos later in
7 February and March with respect to some of her views
8 with what was happening with the State Police and some
9 of those observations were gathered earlier in 1998.

10 MR. CHERTOFF: But I want to stay in 1998.
11 In 1998, she conveyed to you that she felt the facts
12 being developed in the Troop D Audit and facts being
13 uncovered were strengthening her argument against the
14 appeal, correct?

15 MR. ZOUBEK: Yes. And, again, if I can, just
16 for the record, she never identified and said because
17 of the Troop D Audit. And I think it's important
18 because it wasn't until later in 1998 that we received
19 a full presentation as to what was beginning to be
20 found in the Troop D Audit and we didn't receive a full
21 description of that until February 10th, 1999.

22 MR. CHERTOFF: But incomplete as things were
23 in 1998, did you convey her concerns to the Attorney
24 General?

25 MR. ZOUBEK: I had -- I did have a general

1 discussion with the Attorney General on the issue of
2 the Soto appeal.

3 And he outlined to me the reasons why he
4 understood the appeal was originally taken and why it
5 was currently being maintained.

6 MR. CHERTOFF: And he didn't find any of
7 these strengthened concerns based on what was being
8 revealed? That didn't move him off the position of
9 going forward with the appeal.

10 MR. ZOUBEK: No. And in some of those
11 initial conversations, I, in particular, did also share
12 the concern with respect to the fact that the -- as to
13 the concern that the law had been set. That you could
14 have the analysis done solely by statistics without any
15 individualized analysis of the underlying case.

16 So, that's more of the discussions that was -
17 - that were occurring at that time.

18 We had -- later on in 1999, additional
19 discussions.

20 MR. CHERTOFF: I want to stay in 1998. I
21 don't want to drift over into the next year yet.

22 In mid-December, you get a report on the
23 status of the Troop D Audit?

24 MR. ZOUBEK: There was a meeting in which
25 there was an oral report, but there was not any

1 delivery of statistics. There was a general
2 description that they were finding discrepancies. Some
3 of them were race based.

4 And they were instructed to continue with
5 that work. And once they had gotten to a point where
6 they had a more complete analysis, I wanted to have a
7 briefing that occurred later in February.

8 MR. CHERTOFF: Now, did you report on this to
9 the Attorney General?

10 MR. ZOUBEK: I kept him informed that I had
11 the meeting in December. That -- and he shared the
12 concern with respect to the falsification issue and
13 advised me that whatever resources we needed to put on
14 that audit should be put on that audit.

15 MR. CHERTOFF: As of mid-December, was it
16 your understanding that the way this audit was going to
17 be conducted was in three phases, covering each of the
18 three barracks on the Turnpike?

19 MR. ZOUBEK: That's my understanding. And,
20 indeed, if I can, I'm only going to mention February
21 10th because it memorializes something that I received
22 a synopsis of the audit at that time. And I think it
23 reflects that on June 11th, 1998, Lieutenant Sachetti
24 and his crew was ordered to do an audit of the Turnpike
25 in all three of its barracks.

1 MR. CHERTOFF: And you understood there to be
2 three phases, including a phase that went out -- that
3 went beyond your comparison of discrepancies on the
4 documentation and went underneath to look at even
5 documentation that was on the surface. Fine.

6 MR. ZOUBEK: Yes, but I think it's important
7 to recognize that if you look at the description of the
8 Troop D Audit, Phase Three was supposed to be a random
9 selection of stops that could be reviewed.

10 Phase Two did include looking behind the
11 documents to determine whether there was any
12 falsification.

13 MR. CHERTOFF: Now, in the course of --
14 again, in 1998, in the course of your getting reports
15 and information concerning the Troop D Audit, did there
16 come a point in time that you received a document
17 indicating that there had previously been audits not
18 related to falsification that dealt with the issue of
19 racial profiling going back into 1996 and thereafter?

20 MR. ZOUBEK: Well, what I received sometime
21 later in June of 1998, Debra Stone brought to me, and
22 particularly brought to my attention, that there had
23 been a prior audit with respect to Trooper Hogan and
24 the record reflects that she gave me a synopsis of
25 audits that were done by the staff inspection unit with

1 the Internal Affairs and there were four or five audits
2 that were done by a Lieutenant or Sergeant Hinkle that
3 went -- some of them went back to 1995.

4 MR. CHERTOFF: Now, I'm going to show you --
5 ask that you be shown Z-3 for identification, which
6 we'll put in front of you. And ask you if this was the
7 package you got.

8 MR. ZOUBEK: Yes, I've reviewed my file prior
9 to my deposition and I did receive this. To the best
10 of my recollection, it was at the end of June, 1998.

11 MR. CHERTOFF: And there's considerable
12 information in this concerning various types of reviews
13 that had been done about statistics, including a
14 document dated September 24th, 1996 at OAG 2074, which
15 is entitled Patrol Issues Concerns at Moorestown
16 Station.

17 MR. ZOUBEK: Yes, that's the document I have
18 in front of me.

19 MR. CHERTOFF: Now, Ms. Stone gave you this
20 and where did she say she got it from?

21 MR. ZOUBEK: She told me that she had
22 received it from State -- quote, unquote, "State
23 Police." I don't think she identified specifically
24 where it came from. And she, in particular, drew my
25 attention to the analysis that had been done out at

1 Cranbury involving Trooper Hogan. Because at that
2 point in time, that's what I was focused on was, as a
3 prosecutor, with respect to that case and the Troop D
4 Audit.

5 MR. CHERTOFF: And that's because, again,
6 your responsibility at this point in time did not
7 involve dealing with the Department of Justice or the
8 general issue of the profiling, correct?

9 MR. ZOUBEK: That's correct.

10 MR. CHERTOFF: Did you discuss this with the
11 Attorney General?

12 MR. ZOUBEK: I think I may have said to him
13 at that point in time that we determined that there was
14 a prior audit done on Trooper Hogan that resulted from
15 some concern about his activities back in 1995. But I
16 did not discuss with him some of the other audit
17 information that's in here that, for the most part,
18 deals with stop percentages. Which is not something
19 that I was focused on at the time.

20 MR. CHERTOFF: Did he ask you about this
21 audit or how the audit came to be?

22 MR. ZOUBEK: I think I explained to him how
23 it came to be in the context of Trooper Hogan, and that
24 that discussion relates more specifically to some of
25 the investigation in that case.

1 MR. CHERTOFF: But did he ask you -- let me
2 ask you this. Did he express surprise that there was
3 any auditing going on with respect to individual
4 troopers?

5 MR. ZOUBEK: No.

6 MR. CHERTOFF: Did he ask questions about
7 what kind of auditing procedures had been going on?

8 MR. ZOUBEK: No.

9 MR. CHERTOFF: Did he direct you to
10 communicate to Mr. Rover or anybody else in the
11 Department of Law and Public Safety who was dealing
12 with racial profiling to make them aware of this
13 information?

14 MR. ZOUBEK: Again, keeping in mind that my
15 recollection is is all I advised him on was a prior
16 audit with respect to Trooper Hogan, which was in the
17 context of a criminal investigation. He did not say
18 that.

19 MR. CHERTOFF: Now, you agree with me that
20 respect to Z-3, it's quite clear this material was not
21 withheld from the Office of the Attorney General by the
22 State Police.

23 MR. ZOUBEK: No. The record reflects that it
24 was delivered to the Division of Criminal Justice in
25 the spring of 1998.

1 MR. CHERTOFF: And, again, during this period
2 of time in 1998, you really didn't -- you were never
3 invited to participate in any discussion even though
4 you were the head of the Division of Criminal Justice
5 concerning the issue of racial profiling in general?

6 MR. ZOUBEK: No -- yes. As it relates to the
7 Justice Department, no.

8 But after the discovery of the falsification
9 issue and once I was informed of that by Lieutenant
10 Colonel Dunlop, I viewed that matter to be of great
11 significance to warrant a substantial investment of
12 resources, not only on the Hogan and Kenna
13 investigation, but on Troop D. I did advise the
14 Attorney General with respect to that.

15 So, I viewed that as my work at that time
16 with respect to the issue of racial profiling.

17 So, I don't want to give an impression that I
18 wasn't doing -- or involved in discussion with the
19 Attorney General on racial profiling.

20 MR. CHERTOFF: Now, my question is not
21 whether you were involved or whether you were invited
22 in to more general discussions concerning racial
23 profiling as it involved matters outside the question
24 of falsification. Were you made part of those
25 discussions?

1 MR. ZOUBEK: To the extent to which I have
2 learned that there were some discussions, for example,
3 meetings with the Black Ministers' Council in May of
4 1998, I was -- I was not.

5 But I don't know if the record reflects a
6 significant degree of activity with the Justice
7 Department from April of 1998 through the end of 1998.
8 So, I did not attend any meetings, but I also am not
9 privy to all of the meetings that occurred.

10 MR. CHERTOFF: Now, you said you had a
11 meeting in -- subsequent meeting in February of 1999
12 regarding the Troop D Audit.

13 MR. ZOUBEK: That's correct.

14 MR. CHERTOFF: And what was the date of that
15 meeting?

16 MR. ZOUBEK: It was February 10th, 1999.

17 MR. CHERTOFF: Where did the meeting occur?

18 MR. ZOUBEK: It occurred in the fifth floor
19 training at the Hughes Justice Complex here.

20 MR. CHERTOFF: And who called the meeting?

21 MR. ZOUBEK: I had asked for the meeting
22 because I had the first briefing in the middle of
23 December and I wanted to know what was happening with
24 respect to the audit. So, I think it was set up ten
25 days or so in advance.

1 MR. CHERTOFF: And who attended the meeting?

2 MR. ZOUBEK: I remember Lieutenant -- Colonel
3 Williams attended the meeting, Lieutenant Colonel
4 Fedorko attended the meeting, Lieutenant Colonel Dunlop
5 attended the meeting. I think Lieutenant Sachetti may
6 have been there. There's someone who -- Caseppi
7 (phonetic), I think from the State Police. I may be
8 butchering that name, I apologize. I believe Debra
9 Stone was there from the Division of Criminal Justice.
10 Chuck Grinnell or Charles Grinnell may have been there.
11 I am not sure whether or not Jim Gerrow, who we had
12 brought in the Special Prosecutor in the Hogan and
13 Kenna case was there or not.

14 MR. CHERTOFF: Now, you received your report
15 at that time about the Status of the Troop D Audit?

16 MR. ZOUBEK: I received a presentation as to
17 the status of the Troop D Audit. I also received a
18 synopsis -- a two-page synopsis of the audit, as well
19 as for the first time aggregate statistics out of
20 Moorestown and Cranbury, I believe, that broke down
21 percentages of stop by squad and by trooper.

22 MR. CHERTOFF: Now, with respect to the Troop
23 D Audit, what were you advised about what had been
24 discovered at that point in the Troop D Audit?

25 MR. ZOUBEK: Generally, what I was advised in

1 the update was that there was a concern Lieutenant
2 Colonel Dunlop had at some point that the Troop D Audit
3 may be veering off its original course.

4 Its original course that we had agreed to was
5 to focus on race based discrepancies, not just if, you
6 know, there's a not a document in the file that doesn't
7 have anything to do with race. And I was advised as to
8 where they were in terms of the completion of the
9 phases they had completed at that point in time and I
10 recall the documents that I received, as well, I
11 believe you have a redacted copy of a portion of those
12 documents identified somewhere between 10 to 12
13 troopers that were going to be referred.

14 I think it's important to keep in mind that
15 what Lieutenant Sachetti was doing was an inspection
16 audit. And what would happen is if there was an issue
17 that they wanted to have an Internal Affairs
18 investigation, that would then get turned over to
19 another group within Internal Affairs. And I think
20 they had identified ten to 12 troopers that they said
21 they were going to process for those types of Internal
22 Affairs referrals.

23 MR. CHERTOFF: Now, with respect to the
24 actual status of the audit, was it complete?

25 MR. ZOUBEK: There were -- the -- it was --

1 there were portions of it that were complete. But
2 there was -- there was work that needed to be done.

3 MR. CHERTOFF: And was it your understanding
4 or was it your directive at the close of the meeting
5 that the work continue forward?

6 MR. ZOUBEK: Absolutely. And I had offered
7 before to add Division of Criminal Justice personnel to
8 it. I checked what was necessary at that time to put
9 additional staff on that to move that along. And that
10 was one of the other focuses of that meeting.

11 MR. CHERTOFF: And you understood at that
12 point that -- even apart from the ten to 12 troopers
13 who were referred for Internal Affairs reviews, there
14 were a larger number of discrepancies regarding to
15 racial identification that had been uncovered.

16 MR. ZOUBEK: That -- the way it was described
17 to me was that they had broken out the ten to 12 at
18 that point in time. I don't know that I agree with --
19 there was a much larger group with respect to racial
20 numbers. I know that there was a number had been
21 thrown around like a hundred and fifty troopers. I
22 think that deals with general discrepancies, not with
23 respect to race based discrepancies.

24 MR. CHERTOFF: Now, as of the close of the
25 meeting, therefore, your mandate was to go forward,

1 correct?

2 MR. ZOUBEK: Absolutely.

3 MR. CHERTOFF: And, in fact, there came a
4 time in early March where you -- did you become aware
5 that they had an additional personnel to assist in
6 moving forward with that audit?

7 MR. ZOUBEK: I -- I have become aware of that
8 after the fact. It was certainly consistent with my
9 instructions was that we needed more people, I asked
10 them to assign more people so that it could be
11 completed expeditiously.

12 MR. CHERTOFF: Now, that meeting on February
13 10th occurred in the morning?

14 MR. ZOUBEK: Yes, it did.

15 MR. CHERTOFF: That afternoon, you had
16 another meeting with Attorney General Verniero,
17 correct?

18 MR. ZOUBEK: Yes.

19 MR. CHERTOFF: And how did you come to have
20 that meeting?

21 MR. ZOUBEK: I was called up to the Attorney
22 General's Office.

23 MR. CHERTOFF: And who was there?

24 MR. ZOUBEK: Attorney General Verniero and
25 First Assistant David Hesse.

1 MR. CHERTOFF: What were you told?

2 MR. ZOUBEK: I was advised that the Attorney
3 General was calling for a State Police Review Team to
4 look at a number of issues with respect to the State
5 Police.

6 MR. CHERTOFF: And had you been consulted
7 about that previously?

8 MR. ZOUBEK: Not specifically with respect to
9 the initiation of a State Police Review Team.

10 MR. CHERTOFF: What did Mr. Verniero tell you
11 about the reason he wanted to initiate the State Police
12 Review Team?

13 MR. ZOUBEK: That he was frustrated as it
14 related to inadequacy of responses from the State
15 Police on a couple of issues, including Internal
16 Affairs promotions and some other issues.

17 MR. CHERTOFF: Well, let's talk about
18 Internal Affairs. What did he say to you was the
19 problem with Internal Affairs?

20 MR. ZOUBEK: He mentioned Internal Affairs.
21 I had been involved for a period of two to three months
22 on working specifically on some concerns I had with
23 respect to a couple of the egregious instances where I
24 had found that matters had not been referred over to
25 the Division of Criminal Justice from Internal Affairs

1 that should have been referred over.

2 MR. CHERTOFF: And with respect to those
3 matters, were you, in fact, in process of dealing with
4 Internal Affairs at the State Police and working out
5 some new protocol as to how to handle these matters?

6 MR. ZOUBEK: I had put together a proposal.
7 I had met with Colonel Williams. But Colonel Williams,
8 at that time, had rejected the proposals because he
9 thought they were unnecessary, and I strongly disagreed
10 with him.

11 MR. CHERTOFF: And when was that rejection?

12 MR. ZOUBEK: I think it would have been some
13 time in January.

14 MR. CHERTOFF: And so what did you do when he
15 rejected the proposals?

16 MR. ZOUBEK: I -- I talked to him further
17 about what I thought would be the -- a help to the
18 State Police by making some changes in what was known
19 as S.O.P. B-10 that dealt with internal referrals. And
20 that that was a matter that I thought would be of
21 assistance to the State Police.

22 But that had not been resolved as of February
23 10th.

24 MR. CHERTOFF: So, you were still discussing
25 it with him?

1 MR. ZOUBEK: It was still open.

2 MR. CHERTOFF: And, again, as we've
3 indicated, that morning you had been given a report
4 about the status of the Troop D Audit and you were
5 satisfied with the progress then, correct?

6 MR. ZOUBEK: Yes.

7 MR. CHERTOFF: And what else was there that
8 Mr. Verniero identified for you as the reason he wanted
9 to have a State Police Review?

10 MR. ZOUBEK: I think those were the -- those
11 were the general responses that he wanted to do a broad
12 look on a number of issues at the State Police to make
13 sure the practices, procedures and policies were in
14 place that the public could have confidence in.

15 MR. CHERTOFF: Just so we're clear with this,
16 the two -- the two items he identified as precipitating
17 this desire to have an outside State Police Review were
18 the issue of responsiveness on the Troop D Audit and
19 responsiveness on the issue of the Internal Affairs
20 protocols?

21 MR. ZOUBEK: No, I don't -- I -- with all due
22 respect, I don't think I said responsiveness on the
23 Troop D Audit.

24 MR. CHERTOFF: Okay. So, other than the
25 issue with the protocols, which was under discussion,

1 what else did he identify as --

2 MR. ZOUBEK: Well, I think if I can, I mean
3 he handed me an announcement of the State Police Review
4 Team. And that document has on it -- it's dated
5 February 10th. I think it has Internal Affairs,
6 Hiring, Promotions, and the handling of complaints from
7 the public, that's the best of my recollection. But if
8 you can refresh it, I'd appreciate it.

9 MR. CHERTOFF: Well, let me show you Z-9.
10 We'll put it up, it's the press release dated February
11 10th. And it identifies as a focus --

12 MR. ZOUBEK: Yes. And it refreshes my
13 recollection in another matter, which is at the end of
14 January, beginning of February, we had received a
15 number of additional lawsuits by troopers that raised
16 issues with respect to how troopers' complaints were
17 being handled.

18 MR. CHERTOFF: All right. Now, there's
19 nothing in this release about racial profiling,
20 correct?

21 MR. ZOUBEK: Not specifically as to the issue
22 of racial profiling.

23 MR. CHERTOFF: And so is it fair to say that
24 on February 10th, you were not told that the State
25 Police review would be studying racial profiling?

1 MR. ZOUBEK: Yes and no. I mean some of the
2 issues here were viewed as having an impact on the
3 racial profiling issue.

4 But in terms of doing a review of getting to
5 the bottom of whether racial profiling, per se, was
6 occurring, no.

7 MR. CHERTOFF: And you were also told that
8 this would be a four-month time frame for purposes of
9 completing this review, correct?

10 MR. ZOUBEK: Correct.

11 MR. CHERTOFF: Now, then is it fair to say
12 within a day or two thereafter, there was a change in
13 focus that you received with respect to this review
14 team?

15 MR. ZOUBEK: I don't say change in focus. An
16 additional focus.

17 MR. CHERTOFF: And what was the additional
18 focus?

19 MR. ZOUBEK: I think additional focus was on
20 the issue of getting to the bottom of whether racial
21 profiling was occurring. I think there were
22 substantial criticisms, if you will, as to the
23 announcement of the State Police Review Team about
24 there's a need at this time to look at the issue of
25 racial profiling. And that was added.

1 MR. CHERTOFF: Now, before -- how did you
2 come to learn that your mandate was not going to be
3 expanded to include a focus on racial profiling?

4 MR. ZOUBEK: I think within the 24-hour to
5 48-hour period after the announcement of the State
6 Police Review Team, the General held a couple of
7 meetings with reporters explaining the State Police
8 Review Team.

9 And in one of those discussions, there was a
10 focus by the Attorney General on getting more
11 specifically to the bottom of racial profiling. That
12 was announced and we moved to that, as well.

13 MR. CHERTOFF: So, is it fair to say, as you
14 understand it, the way your mandate was expanded came
15 about because the Attorney General said in a press
16 interview he was going to have the Review Team look at
17 racial profiling, and then you were subsequently
18 contacted and told you're going to look at racial
19 profiling?

20 MR. ZOUBEK: Well, I was -- I was there with
21 them at the time. And I think it also -- I think I
22 said in my deposition, I think that it was very -- a
23 very logical addition because it was very logical
24 initial criticism of the announcement of the State
25 Police Review Team.

1 MR. CHERTOFF: But he didn't discuss that
2 with you first, right?

3 MR. ZOUBEK: I was present with him when he
4 was discussing it.

5 MR. CHERTOFF: With the reporter?

6 MR. ZOUBEK: Yes.

7 MR. CHERTOFF: He didn't -- in other words,
8 before he went to talk to the reporter, he didn't say
9 at any time prior in substance, Paul, as long as we're
10 doing this, should we take a look at racial profiling?

11 MR. ZOUBEK: No.

12 MR. CHERTOFF: Now -- and at that point in
13 time, you had no knowledge, of course, as to what
14 reviews had been done with respect to racial profiling,
15 correct?

16 MR. ZOUBEK: It --

17 MR. CHERTOFF: As of February 12th?

18 MR. ZOUBEK: Well, you --

19 MR. CHERTOFF: Or thereabouts.

20 MR. ZOUBEK: I don't think that's --

21 MR. CHERTOFF: Except for the Troop D Audit.

22 MR. ZOUBEK: I don't think that's correct
23 because I had been involved in the Hogan and Kenna
24 investigation. The Troop D Audit, I did see some
25 documents in June of 1998 and I was generally involved

1 in the discussions on racial profiling. I just want to
2 make sure the record's clear.

3 MR. CHERTOFF: But you were not certainly
4 part -- you were not in a position to have -- let me
5 withdraw the question.

6 You were not conversant in all the aspects of
7 the reviews that had been done with respect to racial
8 profiling as of February 12th, 1999, right?

9 MR. ZOUBEK: No.

10 MR. CHERTOFF: When you say no, you mean you
11 were not --

12 MR. ZOUBEK: No, we got -- we got lost in
13 those questions, both of us.

14 MR. CHERTOFF: Okay. So, now you -- a couple
15 of days after February 10th, you get asked to take on
16 this racial profiling issue, correct?

17 MR. ZOUBEK: Yes.

18 MR. CHERTOFF: And it's the first you learn
19 about the notion of having a review of racial profiling
20 is in this press interview, correct?

21 MR. ZOUBEK: Yes.

22 MR. CHERTOFF: Now, at what point did you
23 actually start to learn about the nature of this
24 Department of Justice Review of racial profiling in the
25 State of New Jersey?

1 MR. ZOUBEK: I think that came about in the
2 first two weeks, if you will, I believe that what
3 happened was there were a number of calls challenging
4 the ability of the State Police Review Team to do this
5 kind of investigation and calls from the Justice
6 Department to become involved in an investigation.

7 And I think in the context of that, the
8 Justice Department, for the first time, revealed
9 publicly that they did have a review -- under the
10 Pattern and Practice Statute, Civil Statute of the New
11 Jersey State Police.

12 And then I think the record reflects that on
13 February 16th or 17th, that was announced.

14 And on the 17th of February, there was a
15 letter forwarded by the Attorney General to the Justice
16 Department explaining aspects of the State Police
17 Review Team. And on that day, the 17th, I met with the
18 Attorney General and Rover as it relates to the Justice
19 Department investigation.

20 MR. CHERTOFF: All right. So, to put it into
21 context, before February of 1999, the existence of this
22 Civil Rights investigation was not publicly known,
23 correct?

24 MR. ZOUBEK: I believe that's correct.

25 MR. CHERTOFF: And it was only in February in

1 response to increased clamor for a Civil Rights
2 Division investigation and criticism of the State
3 Police Review Team that the Department of Justice, for
4 the first time, went public and said you know, we've
5 been investigating this, right?

6 MR. ZOUBEK: You're correct. It was the
7 Justice Department --

8 MR. CHERTOFF: And --

9 MR. ZOUBEK: -- that took that step.

10 MR. CHERTOFF: And, in fact, the Attorney
11 General of the State responded to that announcement by
12 the Department of Justice by essentially informing the
13 Department of Justice that we had a State Police Review
14 Team and that was going to look at the problem, right?

15 MR. ZOUBEK: Yes, but I -- in that, I don't
16 presume that that was the first that the Justice
17 Department was learning about the fact that we were
18 doing the State Police review.

19 MR. CHERTOFF: Well, how did they first learn
20 about it?

21 MR. ZOUBEK: I would imagine that -- I
22 gleaned from my discussions with them that they're on
23 line and they read the New Jersey newspapers and they
24 learned about it.

25 MR. CHERTOFF: Now, when you got involved in

1 this issue of profiling in February as part of the
2 State Police Review Team, was Mr. Hespe involved in
3 this? Did he become part of this?

4 MR. ZOUBEK: Mr. Hespe, I think, the February
5 10th announcement mentions me as an incoming First
6 Assistant Attorney General.

7 I think I had accepted that position shortly
8 before that time. And I think it had been already -- I
9 don't -- I think it had been announced at that point in
10 time or was about to be announced that First Assistant
11 David Hespe was going over as Commissioner of
12 Education.

13 So, at some point before March 22nd when I
14 was sworn in as First Assistant, I did have some
15 conversations with him in transition.

16 MR. CHERTOFF: So, at that point, you report
17 directly, again, to the Attorney General -- Attorney
18 General Verniero with respect to the State Police
19 Review Team.

20 MR. ZOUBEK: Correct.

21 MR. CHERTOFF: And you said a letter was
22 written to the Department of Justice after this Review
23 Team was formed and after the announcement of the
24 public -- the public announcement of the Civil Rights
25 investigation?

1 MR. ZOUBEK: I think there was a letter dated
2 February 17th.

3 MR. CHERTOFF: And what was that -- what was
4 that -- what did the letter indicate?

5 MR. ZOUBEK: I think it was advising the
6 Justice Department more specifically about the State
7 Police Review Team and saying that the Review Team
8 would be cooperating with the Justice Department.

9 MR. CHERTOFF: Now, a time came that this --
10 I'm going to try to look into the letter actually to be
11 more specific. But while we locate now, let's move on
12 a little bit.

13 I take it at this point you become aware or
14 you were already aware that George Rover had, up to
15 that point, been the designated lawyer for the
16 Department of Law and Safety and communicated with the
17 Federal Department of Justice, correct?

18 MR. ZOUBEK: Yes. My calendar reflects on
19 February 17th, I had a meeting with the Attorney
20 General and Deputy Attorney General Rover with respect
21 to that letter. And after that meeting, I sat with
22 Rover and spoke with him about his involvement.

23 MR. CHERTOFF: So, the Attorney General, Mr.
24 Rover and you talked about this letter of February 17th
25 to go to the Justice Department.

1 MR. ZOUBEK: Yes.
2 MR. CHERTOFF: Which is Z-8.
3 MR. ZOUBEK: You know better than I.
4 MS. GLADING: I'm sorry.
5 MR. CHERTOFF: Z-13. Well, let's put it up.
6 It's February 17th. Is this the letter we're talking
7 about to Mr. Lee?
8 MR. ZOUBEK: Yes.
9 MR. CHERTOFF: All right. And this was --
10 how was this letter actually prepared?
11 MR. ZOUBEK: I believe -- and I don't recall
12 specifically. But I believe the Attorney General --
13 frankly I'm trying to remember who L.G. worked for at
14 the time, that's the secretary, and I can't recall
15 whether it was David Hespe. I believe she worked for
16 the Attorney General at the time.
17 MR. CHERTOFF: All right. And who drafted
18 the letter, do you know?
19 MR. ZOUBEK: I do not know. I did not.
20 MR. CHERTOFF: Now, going into the letter
21 just for a second, did you review it before it went
22 out?
23 MR. ZOUBEK: I probably did.
24 MR. CHERTOFF: Now, after this letter was
25 prepared, you had talked to Mr. Rover --

1 MR. ZOUBEK: Yes.
2 MR. CHERTOFF: -- correct?
3 MR. ZOUBEK: That's correct.
4 MR. CHERTOFF: And what did you ask him to
5 do?
6 MR. ZOUBEK: Well, I asked Mr. Rover very
7 generally, you know, what have we sent down. And I
8 asked him what do the documents show.
9 MR. CHERTOFF: What did he say to you?
10 MR. ZOUBEK: I don't know.
11 MR. CHERTOFF: And so what did you tell him
12 to do?
13 MR. ZOUBEK: I told him that I wanted -- as
14 soon as possible, I wanted an accounting of everything
15 that had gone down to the Justice Department. And I
16 also wanted some statistical analysis done or
17 computation done of the documents that we had sent
18 down, to the extent to which we could get that done as
19 soon as possible.
20 MR. CHERTOFF: And did you get that memo on
21 or around February 26th?
22 MR. ZOUBEK: There is a memo dated February
23 26th. I don't recall whether it was hand-delivered
24 that day or I received it the beginning of next week.
25 MR. CHERTOFF: And did it come with a bunch

1 of boxes?

2 MR. ZOUBEK: I think it came with some boxes,
3 yes.

4 MR. CHERTOFF: All right. Now, I'm going to
5 show --

6 MR. ZOUBEK: I -- I may have gotten the
7 letter and the boxes may have been separately delivered
8 to someone else, but I did get the letter.

9 MR. CHERTOFF: Now, I'm going to show you
10 Z-14, which I want to put up, and that's a memo to you
11 of February 26th, 1999. Is this the memo that came
12 with the boxes?

13 MR. ZOUBEK: This is the memo I received.

14 MR. CHERTOFF: All right. Now, if you look
15 at the third page, it talks about numerous documents
16 that have not been -- I have not produced to D.O.J.,
17 and they include the following. And among those are
18 July 5th, 1996 I.A.B. motor vehicle stop ordered at
19 Moorestown Station, audit I.A.B. Perryville, Washington
20 Station, Hunterdon County Statistics, Gloucester County
21 Database Arrest Data. Now, do you remember reading
22 this?

23 MR. ZOUBEK: I do.

24 MR. CHERTOFF: Did you have a discussion with
25 Mr. Rover about how it is that these documents did not

1 get produced?

2 MR. ZOUBEK: Well, initially I received -- I
3 received this letter and I did have subsequent
4 discussions with him, but I did discuss at my
5 deposition that there was, what I would call, an
6 intervening event that meant that I did not -- I did
7 not meet with Mr. Rover immediately on those.

8 MR. CHERTOFF: That's when Mr. --
9 Superintendent Williams left, right?

10 MR. ZOUBEK: That's correct.

11 MR. CHERTOFF: All right. But at some point
12 thereafter, you did, in fact, talk to Mr. Rover about
13 this memo, right?

14 MR. ZOUBEK: I did.

15 MR. CHERTOFF: And you expressed concern
16 about the fact that there were documents that had not
17 been produced.

18 MR. ZOUBEK: I did.

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

20 MR. ZOUBEK: He said that it was his
21 understanding -- he reviewed for me the nature of the
22 discussions with the Justice Department that a sample,
23 if you will, request form in blank had been received by
24 the Justice Department, and that there had been very
25 little correspondence from the Justice Department, and

1 there had been some oral request from the Justice
2 Department and an attempt to determine what should go
3 to the Justice Department or not.

4 And then at that point in time, I viewed what
5 I was doing in the State Police Review Team as a new
6 look at this issue, not wedded to prior litigation
7 positions. And at that point in time, I assigned an
8 evaluation of the production and ensuring that we had a
9 complete production to someone in the Division of
10 Criminal Justice.

11 MR. CHERTOFF: Well, now let me ask you this,
12 with respect -- did you actually see the sample request
13 that he talked about?

14 MR. ZOUBEK: I don't know if I did in that
15 conversation with him, but I did see it during the
16 spring of 1999. Prior to my -- prior to my going down
17 to the Justice Department on March 19th.

18 MR. CHERTOFF: And did you see the various --
19 did you actually view the documents that were
20 identified here as not having been produced?

21 MR. ZOUBEK: I did not -- I did not
22 specifically review this. I signed those to be
23 reviewed. And I hadn't reviewed those all before I
24 went down to my initial meeting with the Justice
25 Department on the 19th.

1 MR. CHERTOFF: It was clear to you, though,
2 from the face of this memo that there were audit
3 materials and statistical materials that had not been
4 produced to D.O.J., correct?

5 MR. ZOUBEK: That's what's set forth on the
6 list. What I was trying to determine was if you look
7 at the sample request that had come in from the Justice
8 Department and looked at the document request or what
9 was in writing, their initial request would purport to
10 call essentially for every document that existed in the
11 State Police from '94 to '96 at every single barracks
12 in the State. And I had been told that there had been
13 negotiations which limited that down. The problem that
14 I had was recreating in any written format of the
15 narrowing down of that request.

16 MR. CHERTOFF: Well, let me break it down.
17 Did Mr. Rover tell you how the decision was made to
18 withhold the documents that were identified in this
19 memo?

20 MR. ZOUBEK: He had told me that some of the
21 documents -- it was unclear as to whether or not they
22 would go down or not. And that was essentially the
23 list of those documents.

24 At that point in time --

25 MR. CHERTOFF: Let me stop you. Did he tell

1 you that he thought these were materials that were
2 called for by what the Department of Justice wanted?

3 MR. ZOUBEK: He told me that -- they were in
4 the -- within the ambit, if you will.

5 MR. CHERTOFF: In other words, that he
6 thought they were within the scope of what was called
7 for.

8 MR. ZOUBEK: Within the scope of the sample
9 request.

10 MR. CHERTOFF: And did he tell you how the
11 decision was made not to send this material down?

12 MR. ZOUBEK: I spoke with him. And he said
13 that there had been some discussions and they weren't
14 clear as to whether some documents can go and some
15 documents shouldn't go.

16 And at that point in time, what I did was I
17 removed --

18 MR. CHERTOFF: Let me stop you, you're
19 getting ahead of me.

20 MR. ZOUBEK: All right.

21 MR. CHERTOFF: My question is who did he have
22 the discussions with about whether it should go or not
23 go?

24 MR. ZOUBEK: I did not ask him specifically
25 who he had those discussions with. From the file, I

1 had seen that he had had contact with Executive
2 Attorney General Waugh and perhaps at times the
3 Attorney General.

4 MR. CHERTOFF: In fact, did he tell you
5 generally that what he did with respect to the decision
6 to withhold the documents he did in consultation with
7 Attorney General Waugh and sometimes Attorney General
8 Verniero?

9 MR. ZOUBEK: No, I did not get to that point.
10 Because at that point in time, I was not able to glean
11 a clear document production and analysis from Deputy
12 Attorney General Rover.

13 I then removed him from the process and had
14 him reassigned.

15 MR. CHERTOFF: Here's my question: At any
16 point in time from February, 1999 to the present
17 moment, did Mr. Rover tell you who made the decision to
18 withhold the documents or some of the documents that
19 are contained in this memo?

20 MR. ZOUBEK: I only learned about that in the
21 course of reading the depositions and testimony in this
22 matter.

23 MR. CHERTOFF: Well, I want to remind you of
24 your testimony at Page 144 of your deposition. When at
25 Page 18, I asked you the question I just asked you a

1 second ago, "At any point in time, from February, 1999
2 to the present moment, did Mr. Rover tell you who made
3 the decision to withhold the documents or some of the
4 documents that are contained in this memo?"

5 "THE WITNESS: He advised me that what he
6 did, he did in consultation with Attorney General
7 Waugh, and sometimes Attorney General Verniero."

8 Is that a correct --

9 MR. ZOUBEK: Well, and that's what I had
10 said. But from my review of the file, that's what I
11 had gleaned that that had happened. But I didn't have
12 any more specific discussion with him.

13 MR. CHERTOFF: And Mr. Rover, in fact, told
14 you that his chain of reporting was to Executive
15 Assistant Attorney General Waugh and to Attorney
16 Verniero.

17 MR. ZOUBEK: That's correct. But what I did
18 not do was -- and I wanted to make sure this is clear,
19 I did not go through -- this is item one, this is item
20 two, this is item three, this is item four, five and
21 six and go through why was this one not produced, why
22 wasn't that one produced. So, I just want to make sure
23 that's clear.

24 MR. CHERTOFF: But you understood generally
25 from your discussion with him at some point in time

1 that his decision -- that he was not making decisions
2 about withholding material that was arguably within the
3 scope of the request. He was consulting with Mr. Waugh
4 and sometimes Mr. Verniero, correct?

5 MR. ZOUBEK: Yes.

6 MR. CHERTOFF: Now, then you went to talk to
7 Mr. Verniero about this, right?

8 MR. ZOUBEK: I -- I --

9 MR. CHERTOFF: About this withholding.

10 MR. ZOUBEK: I -- I went to talk to him about
11 my dissatisfaction with the way in which I thought this
12 had been handled. And that I was going to review the
13 production to make sure that everything that had to go
14 down was evaluated to go down.

15 MR. CHERTOFF: And when you talked to Mr.
16 Verniero about your concern about whether all the
17 documents went down, what was his reaction?

18 MR. ZOUBEK: He told me at that time that I
19 should review the documents, whatever I thought should
20 go down should go down.

21 MR. CHERTOFF: Did you ask him whether he had
22 been involved at all or had discussions with Mr. Rover
23 about what was going down, what wasn't going down?

24 MR. ZOUBEK: I did not.

25 MR. CHERTOFF: Did he mention that he had

1 discussions with Mr. Rover or Mr. Waugh about the
2 issues of what goes down and what doesn't go down?

3 MR. ZOUBEK: He did not.

4 MR. CHERTOFF: By the way, if you go back to
5 this memo of February 26th, there's an -- in item three
6 of the documents not produced it talks about the
7 statistical breakdown of motor vehicle stops for the
8 sample base. Do you know what that is?

9 MR. ZOUBEK: I believe -- and I'm not
10 entirely correct -- I believe that's what I had
11 requested Rover to pull together, which was the
12 statistical breakdown.

13 When I received it, I had the impression that
14 it was after -- when I asked the question what did the
15 documents show in terms of statistics, he says I don't
16 know. I wanted to find that out. And that's what I
17 was shown.

18 I don't know when that was created, but that
19 was the context.

20 MR. CHERTOFF: Do you remember the document
21 that it refers to if we show it to you?

22 MR. ZOUBEK: I believe they were some charts
23 with respect to the stop statistics.

24 MR. CHERTOFF: Do you know what year for the
25 sample days?

1 MR. ZOUBEK: Well, I think that's '95 and
2 '96, which I think is the sample date.

3 MR. CHERTOFF: Let me show you G-25 for
4 identification. It's a memo of July 10th, 1997 to
5 Colonel Williams from Sergeant Gilbert.

6 MR. ZOUBEK: No, that's not the document.

7 MR. CHERTOFF: That's not the document?

8 MR. ZOUBEK: That's not the document.

9 MR. CHERTOFF: Do you remember the -- was it
10 in box format?

11 MR. ZOUBEK: Yes.

12 MR. CHERTOFF: Is it a document that you
13 later saw in a notebook provided to you by Sergeant
14 Gilbert?

15 MR. ZOUBEK: I saw, again -- yes.

16 MR. CHERTOFF: All right. Let me show you
17 G-21 for identification and see if this is the one.
18 It's a motor vehicle stop rate data information, G-21.
19 Put it up on the board. All right, is this the
20 document?

21 MR. ZOUBEK: I believe so.

22 MR. CHERTOFF: Now, again, this was in Mr.
23 Rover's file, correct?

24 MR. ZOUBEK: Yes. What I'm not able to piece
25 together at this point in time is, as I was told, no, I

1 don't know what the statistics are, we don't have that.
2 And then subsequently I get this document. I don't
3 know whether the document was produced after the time I
4 asked that question of Mr. Rover or it was a
5 preexisting document.

6 MR. CHERTOFF: But it's your understanding
7 that that's what's referred to by the statistical
8 breakdown in motor vehicle stops from the sample dates
9 that's identified in the memo of February 26th.

10 MR. ZOUBEK: Yes, because I had asked what do
11 the sample dates show.

12 MR. CHERTOFF: So, again, it's clear that
13 that wasn't withheld by the State Police, correct,
14 because it was in Mr. Rover's file?

15 MR. ZOUBEK: Correct.

16 MR. CHERTOFF: Now, in your -- so, you have
17 your discussion with Mr. Verniero. He doesn't talk to
18 you at all about any degree of participation or
19 knowledge he has about the process of producing things,
20 correct?

21 MR. ZOUBEK: That's correct.

22 MR. CHERTOFF: Did he tell you he was
23 involved at all in reviewing the manner in which
24 material was furnished to the Department of Justice?
25 As of this time, did he tell you that?

1 MR. ZOUBEK: No.

2 MR. CHERTOFF: Now, then you go meet with --
3 well, Colonel Williams is gone at this point, right?

4 MR. ZOUBEK: February 28th.

5 MR. CHERTOFF: So, you go to meet with Lt.
6 Colonels Dunlop and Fedorko concerning the issue of
7 production, correct?

8 MR. ZOUBEK: Yes, but that's -- that doesn't
9 complete the picture because on February 26th, I had a
10 meeting with Colonel Williams, Lieutenant Colonel
11 Fedorko and Lieutenant Colonel Dunlop at that time to
12 outline to them what my expectations were as to what we
13 would be doing with the State Police review and what I
14 would require from them, including contact persons and
15 production of documents.

16 MR. CHERTOFF: So, this meeting on -- on March
17 11 is a follow up meeting?

18 MR. ZOUBEK: No. What happened was I had --
19 February 26th I had a meeting where I made the initial
20 request for documents. I followed that up with a memo
21 to, now it was Acting Superintendent Fedorko on March
22 4th, asking for -- for certain documents and information
23 to be identified and then I had -- and then I had a
24 meeting on March 11th.

25 MR. CHERTOFF: What was the discussion in the

1 meeting?

2 MR. ZOUBEK: At March 11th, I met with the
3 Acting Superintendent Fedorko and Lieutenant Colonel
4 Dunlop and I had a general discussion with them as to
5 what I expected was a complete -- and my understanding
6 of what a complete document production was and that what
7 I wanted was all documents that related to racial
8 profiling, whether or not they believed they had come
9 over in the past or not because I needed to know -- and
10 responsible by constructive possession for anything that
11 existed in the Department -- I needed to know everything
12 that -- that existed.

13 MR. CHERTOFF: Now, on February 15th you saw
14 Lieutenant Colonel Dunlop and Sergeant Gilbert, correct?

15 MR. ZOUBEK: I believe that's March 15th.

16 MR. CHERTOFF: I'm sorry. March 15th. And
17 tell us what happened at that interaction?

18 MR. ZOUBEK: Well, I think -- if -- if I may
19 before I -- I mention what happened that -- between the
20 March 11th meeting and the March 15th meeting, I
21 received a call from Mr. Rover who said he was aware
22 that I had made some -- some requests from the -- from
23 the State Police for documents and one of the reasons I
24 had made that request is I had been informed by Deputy
25 Director Stone that she believed that there were other

1 documents over there that we had not gotten yet, in
2 particular, I had indications that there may be
3 documents involving senior staff of the State Police
4 that, perhaps, had not come over yet and Rover told me
5 that he would be over with Gilbert and others to see
6 that all of that was pulled together and then on March
7 15th I had a meeting that involved Rover, Lieutenant
8 Colonel Dunlop and some representatives of the Division
9 of Criminal Justice.

10 MR. CHERTOFF: And at this point, did you get
11 a notebook from Sergeant Gilbert?

12 MR. ZOUBEK: Yes, I -- I did and my
13 understanding at that point in time was, since I had
14 already received this production from -- from Rover who
15 I had known had worked with Gilbert in the past and what
16 I was receiving at this time was additional documents on
17 March 15th.

18 MR. CHERTOFF: Now, did you ever have an
19 opportunity to compare the content of the documents in
20 the notebook you got on March 15th with the content of
21 the files of --

22 MR. ZOUBEK: I --

23 MR. CHERTOFF: -- Mr. Rover?

24 MR. ZOUBEK: -- I eventually, before the
25 issuance of the interim report, did go back and compare

1 some of those -- some of those documents.

2 MR. CHERTOFF: And is it fair to say that
3 there were documents in the notebook that were contained
4 in Mr. Rover's files?

5 MR. ZOUBEK: Yes.

6 MR. CHERTOFF: Now, at the time you got the
7 notebook, though, you hadn't done that comparison,
8 obviously, correct?

9 MR. ZOUBEK: I was going to sip water. What -
10 - what was the question?

11 MR. CHERTOFF: I said, at the time you
12 received the notebook -- the blue notebook from Mr.
13 Gilbert -- Sergeant Gilbert, you had not, obviously, had
14 an opportunity to compare the content with what was in
15 the files, correct?

16 MR. ZOUBEK: No, I did not and as I said going
17 into that meeting, since I had already received the
18 production from -- from Rover and I had an understanding
19 that I was getting additional documents, that was the
20 context in which I received the -- the now well-known
21 blue binder on -- on March 15th, 1999.

22 MR. CHERTOFF: What was your reaction when you
23 got it?

24 MR. ZOUBEK: I was -- I was upset.

25 MR. CHERTOFF: Why were you upset?

1 MR. ZOUBEK: Because I thought the document
2 had a -- a variety of -- the binder had a variety of
3 documents that went very much to some of the central
4 core issues with respect to racial profiling.

5 MR. CHERTOFF: Let me ask that you be given a
6 copy of that binder, which is G-33 and I want you to
7 identify for us the documents that you thought went to
8 the core issues of racial profiling that were in this
9 notebook.

10 MR. ZOUBEK: I -- I think in particular I
11 found the undated letter from -- the undated memo from
12 Gilbert to Williams which was consistent with the
13 information that I had received from Deputy Director
14 Stone that there may be some additional analyses that
15 had happened within the Superintendent's Office.

16 I was particularly concerned that I received
17 in that -- in that document a comparison that said that
18 the -- some of the numbers in one of the audits were
19 higher than what was determined in the Soto case. I
20 think there's an October memo from Touw -- Fedorko on
21 that but I was particularly concerned and -- and
22 learning for the first time that the State Police had
23 been collecting on a monthly basis since 1997 and
24 through 1998 stop and consent statistics out of the
25 Moorestown and Cranbury Barracks and the --

1 MR. CHERTOFF: What --

2 MR. ZOUBEK: If I can, I can explain why that
3 was of particular concern to me.

4 MR. CHERTOFF: Before we get to that, I want
5 to first focus on the other documents you identified
6 that go back a little bit further. You said there was
7 an undated memorandum that you found very pertinent?

8 MR. ZOUBEK: Well, I -- I think, yes. I think
9 that's the, we're in a very bad spot memo.

10 MR. CHERTOFF: And that's the one that's --
11 that we've now seen that is -- was created by Sergeant
12 Gilbert and that talks about the comparison between the
13 Maryland consent to search data and the consent to
14 search data in New Jersey, correct?

15 MR. ZOUBEK: Yes.

16 MR. CHERTOFF: Now, we'll put up a -- we'll
17 put up a version of that just so we're on the same page,
18 so-to-speak. Is this the document we're talking about?

19 MR. ZOUBEK: Yes and I have them in front of
20 me, as well.

21 MR. CHERTOFF: Now, there are two parts to
22 that document. There's a part of that document, a
23 second part that deals with the Gloucester County arrest
24 statistics regarding the individual Troopers who are the
25 subject of the Soto case, correct?

1 MR. ZOUBEK: Well --

2 MR. CHERTOFF: That's -- on Page 2?

3 MR. ZOUBEK: -- you know -- that's your
4 description of the document. I -- when I reviewed it I
5 considered it one -- one document.

6 MR. CHERTOFF: Okay. But as to that second
7 page, do you know whether that, in fact, is the -- is
8 the Gloucester County arrest data that's referred to in
9 Rover's memo of February 26th?

10 MR. ZOUBEK: I've come to learn that that
11 portion of it is.

12 MR. CHERTOFF: Now, the top -- the first page
13 talks about the consent to search data with respect to
14 Maryland and New Jersey, correct?

15 MR. ZOUBEK: Correct.

16 MR. CHERTOFF: And that struck you as
17 significant, correct?

18 MR. ZOUBEK: Correct.

19 MR. CHERTOFF: Why?

20 MR. ZOUBEK: I had already one -- I -- consent
21 searches are -- are relevant to the issue. I believe in
22 my years of experience handling drug cases when I was in
23 the U.S. Attorney's Office, I also in beginning the
24 State Police Review I tried to examine this issue across
25 the -- the Country and I had read some of the litigation

1 documents in the Maryland case.

2 MR. CHERTOFF: Now, you said there was another
3 document that indicated that the numbers in which
4 somebody indicate, I think, Captain Tassel that the
5 numbers are worse now than they were at the time of the
6 Soto case. Can you find that document for us?

7 MR. ZOUBEK: Yes. It's a 10/4/96 memo
8 regarding Internal Affairs recommendation to the patrol
9 concerns at Moorestown Station to Major M. Fedorko. It
10 is approximately -- I apologize, but this document does
11 not have OAG numbers on it. It's probably about 15 or
12 20 pages into the blue binder.

13 MR. CHERTOFF: Okay. And this -- this is
14 basically that -- what concerned you was it was an
15 analysis of the percentage of minorities stopped by both
16 minority and non-minority, troopers being hired, then
17 the expert identified in the Gloucester County trial,
18 right?

19 MR. ZOUBEK: That's correct.

20 MR. CHERTOFF: Now, the document which is
21 referred to by that is, in fact, the patrol issues
22 concerns at Moorestown Station document which in this -
23 - in this binder is in the preceding page right before
24 that memo you've talked about, right?

25 MR. ZOUBEK: That's -- that's correct.

1 MR. CHERTOFF: And did you later come to see
2 that this document was actually transmitted to Attorney
3 General Verniero in July of 1997 under cover page by Mr.
4 Waugh?

5 MR. ZOUBEK: Yes and no. I do not believe
6 that the Touw, the Fedorko portion of that is part of
7 that -- and you can correct me if I'm wrong --

8 MR. CHERTOFF: I -- I believe that's correct.
9 I'm talking about the -- the actual numbers that were
10 discussed in the Touw memo were both contained in the
11 blue binder and also sent up in a memo to the Attorney
12 General in 1977, correct?

13 MR. ZOUBEK: I've come -- I've come to learn
14 that.

15 MR. CHERTOFF: But, obviously, you didn't know
16 that at the time?

17 MR. ZOUBEK: No and I think it's -- it's
18 important to put in context on that March 15th meeting,
19 I got pulled out of that meeting to be advised that the
20 next day I would be having a -- an oral argument with
21 the Appellate -- before the Appellate Division by phone,
22 I should say, with respect to a request for a
23 continuance of the argument in -- in Soto. So, what I
24 was involved in for a 24-hour period, if you will, was
25 trying to make a quick assessment but not a complete

1 assessment of the blue binder.

2 MR. CHERTOFF: All right. We understand that.
3 I just want to -- but just for the sake of clarity, the
4 -- the documents you identified as significant were the
5 undated memo by Sergeant Gilbert, the document that
6 summarized the information about what was going on at
7 Moorestown Station, more recently than Soto, and then
8 two documents that set forth figures with respect to
9 searches and stops in '97 and '98. Is that correct?

10 MR. ZOUBEK: Yes, if you -- you are including
11 in that the compilations of Moorestown and Cranbury that
12 were '97 and '98.

13 MR. CHERTOFF: Yes.

14 MR. ZOUBEK: Okay. Yes.

15 MR. CHERTOFF: All right. With those in mind,
16 you went to see -- yes, you go meet to see the Attorney
17 General?

18 MR. ZOUBEK: I did eventually, but I think
19 it's important that that's not the first step that I
20 took. I -- I gave copies of that blue binder to Debra
21 Stone, Jack Fahy, to -- because those were people I was
22 aware that was involved in that. Because I had believed
23 that Rover was providing to me additional documents
24 beyond the -- the February 26th memo, I called him and
25 asked him about the undated Gilbert memo and he had --

1 he had informed me that he had not seen that before.

2 MR. CHERTOFF: Did he inform you that he was
3 familiar with the content of it, that there had been a
4 comparison made between the Maryland figures and the New
5 Jersey figures that he was aware of?

6 MR. ZOUBEK: Not at the -- not in that 24 hour
7 period. Subsequently, had -- general discussion on
8 that.

9 MR. CHERTOFF: We'll get to that later. Then
10 what did you do after you spoke to those people?

11 MR. ZOUBEK: I went to see Attorney General
12 Verniero.

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

14 MR. ZOUBEK: I -- it was said that I have just
15 received the production of documents that caused me
16 concern and I think David Hespe was in his office at the
17 same time or was brought in and I did not review the
18 entire binder with him, but I drew his attention in
19 particular to the monthly compilation for '97 and '98 of
20 statistics from Moorestown and Cranbury and, as well,
21 the undated Gilbert memo.

22 MR. CHERTOFF: Now, did you give him the book
23 to look at?

24 MR. ZOUBEK: I -- I think I sat with him and
25 pointed out portions and essentially asked the question,

1 "Have you seen these documents before?"

2 MR. CHERTOFF: And what did he say?

3 MR. ZOUBEK: And he said, "No."

4 MR. CHERTOFF: What was his reaction?

5 MR. ZOUBEK: And he -- his reaction was,
6 "Where have these documents been?" "Why haven't they
7 been produced before?" "I want you to find that out."

8 MR. CHERTOFF: Did he tell you he was upset by
9 anything in particular?

10 MR. ZOUBEK: I -- I think one of the
11 particular focuses that we had and that -- by "we" I
12 mean General Verniero, David Hespe and myself at that
13 time -- where the monthly statistics were being kept out
14 of Moorestown and Cranbury in '97 and '98 because I, in
15 particular, had gone out on February 16th after meeting
16 with the Black Ministers Council and said that we -- we
17 don't have that kind of data easily available to us and,
18 indeed, had written to three newspapers on February 8th,
19 1999 and advised them that it was impossible at that
20 time to get stops broken down by race and consent broken
21 down by race and here it was, I was seeing that this was
22 easily accessible at the time.

23 MR. CHERTOFF: So, did he express -- the fact
24 that he was upset about the fact that it was -- he was
25 now learning for the first time that it's possible to

1 compile data regarding consents to search based on race?

2 MR. ZOUBEK: No, he was upset that and -- and
3 David Hespe had said that he -- he, David Hespe, had
4 asked for -- for data like this before, in terms of the
5 most recent period, and that he had been told by the
6 State Police that it didn't exist.

7 MR. CHERTOFF: Who did Hespe say he asked?

8 MR. ZOUBEK: He -- he -- I presumed, at that
9 time because generally between the First Assistant and
10 the -- the Attorney General, most of the contact is with
11 the Superintendent.

12 MR. CHERTOFF: In particular, you said that
13 you focused his attention on summaries -- three
14 documents, 1997 and '98 summaries of consent to search
15 and -- and stop data and also the 1996 summary, which
16 made the comparison to Maryland, correct?

17 MR. ZOUBEK: Yes, but I think you said three.
18 Those are two, I consider --

19 MR. CHERTOFF: Well, there's a summary for
20 '98, a summary for '97 and the '96 summary, correct?

21 MR. ZOUBEK: Fine.

22 MR. CHERTOFF: Now, with respect to these
23 issues -- again, I want to be clear -- you directed his
24 attention or there was discussion about what these
25 documents showed in terms of the fact that it is

1 possible to get consent to search data broken down by
2 race, right?

3 MR. ZOUBEK: Correct.

4 MR. CHERTOFF: And he expressed -- and you
5 expressed a concern about the fact that there had been
6 representations made that this kind of consent data was
7 unavailable, right?

8 MR. ZOUBEK: And the represent -- yes and the
9 representations that I was talking about were
10 representations that have been made in early February
11 1999 in a -- in a letter that was sent out to at least
12 three news papers that specifically say -- and it's a
13 letter from John Hagerty, the Press Officer of the State
14 Police to those newspapers -- did say that -- that's not
15 -- that's not available and it was my understanding from
16 David Hesse that that's what he had been informed by the
17 State Police.

18 MR. CHERTOFF: And it was clear to you that
19 these -- each of these documents showed that it was
20 impossible -- in fact it was possible to get a break
21 down of consents to search by race because each of these
22 documents, in fact, did that, correct?

23 MR. ZOUBEK: It was possible to get it from
24 Moorestown and Cranbury. Technically, if you wanted to
25 make a distinction and -- and perhaps that's what the

1 State Police did at the time -- there wasn't any
2 available for Newark, so it wasn't available for the
3 Turnpike as a whole --

4 MR. CHERTOFF: For each --

5 MR. ZOUBEK: -- but it was available for
6 Moorestown and Cranbury.

7 MR. CHERTOFF: -- for each of the '96, '97 and
8 '98, correct?

9 MR. ZOUBEK: Ninety -- I was focused on '97
10 and -- and '98 because it wasn't -- the stops were not
11 broken down on a consistent monthly basis. What had
12 happened was, as shown in the blue binder, was these
13 documents were being collected monthly, forwarded up the
14 chain of command of the State Police as it relates to
15 the stops and consents out of the Moorestown and
16 Cranbury. I was focusing on '97 and '98.

17 MR. CHERTOFF: But I want to just bring you
18 back to one of the documents you've identified as
19 something that you've -- you directed Mr. -- Attorney
20 General Verniero's attention to, which is this undated
21 document. You'll agree with me that this also shows
22 consents to search at Moorestown and Cranbury and at
23 Newark, broken down by race, correct?

24 MR. ZOUBEK: Correct.

25 MR. CHERTOFF: And Attorney General Verniero

1 told you in substance that he -- he never knew that this
2 kind of comparison could be made?

3 MR. ZOUBEK: He told me he had never seen the
4 document before.

5 MR. CHERTOFF: Did he tell you he had -- did
6 not know that this kind of comparison could be made?

7 MR. ZOUBEK: That was not the discussion.

8 MR. CHERTOFF: Well, did he ever tell you, I
9 was aware that they were -- let me step back.

10 MR. ZOUBEK: Well, I think --

11 MR. CHERTOFF: You --

12 MR. ZOUBEK: -- I --

13 MR. CHERTOFF: -- you --

14 MR. ZOUBEK: -- this -- that's -- that's the
15 extent of my discussion on March 6 -- March -- that was
16 my -- the extent of my discussion before I had to -- I
17 had an Appellate Division argument at 11 o'clock or 1
18 o'clock that day and I was about to go down to the
19 Justice Department on March 19th and -- so that was the
20 extent of the discussion I had with him at that time.
21 There was subsequent discussions I had with him.

22 MR. CHERTOFF: All right. Well, we'll get to
23 that in a second, but did you leave the book with him,
24 by the way?

25 MR. ZOUBEK: No.

1 MR. CHERTOFF: How long did you spend with him
2 in this first interaction?

3 MR. ZOUBEK: A half hour, 45 minutes.

4 MR. CHERTOFF: And, at least in this period,
5 he never told you he knew about the -- the fact that
6 there had been comparisons made with respect to consent
7 to search, correct?

8 MR. ZOUBEK: Correct.

9 MR. CHERTOFF: And he was angry -- he
10 expressed anger about this, right?

11 MR. ZOUBEK: Anger as it related to the '97
12 and '98 data and the fact that if these had been
13 requested by David Hesse and had not been produced that
14 -- he was upset about that.

15 MR. CHERTOFF: So, now you go down to the
16 Appellate Division argument?

17 MR. ZOUBEK: Right. Yes.

18 MR. CHERTOFF: On the telephone?

19 MR. ZOUBEK: Yes.

20 MR. CHERTOFF: And in that argument did the
21 Judges express concern -- did -- did you indicate that
22 you wanted to have or the State wanted to have the delay
23 or a continuance in terms of filing the brief because
24 there was now an examination underway regarding racial
25 profiling?

1 MR. ZOUBEK: Yes and I think it was Judge
2 Stern. I had the discussion with Judge Stern that he
3 says, Mr. Zoubek, is what you're telling me that you
4 also feel that you have some ethical issues as it
5 relates to going forward on some -- some subject matters
6 and I -- I did say that it was one of the concerns and
7 before I had Deputy Attorney General's -- before them
8 arguing, I wanted to complete portions of this review.

9 MR. CHERTOFF: Now, let me break this down.
10 First of all, did one of the Judges say in the
11 discussion that they were surprised or perturbed that
12 years into this litigation, it was only now that the
13 State was actually going to examine under -- investigate
14 the underlying facts?

15 MR. ZOUBEK: Yes, I think that was Judge
16 Braithwaite.

17 MR. CHERTOFF: And then there was discussion
18 concerning continuing discovery obligations, both in the
19 underlying case and before the Appellate Division that
20 might be imposed if, in fact, it turned out that the
21 facts you discovered supported -- tended to support the
22 position of the defendants in the case?

23 MR. ZOUBEK: Yes and no. I think my
24 presentation was that we were at a position where we
25 were potentially reconsidering our pet -- opposition in

1 the -- in the Soto case and the issue with respect to
2 discovery obligations, which I'm -- I'm quite aware was
3 -- was discussed and I -- I committed to the Court that
4 I was aware of that issue.

5 MR. CHERTOFF: Now, let me try to be as
6 straightforward as I can about this because we heard
7 testimony earlier from you and others that the legal
8 issue on the appeal in Soto has to do with shifting the
9 burden of proof and whether you have to have, you know,
10 whether this kind of statistical evidence is sufficient
11 to warrant going forward.

12 MR. ZOUBEK: Well --

13 MR. CHERTOFF: But these issues that you're
14 looking at here are issues of fact. Would you explain
15 to us how it is that discovery of facts, for example,
16 about consents to search, could alter the position of
17 the State in the Soto case?

18 MR. ZOUBEK: Well, I think what I've testified
19 to before is that I felt that this was a record that had
20 been developed in 1988 to 1991 that was being
21 interpreted as the State saying that racial profiling
22 didn't exist and part of my general view of the Soto
23 case was you have to step back as you were looking at
24 racial profiling and whatever determination we made as
25 the State Police Review Team, I thought would have a

1 serious and substantial impact on the position in the
2 Soto case and I thought it would be of moment to -- to
3 have an opportunity to make that determination.

4 MR. CHERTOFF: But as it relates to discovery
5 issues and ethical issues which you were discussing with
6 the Judges, is it fair to say that you believed and the
7 Judges expressed the view that a fax that emerged even
8 after the record was closed, showed that there might
9 very well be profiling and it would be a) incumbent to
10 disclose that to you -- to your opponents; and b)
11 perhaps necessary to advise the Appellate Division and
12 change your position in resisting Judge Francis'
13 decision?

14 MR. ZOUBEK: Well, I -- I think once the
15 record is -- is closed, there are some limitations on
16 what the Brady obligation and other discovery obligation
17 is, but I think -- I think that what I -- my point was
18 that if we were finding things that were being
19 consistent and we were arguing that the database wasn't
20 correct or the stop percentages weren't correct, but
21 we're seeing similar stop percentages, that I wanted to
22 know that answer before Deputy Attorney General stood up
23 and argued in that case, particularly given the broad
24 questions that were being asked during the Appellate
25 Division argument.

1 MR. CHERTOFF: And the Appellate Division
2 Judges agreed with that. They said, if you find after -
3 - even after the fact more recently that the numbers
4 remain consistent with Soto or are higher, that is a
5 fact that you have some ethical obligation to disclose
6 to us, correct?

7 MR. ZOUBEK: Yes and I -- I told the Court
8 that part of -- that's part of what there would be a
9 public accounting at the review.

10 MR. CHERTOFF: And by the way, that ethical
11 obligation, that discovery obligation, that didn't arise
12 for the first time in the law of New Jersey in 1999.
13 That ethical obligation and legal obligation existed in
14 1995, '96, '97, '98, and as well as '99, correct.

15 MR. ZOUBEK: I think you can go back a few
16 more decades than that.

17 MR. CHERTOFF: Well, we only need to go back
18 within a reasonable period of time. So, it -- so, that
19 it's completely clear, that at least as you understood
20 it and as the Judges from the Appellate Division
21 expressed their understanding, this kind of factual
22 information was important from an ethical and discovery
23 standpoint if, in fact, the State was going to continue
24 to maintain its Appellate Division in Soto, correct?

25 MR. ZOUBEK: Yes -- yes and no. Because I

1 think it's important that -- that generally, once we
2 were looking at that position, I didn't think it was
3 appropriate to continue the Soto case, but I'm not
4 saying that specifically every single document that may
5 come up in 1997 and '98 are -- are items that were
6 required in discovery to be produced in the case that
7 the record was '88 to '91.

8 MR. CHERTOFF: Let me ask you this question.
9 Was it your understanding that in terms of this ethical
10 obligation to disclose relevant facts, even if they
11 arose subsequent in time, was it your understanding that
12 one can discharge that ethical obligation by averting
13 one's eyes from bad facts and not following -- not
14 following leads? You know, does that -- when you're
15 confronted with the possibility of --

16 MR. ZOUBEK: Mr. Chertoff, one's ethical
17 obligation is one ethical obligation that -- I don't
18 know if that's a question.

19 MR. CHERTOFF: Well, my question is this. You
20 know, if you're confronted with the possibility that you
21 may learn facts on investigations that are inconsistent
22 with the position you previously took in court, I guess
23 there are two possible responses. You could avoid
24 learning the facts or you could go find out the facts
25 and I think we've agreed --

1 MR. ZOUBEK: Well, I -- I think, if I can on
2 one of the important points here is, if it's
3 inconsistent with the position that you have -- you have
4 taken, I think the State Police Review Team took some
5 different positions that have been taken before on this
6 issue and as we were doing that, I advised the Court
7 that that's what we were in the process of doing.

8 MR. CHERTOFF: I'm asking a different
9 question. As I understood where you were with the Court
10 on -- on March 16th, you basically agreed with the Court
11 that if this review revealed statistics that were
12 somewhat inconsistent with the position that the State
13 had previously taken in Soto, you have -- you'd have to
14 reveal that to the Court and you might have to reassess
15 your position. Is that fair to say?

16 MR. ZOUBEK: That's correct, but it didn't
17 preclude the prospect of going forward potentially on
18 some of the specific legal issues in that case.

19 MR. CHERTOFF: I understand, but it would
20 certainly be something that would be disclosable and you
21 should consider in terms of effect in your position,
22 right?

23 MR. ZOUBEK: I think you should consider
24 disclosing it. I would not say, particularly given some
25 of the testimony that has occurred today that I have

1 heard, that it's a blanket correct statement to say that
2 every document that existed with respect to racial
3 profiling in those 90,000 pages was required by the
4 Attorney General's Office --

5 MR. CHERTOFF: That --

6 MR. ZOUBEK: -- to be produced.

7 MR. CHERTOFF: -- that's not what I'm saying -

8 -

9 MR. ZOUBEK: But I'm not saying --

10 MR. CHERTOFF: -- and I want to be very clear
11 about this.

12 MR. ZOUBEK: -- I'm not saying that you said
13 that.

14 MR. CHERTOFF: I don't want to suggest that
15 every page has to be disclosed. I just want to
16 establish, was it clear at the end of the argument with
17 the three Judges from the Appellate Division in the
18 State of New Jersey that everybody agreed that if you
19 have facts that are inconsistent with a position
20 previously taken in litigation, there is an -- an
21 ethical obligation in some sense to disclose that fact
22 and to deal with it, correct?

23 MR. ZOUBEK: Yes, with the limitation I've
24 said that the record was closed at an earlier period of
25 time.

1 MR. CHERTOFF: Now, am I also correct -- and,
2 of course, that's been the -- the rule with respect to
3 discovery and ethics and certainly for the proceeding
4 decade, right?

5 MR. ZOUBEK: (No verbal response given)

6 MR. CHERTOFF: We agree on that?

7 MR. ZOUBEK: We've had that agreement.

8 MR. CHERTOFF: All right. And, therefore --
9 let me ask you this question. Is it an appropriate
10 response when one gets wind of the possibility that
11 there are bad facts out there and you might have to
12 disclose, does one avoid -- can one properly avoid one's
13 ethical obligation of disclosure by simply averting
14 one's eyes and not investigating the facts?

15 MR. ZOUBEK: That's a very general
16 hypothetical, Mr. Chertoff and I --

17 MR. CHERTOFF: Well, let me ask you --
18 basically, would you agree with me that if you have --
19 if a red flag goes up on some inconsistent facts, you
20 don't -- you can't get out of your ethical obligation to
21 disclose those facts or to reconsider your position
22 simply by saying, I don't want to go there and I don't
23 want to think about it?

24 MR. ZOUBEK: Again, Mr. Chertoff, I think
25 you've got a very gen -- I don't want to go there, I

1 don't want to think about it. The ethical obligation is
2 your ethical obligation, is your ethical obligation, is
3 you ethical obligation and your obligation to do justice
4 is your obligation to do justice.

5 MR. CHERTOFF: I guess I'll have to settle for
6 that. You come back after this argument, do you report
7 on it to the Attorney General?

8 MR. ZOUBEK: Yes.

9 MR. CHERTOFF: What did you say to him?

10 MR. ZOUBEK: I told him that I viewed that we
11 had a -- some very strong reactions from the bench with
12 respect to the State's position in Soto.

13 MR. CHERTOFF: And what did he say?

14 MR. ZOUBEK: I -- this was part of a -- an
15 evolving discussion I had with him relative to my
16 recommendation that it was appropriate for us to think
17 about withdrawing the Soto appeal at that time.

18 MR. CHERTOFF: To be a little more plain
19 spoken, did you basically tell him that the Judges in
20 the Appellate Division had raised a fuss about the fact
21 that they were concerned about whether this
22 investigation and facts were going to emerge that were
23 inconsistent with the position of the State in Soto and
24 that there would have to be some consideration given to
25 disclosing that?

1 MR. ZOUBEK: I -- that was one of the things
2 that -- would review with him.

3 MR. CHERTOFF: And -- so, it became clear at
4 that meeting, if not earlier, that the issue of whether
5 facts inconsistent with the Soto position were in the
6 possession of the State, could very well become a
7 subject of -- of concern to the Judges in the Appellate
8 Division dealing with this case, right?

9 MR. ZOUBEK: Yes.

10 MR. CHERTOFF: And, therefore, if one
11 disclosed the fact to the Judges that there were -- that
12 the facts were inconsistent with Soto, there might be
13 some follow-up concerning when that was known and when
14 the State decided to -- to look into this. Was that
15 discussed?

16 MR. ZOUBEK: No because it -- because, again,
17 when I was discussing with the Attorney General some of
18 my perspectives with respect to the import of statistics
19 and, as I've said, I didn't feel that I was wedded to
20 prior litigation positions were different than what had
21 been taken before. So we didn't have that particular
22 discussion you're talking about.

23 MR. CHERTOFF: All right. Now -- so, what
24 does he say to you after you lay this out for him in
25 terms of where the Appellate Division was concerned

1 about?

2 MR. ZOUBEK: I told him that it was my strong
3 recommendation not only based upon my information that I
4 had received with respect to racial profiling generally,
5 but also my view of the record in the Soto case that was
6 now -- here we were, it was 1999, that was a record from
7 '88 to '91, that was based on stops that were done even
8 before Dintino sent out his SOP in 1990 that it was in
9 the State's best interest to not have the law on racial
10 profiling be set on a record from '88 to '91 and it was
11 my strong recommendation that we consider withdrawing
12 the case.

13 MR. CHERTOFF: Now, to put it in context, on
14 this day, March 16th, two events have happened which
15 dovetail. First of all, you discover that there are
16 documents in existence going back as -- as early as 1996
17 that clearly show from a statistical standpoint that
18 there are consent to search problems as well as stop
19 problems in the very locations that were the subject of
20 the Soto case. Is that correct?

21 MR. ZOUBEK: Yes with the caveat that I was
22 particularly focused on some of the -- some of the
23 consent analysis that I was --

24 MR. CHERTOFF: Okay. And in the very same
25 day, you hear from the Appellate Division that they're

1 troubled and they're reminding the State of its ethical
2 obligation to disclose facts that are inconsistent with
3 the Soto position, correct? That's the same day?

4 MR. ZOUBEK: Yes, but with -- with one -- one
5 correction, if I can. I -- I -- Judge Stern said to me,
6 the reason you're filing part of this motion, Mr.
7 Zoubek, is because you want to have an evaluation
8 because of your ethical obligations and I said, yes. I
9 don't think it's fair to assert that I was being
10 reminded of my --

11 MR. CHERTOFF: Right.

12 MR. ZOUBEK: -- ethical obligations.

13 MR. CHERTOFF: They -- they acknowledge what
14 you had acknowledged up front which is there's an
15 ethical obligation. You -- certainly, the Court was now
16 aware that this issue of -- perhaps the need to change
17 position was on the table, right?

18 MR. ZOUBEK: Correct.

19 MR. CHERTOFF: So, both of these events come
20 together. You go up to the Attorney General and in the
21 course of this single day you've told him, here's --
22 here are documents that you, Paul Zoubek, had never seen
23 before that seem pertinent and, by the way, the
24 Appellate Division is now aware of the fact that because
25 of information like this, we might have to change our

1 position in Soto, correct?

2 MR. ZOUBEK: I -- there wasn't the connection
3 in terms of because of documents like this we might have
4 to change our position in Soto.

5 MR. CHERTOFF: Both the Appellate Division
6 issue and the issue of these newly discovered documents,
7 as far as your concerned, were on the table, same time
8 -- same time, same place?

9 MR. ZOUBEK: And they had an impact on the
10 position with respect to Soto.

11 MR. CHERTOFF: And, therefore, you recommended
12 that Soto be withdrawn or that it be considered?

13 MR. ZOUBEK: I had already begun a process of
14 making that recommendation prior to that.

15 MR. CHERTOFF: And at that point, for the
16 first, the Attorney General indicated an interest in
17 doing that, correct?

18 MR. ZOUBEK: Well, I -- I -- he had -- I had
19 prior discussions with him in late February, early March
20 and the motion that I filed on March 5th for the
21 continuance was, I think, the beginning of that process
22 of opening up the -- the notion of potentially
23 withdrawing it.

24 MR. CHERTOFF: And what was his response on -
25 - on March 16th when you made the suggestion? Was he in

1 favor of dropping it or -- or withdrawing it?

2 MR. ZOUBEK: A -- a final decision had not
3 been made but the determination was that the racial port
4 -- racial profiling portion of the State Police Review
5 work would be completed prior to the scheduled oral
6 argument which was April 28th and the brief of the State
7 was due on April 21st.

8 MR. CHERTOFF: Now, at -- at or about the very
9 same day then you -- you and -- and Mr. -- then
10 revisited the question of the blue binder because you
11 prepared memos to file concerning that binder, correct?

12 MR. ZOUBEK: I don't know at what point in
13 time the -- the memos were done that day, but they were
14 done on the 16th.

15 MR. CHERTOFF: Let me put Z-16 up on the --
16 it's a memo to file from Peter Verniero dated March
17 16th, 1999. Now, did you -- you recognize this memo to
18 file?

19 MR. ZOUBEK: I do.

20 MR. CHERTOFF: Did you actually help draft it?

21 MR. ZOUBEK: No, I reviewed a draft of it.

22 MR. CHERTOFF: The Attorney General drafted it
23 initially?

24 MR. ZOUBEK: I don't recall whether the
25 Attorney General or the First Assistant Hesper drafted

1 it. I don't believe I -- I don't -- I don't think I
2 did.

3 MR. CHERTOFF: Did you -- did you discuss this
4 with --

5 MR. ZOUBEK: Yeah.

6 MR. CHERTOFF: -- the Attorney General?

7 MR. ZOUBEK: Yes.

8 MR. CHERTOFF: And -- so, this was a -- the
9 second occasion you had a conversation with the Attorney
10 General concerning the so-called blue binder, correct?

11 MR. ZOUBEK: I don't know if it was in the
12 same conversation, Mr. Chertoff, or a second
13 conversation. Because it all -- it was the same --

14 MR. CHERTOFF: No, that's right. And -- this
15 would have been after you got back from the Appellate
16 Division?

17 MR. ZOUBEK: Not necessarily. It could have
18 been -- I -- I think I may have had this discussion
19 before I went to the Appellate Division. I don't
20 specifically recall, but I'm not -- I don't recall
21 whether it was one meeting or two meetings. So, I'm --

22 MR. CHERTOFF: At some point in the course of
23 these meetings, what does the Attorney General say to
24 you, if anything, concerning his awareness of the
25 existence of documents that refer to consent to search

1 data?

2 MR. ZOUBEK: I think the focus was on the
3 documents that I had shown him and I made a
4 representation to him that based upon my quick review
5 that I had done within 24 hours, that the Division of
6 Criminal Justice and the Office of the Attorney General
7 had not seen those documents before.

8 MR. CHERTOFF: Now, this language here, "Today
9 I became aware for the first time of the existence of
10 certain State Police documents containing data and
11 information relating to stops and searches of minority
12 motorists not heretofore produced to us by State
13 Police." Is that the way this draft came to you?

14 MR. ZOUBEK: This is the final draft. I don't
15 recall any -- the prior versions.

16 MR. CHERTOFF: It says, "Director Paul Zoubek
17 made me aware of the documents." Correct?

18 MR. ZOUBEK: Correct.

19 MR. CHERTOFF: Was it your impression from
20 your discussion with Mr. Verniero whether it was in one
21 occasion or two occasions leading up to this memorandum.
22 Was it your impression that -- that up to this point,
23 Mr. Verniero was unaware of the content of the documents
24 you had specifically drawn to his attention?

25 MR. ZOUBEK: I asked him the specific

1 question, "Have you seen these documents before?" "Were
2 you aware of these documents?" That was -- and -- and
3 that was -- he responded to that.

4 MR. CHERTOFF: You -- you asked him whether he
5 was aware of the documents?

6 MR. ZOUBEK: I believe that's what I asked
7 him.

8 MR. CHERTOFF: Okay. Now, did he indicate to
9 you, at any point prior to preparation or signing this
10 memo, that whether or not he was aware of the documents,
11 he was aware of the content of at least one of the
12 documents, namely the comparison between Maryland
13 statistics and New Jersey statistics?

14 MR. ZOUBEK: No.

15 MR. CHERTOFF: Having made you aware of that
16 fact, would you have written -- would have signed off on
17 a memo written this way?

18 MR. ZOUBEK: (No verbal response given)

19 MR. CHERTOFF: I guess what I'm getting at is
20 this, that -- this --

21 MR. ZOUBEK: I think it -- I think in a
22 fairness to the circumstances, I did come up and make a
23 representation that it was my understanding at the time,
24 some of which we can discuss later, a change that the
25 Division of Criminal Justice or the Office of the

1 Attorney General did not have some of the documents that
2 I was showing the Attorney General.

3 MR. CHERTOFF: Whose idea was it to write a
4 memo to the file like this?

5 MR. ZOUBEK: I -- it was a discussion, all
6 three of us were in the room, at some place -- at some
7 point in time there was a discussion of -- of the -- the
8 general putting this -- this memo in his -- in his file.
9 I don't recall who raised it.

10 MR. CHERTOFF: What was the reason to do it?

11 MR. ZOUBEK: I -- well, I -- frankly, I mean,
12 I -- I was involved for a 24 hour period of checking
13 with the number of people as to these documents and I
14 was -- it was my view that they were very significant
15 documents and the Attorney General made a determination
16 to reflect that -- that he was being made aware of
17 these by me for the first time.

18 MR. CHERTOFF: But why? What was your --
19 whoever came up with the idea? What was the articulated
20 reason to write a memo to the file saying, I've never
21 seen these documents before?

22 MR. ZOUBEK: Well, I think I had said that
23 this has a -- this has a substantial impact on matters
24 with respect to moving forward with the Justice
25 Department, Soto, racial profiling generally, and I

1 viewed the issue of these documents and that perhaps
2 someday somebody might ask me a question about what
3 happened at -- at that -- that meeting and there was a
4 memo to a file that was done.

5 MR. CHERTOFF: Well, you know you hadn't seen
6 the documents before because, you know, you hadn't seen
7 them, right?

8 MR. ZOUBEK: Yes. In cross-checking, there
9 are about -- there are some documents that I may have
10 seen and may have not, but at that time, I did not know
11 what I did.

12 MR. CHERTOFF: But when you're talking about
13 impact it may have in the future, you mentioned it could
14 have impact in connection with the Department of Justice
15 inquiry. That's because there could be an issue raised
16 about whether production of documents was forthcoming.
17 That was one concern, right?

18 MR. ZOUBEK: Yes, because these were presented
19 to me as additional documents.

20 MR. CHERTOFF: There were concerns also with
21 respect to Soto because perhaps the Appellate Division
22 could become -- could raise questions about when this
23 information was in the possession of the State and why
24 it wasn't brought forth earlier than 1999. That was
25 another concern, right?

1 MR. ZOUBEK: Yes.

2 MR. CHERTOFF: And you said there was a third
3 concern beyond that. Just generally, was there a
4 political concern that somehow it could be embarrassing
5 that this thing was held for a long period of time?

6 MR. ZOUBEK: That was not what I was focused
7 on at that time.

8 MR. CHERTOFF: What was the third concern?

9 MR. ZOUBEK: That was not the discussion. I
10 don't know. Did I say that it was three reasons?

11 MR. CHERTOFF: You said there was --
12 Department of Justice, you said there was a concern
13 about Soto and something about racial profiling
14 generally.

15 MR. ZOUBEK: Well, I -- I thought that the
16 documents on that -- if -- on the State Police Review
17 Team and the conclusions that the State Police Review
18 Team was going to make in -- in its report.

19 MR. CHERTOFF: Did you leave -- I withdraw the
20 question. Was it your impression as of the time this
21 document was signed, this memo of March 16th, was it
22 your impression that the content of the material that
23 you had shown Mr. Verniero in that blue binder that that
24 contact was unfamiliar to him?

25 MR. ZOUBEK: I don't believe I -- I reached

1 that conclusion at that time.

2 MR. CHERTOFF: Well, did you think he -- did
3 you think he was aware of the content, that he was
4 merely saying he hadn't seen the paper or did you think
5 he was telling you basically, I'm -- I'm not aware of
6 any of this information?

7 MR. ZOUBEK: That's speculating as to what is
8 in the General's mind at the time. I asked him
9 questions. I -- I've identified what was discussed at
10 the time.

11 MR. CHERTOFF: No, what did you think? When
12 you got this memo and you saw -- and it was signed off
13 on, what did you think that meant -- was the Attorney
14 General's state of awareness about the content of these
15 documents?

16 MR. ZOUBEK: I thought it was the first time
17 it was being presented to him.

18 MR. CHERTOFF: The information?

19 MR. ZOUBEK: Yes.

20 MR. CHERTOFF: Now, then the next day, you get
21 the mandate to accelerate the -- the profiling portion
22 of this investigation and finish it in two months,
23 right?

24 MR. ZOUBEK: No. I actually think that the
25 Appellate Division had faxed in an order to us at the

1 end of the day on the 16th because I think there were
2 press accounts on the 17th reflecting that the -- what
3 the Court had said and in response, the General
4 announced that he had asked for the review to be
5 expedited.

6 MR. CHERTOFF: So, one reason for that to be
7 expedited was the Court's decision about not granting
8 more of a continuance, correct?

9 MR. ZOUBEK: That was a reason -- that was the
10 reason that -- that I was focused on and that was a
11 reason that I had understood.

12 MR. CHERTOFF: Now, were you also aware that
13 there was an increased likelihood -- I think by this
14 point -- that the Department of Justice would accelerate
15 its investigation and might present the State with a
16 proposed consent degree, some time in April?

17 MR. ZOUBEK: I was aware that there was going
18 to be an increased focus of the Justice Department.
19 There were a couple of reasons for that; 1) my
20 discussions, I had not gone down and met with them. I
21 met with them on March 19th, but I believe it was on
22 March 8th or 9th that representatives from New Jersey
23 stood on the front of the Justice Department steps with
24 -- with Eric Holder and the Justice Department announced
25 that they were going to be expediting what they were

1 doing.

2 MR. CHERTOFF: All right. So, you knew as of
3 -- somewhat -- a couple of days before this -- this
4 portion -- this part of the -- of the review is
5 accelerated that the -- that there was a threat of a
6 consent degree coming out soon from the Department of
7 Justice?

8 MR. ZOUBEK: No. I knew that there was a
9 threat of a lawsuit.

10 MR. CHERTOFF: And -- even a threat of a
11 lawsuit?

12 MR. ZOUBEK: Yes.

13 MR. CHERTOFF: So, in addition to the Soto
14 Judges, essentially, shortening your time to make --
15 fish or cut bait, you also had this pressure from an
16 imminent lawsuit, Department of Justice, correct?

17 MR. ZOUBEK: Correct.

18 MR. CHERTOFF: And that's what led, in your
19 mind, to the acceleration of the profiling portion of
20 this?

21 MR. ZOUBEK: Principally, the -- the failure
22 to get the continuance to June on the Soto case.

23 MR. CHERTOFF: Now, how did you actually go to
24 -- set about going to work with respect to the putting
25 together this interim report? How did you parcel it

1 out?

2 MR. ZOUBEK: I -- I think what I had done in
3 late February, keeping in mind the interim report was
4 part of a larger project, I had set up teams with
5 respect to promotions, hiring, Internal Affairs, and I
6 had put myself at the head of the racial profiling
7 review and I set up teams to look at -- look at data, to
8 do some of the analysis. I also had made the conclusion
9 that no matter what determinations were made as to the
10 existence of racial profiling or not, that we have to
11 put in some very comprehensive steps in New Jersey to
12 deal with the issue, and so, I had asked some people to
13 focus on that.

14 MR. CHERTOFF: Now, I'm going to show you Z-
15 19, which is a series of drafts of the interim report or
16 portions of drafts of the interim report and see if you
17 recognize these drafts.

18 MR. ZOUBEK: Yes. I believe that what you
19 have here, the Z-19, on the front two pages is the very
20 first draft of the -- the interim report. Mr. Susswein
21 was a principal scrivener. That was his first draft.

22 MR. CHERTOFF: Okay. Then there's a draft of
23 April 9th, correct?

24 MR. ZOUBEK: Are they sequentially here, Mr.
25 Chertoff or --

1 MR. CHERTOFF: Yeah, I think they're
2 sequential.

3 MR. ZOUBEK: Yes and I think that -- I think
4 it actually reflects the draft as of April 9th. There
5 are -- there were other drafts in between that and I
6 think I have some comments on the April 9th draft.

7 MR. CHERTOFF: Well, let --

8 MR. ZOUBEK: But I think it's important if --
9 if I will, that there -- there are matters that were on
10 the April 7th draft which I know you've questioned other
11 witnesses on, that never saw the light of day past the
12 April 7th draft.

13 MR. CHERTOFF: All right. And let's get to
14 that. On Page 2 of the April 7th draft, there's a
15 paragraph that says, "We feel constrained -- it's OAG
16 2625 -- We feel constrained to comment that some of the
17 statistical information we rely upon, including
18 particularly revealing data concerning consent searches,
19 were only recently disclosed by the State Police to the
20 Office of the Attorney General. Certain internal
21 studies and audits prepared at the request of the
22 Superintendent were not made known to the Deputy
23 Attorney General who were representing the State in the
24 Soto litigation. This circumstance has seriously
25 compromised the State's litigation posture and also has

1 needlessly delayed initiating appropriate remedies and
2 reforms." Who wrote that?

3 MR. ZOUBEK: Ron Susswein wrote that based
4 upon a preliminary draft of the document that he
5 received from Debra Stone.

6 MR. CHERTOFF: And what was Debra Stone's
7 basis for making that --

8 MR. ZOUBEK: It was --

9 MR. CHERTOFF: -- statement?

10 MR. ZOUBEK: -- it was based upon our initial
11 -- as I said, initial reaction to the blue binder and
12 what was in the blue binder and discussions with Jack
13 Fahy and the understanding at the time, but I -- I must
14 emphasize that I think in -- in fairness, I think it's
15 inappropriate -- that -- that draft was only seen by two
16 people before it came to me and that's the only draft of
17 the interim report in which that language appears in.

18 MR. CHERTOFF: So, now this comes to you and
19 what do you -- what's your reaction when you read that?

20 MR. ZOUBEK: My reaction -- my reaction to
21 that was that I thought it was -- I thought it was too --
22 -- I didn't think it was appropriate to be in the -- in
23 the draft. I knew it was going to be ultimately taken
24 to look at issues as to what -- what may have come over,
25 what may have not. I didn't think that that was -- that

1 was appropriate in the draft based upon what I -- I
2 believed at the time.

3 MR. CHERTOFF: Well, as of April 7th or in the
4 period between March 16th when the memo prepared by Mr.
5 Verniero was -- was drafted and April 7th, did you have
6 discussions with people concerning what the State Police
7 had turned over to the Office of the Attorney General?

8 MR. ZOUBEK: I had had some discussion, but I
9 think this was too strong a language because I knew that
10 there were other data that existed out there even before
11 I did this -- this review that I thought that language
12 was too strong. I asked that it be removed.

13 MR. CHERTOFF: Well, let me ask you this.
14 Before we get to the April 7th draft, had you had your
15 conversation yet with Lieutenant Colonel Dunlop
16 concerning the consent to search data?

17 MR. ZOUBEK: Yes. I had a conversation, I
18 believe, with both Fedorko and Dunlop where I held up
19 the blue binder and I asked them, have you seen this --
20 these things before? These documents and I talked about
21 some of the documents there and the answer from both
22 Fedorko and Dunlop was, "No."

23 MR. CHERTOFF: But did there come a time
24 Colonel Dunlop raised an issue with you concerning
25 whether this memo that we've seen up a couple times --

1 this undated memo -- that talked about consent to search
2 comparisons whether that had been, in fact, turned over
3 to the Attorney General's Office?

4 MR. ZOUBEK: I did have a discussion with
5 Lieutenant Colonel Dunlop as a -- in reaction to my
6 reaction to the blue binder.

7 MR. CHERTOFF: Okay. So, you reacted to the
8 blue binder because you said we haven't seen this stuff
9 before, right?

10 MR. ZOUBEK: Correct.

11 MR. CHERTOFF: And you had talked to the
12 Attorney General Verniero and he certainly didn't
13 indicate to you that he'd seen the things before which
14 you -- or that he heard about the things which you
15 identified, correct?

16 MR. ZOUBEK: I -- you -- you through in the
17 word "heard" and I don't agree with that.

18 MR. CHERTOFF: All right. Let me rephrase it.
19 When you talked to Attorney General Verniero in or
20 around March 16th, he did not tell you that he had heard
21 of or received the content of that undated memo, which
22 you showed him on that day, correct?

23 MR. ZOUBEK: I said that -- that subject
24 wasn't discussed. I discussed the documents with him at
25 the time.

1 MR. CHERTOFF: So, you were under the
2 impression that the content of that document, as well as
3 the document itself, had not been transmitted to the
4 Attorney General's Office, right?

5 MR. ZOUBEK: Correct.

6 MR. CHERTOFF: Then you -- and you had a
7 reaction, which you conveyed to Colonel Dunlop, correct?

8 MR. ZOUBEK: Correct. That was --

9 MR. CHERTOFF: What --

10 MR. ZOUBEK: -- part of my emphasis and that
11 we have to have all documents over and this is not the
12 way in which I wanted this to be handled.

13 MR. CHERTOFF: And then there came a point
14 that Colonel Dunlop came back at you on that issue,
15 correct?

16 MR. ZOUBEK: Yes.

17 MR. CHERTOFF: Tell us about that?

18 MR. ZOUBEK: I received a call at some point
19 in time from Lieutenant Colonel Fedorko. I don't have a
20 calendar. I don't recall exactly when it occurred in
21 which he said he hadn't seen the -- the document but he
22 said, Paul, there was some meeting at some -- I'm being
23 told that there was some meeting at some point in time
24 in which this was all reviewed with the Attorney
25 General.

1 MR. CHERTOFF: And -- so, what did you do?

2 MR. ZOUBEK: I -- I went into the Attorney
3 General and said, look, I'm hearing from Dunlop that
4 there was a meeting in which all of this was completely
5 and extensively reviewed in terms of these documents and
6 the information. And he said that the -- that is --
7 that was not the case.

8 MR. CHERTOFF: He said there was no meeting?

9 MR. ZOUBEK: No. What he said was -- he -- he
10 did not recall -- I had put it very strongly in terms
11 of, I'm hearing from the State Police that this, you
12 know, the -- the Gilbert analysis was presented to you
13 and there was a meeting in which all of this was
14 outlined and -- because my conclusion at this point in
15 time that was raising significant flags as to red -- as
16 to racial profiling and he said that that -- that that
17 didn't -- that didn't occur in that context.

18 MR. CHERTOFF: When you spoke to Colonel
19 Dunlop he basically told you the Attorney General was
20 aware of the content of the documents, right?

21 MR. ZOUBEK: In the context of a -- of a
22 meeting, he said that all of that was discussed in a
23 presentation with the Attorney General.

24 MR. CHERTOFF: And when you went back to the -
25 -

1 MR. ZOUBEK: We didn't -- he and I did not
2 have a contents versus documents discussion.

3 MR. CHERTOFF: All right. And when you went
4 back to the Attorney General, he said that there was no
5 meeting where these concepts were discussed, right?

6 MR. ZOUBEK: No, what he --

7 MR. CHERTOFF: That he remembered.

8 MR. ZOUBEK: -- what he said to me was there
9 was no documents in which this was -- all of this was
10 presented to me as -- as you're telling me.

11 MR. CHERTOFF: Well, I want to be careful --
12 was this a conversation in which he's carefully said to
13 you, there were no documents presented to me at a
14 meeting which disclosed everything that you're telling
15 me or did he tell you there was no meeting in which this
16 information was conveyed to me, as far as you recall?

17 MR. ZOUBEK: I had a conversation with him in
18 which I said that there was a presentation -- I was told
19 there was a meeting in which there was a presentation of
20 State Police of all of these -- these documents and the
21 statistics. I have attended meetings like that with the
22 State Police in the past where it is the dog and pony
23 show with respect to a presentation and I think that was
24 the context I put it in with the Attorney General and he
25 told me, "No, I don't recall that happening."

1 MR. CHERTOFF: Did you, at that point know the
2 meeting had occurred on May 20th?

3 MR. ZOUBEK: I had no idea that the meeting
4 had occurred --

5 MR. CHERTOFF: So, he said that --

6 MR. ZOUBEK: -- on May 20th.

7 MR. CHERTOFF: -- so, he said whatever you
8 told him he said that didn't happen?

9 MR. ZOUBEK: Correct.

10 MR. CHERTOFF: Now -- then what do you do?

11 MR. ZOUBEK: I went back and I called back
12 Dunlop, I think, and I told him -- I said, "Look, I
13 talked to the Attorney General. He doesn't recall a
14 presentation of -- of these statistics.

15 MR. CHERTOFF: And what did Dunlop say?

16 MR. ZOUBEK: He said, well, no, that's what,
17 you know, I -- I think he responded something like,
18 well, that -- that's what Gilbert or my people remember.
19 Something like that.

20 MR. CHERTOFF: Now, at -- in the course of
21 this conversation with Colonel Dunlop, had he raised a
22 concern that the Attorney General's Office was going to
23 try to, in some way, fix the blame for this problem with
24 the documents on Colonel Williams?

25 MR. ZOUBEK: There was a discussion with

1 Lieutenant Colonel Dunlop that I had at some point in
2 time. I don't think it was that same conversation.

3 MR. CHERTOFF: Well, tell us about that
4 conversation?

5 MR. ZOUBEK: Well, I believe that at some
6 point in time -- and I don't recall and I don't -- and I
7 think Dunlop didn't necessarily recall whether it was
8 before or after the testimony on April 26th in which
9 some rumors started to circulate that -- that there was
10 an obstruction of justice investigation on -- on Carl
11 Williams and I think I had a discussion with -- with
12 Dunlop. I don't recall if it was before the 26th or
13 after the 26th and I told him that the -- there wasn't a
14 -- an obstruction of justice investigation. I had used
15 the word obstruction of justice with Lieutenant Colonel
16 Fedorko on a perspective basis in terms of getting out
17 documents from the State Police so that we'd make sure
18 our productions were complete.

19 MR. CHERTOFF: Now, when you -- let's go back
20 to this April 7th draft. This -- that was the initial
21 draft by Ms. Stone and Mr. Susswein?

22 MR. ZOUBEK: It was -- Debra Stone had done a
23 short 10 to 15 page memo. I think it's in the documents
24 called a, "partial summary on racial profiling" and then
25 Mr. Susswein began the -- the drafting of the -- of the

1 report. It was taken from some general comments of
2 Debra Stone. She had some significant concerns as to
3 Appellate Bureau folks not having been apprised of all
4 of this before.

5 MR. CHERTOFF: And did you present this draft?
6 Did Mr. -- did the Attorney General see this draft?

7 MR. ZOUBEK: Not at all. I did not present a
8 draft of the report to -- until perhaps at -- a week or
9 so later. This was a -- as I said, Mr. Susswein's first
10 draft to me and, indeed, although it doesn't reflect
11 here, but this April 7th draft didn't even have a table
12 of contents that -- that came to me and mine came with a
13 table of contents.

14 MR. CHERTOFF: At a point in time, did you
15 present the Attorney General with an initial draft by
16 Ms. Stone which said the Attorney General's Office
17 didn't get this information until 1999?

18 MR. ZOUBEK: No. And I -- if I -- if I can,
19 what was happening was, different members of the team
20 were responsible for different sections. I had a -- I
21 had a group that was doing it on the impact of person's
22 of color and -- and other portions of it and it would be
23 added into the report. So, Ms. Stone's draft is
24 something that went to Ron Susswein, but didn't become a
25 separate document.

1 MR. CHERTOFF: Well, you were asked the
2 following question, Page 207 of your deposition, Line 8.
3 In connection with that, the initial draft by Ms. Stone
4 -- I'll back it up. One of the issues in the draft says
5 --

6 "When did the Attorney General's Office know about
7 statistical issues related to profiling, correct?

8 Answer: Uh-huh.

9 Is that a yes?

10 Yes, I am sorry.

11 And in connection with that, the initial draft by
12 Ms. Stone who had no first hand knowledge of this, says
13 the Attorney General's Office didn't get this
14 information until 1999, correct?

15 THE WITNESS: Correct.

16 We now know that to be a mistake, correct?

17 THE WITNESS: Correct.

18 When that draft was presented to Attorney General
19 Verniero, he did not correct or make a comment about
20 that, right?

21 Answer: He did not."

22 MR. ZOUBEK: Yeah. I wasn't talking about the
23 April 7th -- the April 7th draft. I was talking about
24 the draft that I presented to the Attorney General which
25 included -- there were later -- there were about 200

1 drafts of this as you -- as you know and there was a
2 later draft that included some language on Page 23 and
3 24 that still gave the impression that none of the
4 documents had been received before and that was the
5 draft which is, I think, sometime between April 13th and
6 April 16th that would have been presented to the
7 Attorney General.

8 MR. CHERTOFF: Okay. Now, as of the time you
9 presented that draft to the Attorney General, you still
10 believed that the information -- well, let me step back.
11 It's clear from the interim report, that you viewed the
12 consent to search information as very significant,
13 correct?

14 MR. ZOUBEK: Correct.

15 MR. CHERTOFF: And, in fact, is it fair to say
16 that all the types of statistical information, the type
17 that you placed the most emphasis on was consent to
18 search, correct?

19 MR. ZOUBEK: Yes, given the approach we had
20 taken in the interim report.

21 MR. CHERTOFF: And as of the time the April
22 13th draft was completed, it was still indicated in the
23 -- in the draft that this information had not been
24 received until very recently by the Attorney General's
25 Office, correct?

1 MR. ZOUBEK: That's correct.

2 MR. CHERTOFF: And you presented that to
3 Attorney General Verniero?

4 MR. ZOUBEK: That's correct.

5 MR. CHERTOFF: And he did not raise any issue
6 with that or dispute it in any way, correct?

7 MR. ZOUBEK: That's correct.

8 MR. CHERTOFF: And as of that point in time,
9 you had what you had heard from Colonel Dunlop and you
10 had had Mr. Verniero's -- stated to you that he did not
11 agree with Colonel Dunlop's characterization of an
12 earlier meeting, right?

13 MR. ZOUBEK: Correct.

14 MR. CHERTOFF: Now -- and at this point, you
15 had not yet gone to Mr. Fahy or Mr. Rover to further
16 inquire of them whether they remembered a meeting where
17 this consent to search data was talked about?

18 MR. ZOUBEK: I don't believe I have, but I
19 don't the specific times when I had those discussions
20 with Fahy and Rover. I do believe that they had a
21 discussion with me that there was some discussion of
22 numbers and I don't -- that's my general recollection.

23 MR. CHERTOFF: Now, when the Attorney General
24 gets this draft of April 13th and looks at this draft
25 and, as said, makes no comment with respect to the claim

1 that the State Police didn't turn over the material, did
2 you and the Attorney General then go and discuss the
3 draft with anybody else?

4 MR. ZOUBEK: I'm sorry?

5 MR. CHERTOFF: Yeah. After you had taken the
6 April 13th draft to the Attorney General and discussed
7 and shown it to him, including Page 23, which indicated
8 that the State Police had withheld information from the
9 Attorney General's Office, again, he didn't dispute that
10 or raise any concern about that language, right?

11 MR. ZOUBEK: Correct.

12 MR. CHERTOFF: Did you then take that draft
13 and discuss it with anybody else?

14 MR. ZOUBEK: No.

15 MR. CHERTOFF: Did you discuss that language
16 on Page 23, either in the April 13th draft or in any
17 subsequent or earlier draft with anybody outside of the
18 Department of Law and Public Safety?

19 MR. ZOUBEK: No. I did take additional steps,
20 as I testified to in my deposition, to go back and
21 cross-check documents that resulted in a change on Page
22 23.

23 MR. CHERTOFF: At any time, though, before the
24 report was issued, and before the final changes were
25 made on Page 23, did you -- are you aware whether the

1 draft was shown to anybody outside the Department of Law
2 and Public Safety?

3 MR. ZOUBEK: I'm sorry. Could you repeat that
4 question?

5 MR. CHERTOFF: At any time prior to the
6 issuance of the report, was a draft of the report shown
7 to anybody outside the Department of Law and Public
8 Safety?

9 MR. ZOUBEK: Yes.

10 MR. CHERTOFF: When did that happen?

11 MR. ZOUBEK: I believe on Friday the -- is
12 that the 17th was a Friday or 16th was a Friday?
13 Whatever the Friday was of that -- which -- what I think
14 was the 16th, I believe a draft of the report was
15 forwarded over to the Governor's Office.

16 MR. CHERTOFF: Okay. And then was there any
17 subsequent discussion of that?

18 MR. ZOUBEK: Of the draft?

19 MR. CHERTOFF: Yes.

20 MR. ZOUBEK: Yes.

21 MR. CHERTOFF: When did that take place?

22 MR. ZOUBEK: It took place on Saturday, the
23 17th.

24 MR. CHERTOFF: And who was present for the
25 discussion?

1 MR. ZOUBEK: I was there, the Governor was
2 there, Secretary of State Suarez was there, Attorney
3 General Farmer was there, Chief of Staff Torpey was
4 there, Director of Communications McDonough was there
5 and General Verniero .

6 MR. CHERTOFF: Now, when you said Attorney
7 General Farmer, he wasn't Attorney General yet?

8 MR. ZOUBEK: He's certainly my Attorney
9 General now, but he was Attorney General then.

10 MR. CHERTOFF: Right. And in this meeting,
11 was there --

12 MR. ZOUBEK: Chief -- he was Chief Counsel at
13 the time.

14 MR. CHERTOFF: In this meeting, was there a
15 discussion about this draft of the report?

16 MR. ZOUBEK: I -- yes, there was.

17 MR. CHERTOFF: And was there a discussion, for
18 example, about the consent to search data and the
19 significance of that in the report?

20 MR. ZOUBEK: I -- if I can, Mr. Chertoff.
21 What I did was I essentially went through the entire
22 report and presented the report much in the same way I
23 did on April 26th to this Committee.

24 MR. CHERTOFF: Did the people at the meeting
25 react to any portions of the report?

1 MR. ZOUBEK: Yes.

2 MR. CHERTOFF: Tell us about their reaction?

3 MR. ZOUBEK: I think the Governor was --
4 expressed concern about what was reported in the -- in
5 the report with respect to the findings of relating
6 racial profiling and what I explained to her is I
7 explained to this -- this Committee was that I thought
8 one of the new directions that we're taking on this or
9 new focus that was on -- did not necessary focus on just
10 the stop issue but also to be focusing on discretion at
11 issue with respect to consents.

12 MR. CHERTOFF: What other reaction was there
13 to other parts of the report?

14 MR. ZOUBEK: I -- I think there was --
15 primarily -- there was the -- the Governor was asking a
16 number of -- a number of questions. She asked some
17 questions about some of the -- some of the law and --
18 and also she was very concerned about the -- the
19 findings of the report.

20 MR. CHERTOFF: Was there any reaction to Page
21 23 of the report, which indicates that the State Police
22 withheld certain information from the Attorney General's
23 Office?

24 MR. ZOUBEK: There was discussion of that --
25 that portion and concern with respect to the -- the fact

1 that some documents had not been forwarded.

2 MR. CHERTOFF: What was the discussion about
3 that portion?

4 MR. ZOUBEK: Well, I think in particular,
5 there was discussion with respect to that monthly
6 compilations of data that had come over to the
7 Superintendents Office, but had not come over to the --
8 the Office of the Attorney General and I think the
9 record from this Committee and the record -- the 90,000
10 pages still shows that those -- those monthly
11 compilations had not come over at any point in time.
12 They were not part of the documents I received from --
13 from Rover on -- on February 26th.

14 MR. CHERTOFF: Well, whether the documents or
15 the information came over, I guess the record speaks for
16 itself, but let me ask you this. What, if anything, did
17 the Attorney General say concerning -- let me step back
18 for a second. Am I mistaken in viewing the issue of
19 whether the State Police withheld documents or
20 information from the Attorney General to be a very
21 significant issue?

22 MR. ZOUBEK: Yes.

23 MR. CHERTOFF: I mean, the Attorney General
24 has the responsibility to supervise the State Police,
25 right?

1 MR. ZOUBEK: Correct.

2 MR. CHERTOFF: If the State Police were to lie
3 to the Attorney General or withhold material
4 information, it would strike at the heart of civilian
5 control over the police, right?

6 MR. ZOUBEK: Correct.

7 MR. CHERTOFF: It would be something that
8 would -- would require, in fact, demand some kind of
9 serious investigation and perhaps serious sanctions,
10 correct?

11 MR. ZOUBEK: Depending upon the circumstances.

12 MR. CHERTOFF: Is it fair to say that the
13 people in the meeting who were not from the Department
14 of Law and Public Safety quite understandably had a
15 strong reaction to the suggestion that the State Police
16 might have been withholding information from the
17 Attorney General?

18 MR. ZOUBEK: It was certainly a concern that
19 was discussed.

20 MR. CHERTOFF: And what did the Attorney
21 General say in response to that?

22 MR. ZOUBEK: I think he said that there were
23 documents that he had not seen before, that reflected in
24 the report, that had been asked for from Colonel
25 Williams that had not been received.

1 MR. CHERTOFF: And did you understand that to
2 be referred to, at the very least, to documents you had
3 drawn his attention to when you met with him on March
4 16th?

5 MR. ZOUBEK: His description was of the data
6 that was collected by the State Police and had not --
7 not been provided.

8 MR. CHERTOFF: That was consent to search
9 data, right?

10 MR. ZOUBEK: I -- ask me that question again,
11 Mr. Chertoff?

12 MR. CHERTOFF: That was consent to search data
13 that you specifically --

14 MR. ZOUBEK: He did --

15 MR. CHERTOFF: -- referred to --

16 MR. ZOUBEK: No. He -- he talked about there
17 were documents that the State Police had that had been
18 requested before that had not come over. That's what he
19 had said.

20 MR. CHERTOFF: Now, did he say that in a
21 matter of fact way or did he say it in a way of
22 suggestion that there had been some serious misbehavior
23 or misconduct in not turning over relevant information?

24 MR. ZOUBEK: In the context of his statement
25 that there had been a request for those -- those

1 documents and they had not come over he -- he expressed
2 concern.

3 MR. CHERTOFF: Now, as of the time of this
4 meeting, had you done any further exploration on your
5 own to see whether, in fact, there had been a May 20th
6 meeting where the consent to search information had been
7 talked about?

8 MR. ZOUBEK: I believe I had had -- by the
9 time of that meeting some other discussion with the
10 Attorney General. I can't remember if it was Fahy or
11 Rover who had said something about that there was a
12 meeting. I went back and talked to the Attorney General
13 about it and his response to me was there was a meeting
14 but there was -- there was never any discussion that
15 what he was hearing meant that there was racial
16 profiling.

17 MR. CHERTOFF: All right. Let me step back
18 for a second. I want to go back to this meeting on the
19 -- on the 17th of April or the 18th of April with the
20 Governor. Did the Governor express a strong reaction to
21 the consent to search data?

22 MR. ZOUBEK: That was part of what she
23 responded to when I made the presentation, yes.

24 MR. CHERTOFF: I mean, she made it clear she
25 understood that was very significant stuff, right?

1 MR. ZOUBEK: Yes.

2 MR. CHERTOFF: And in the context of the
3 discussion about what had been withheld by the State
4 Police, was it clear that part of what was being claimed
5 to have been withheld was consent to search data?

6 MR. ZOUBEK: That would have been within it.

7 MR. CHERTOFF: Because that was -- the report
8 makes it clear that the consent to search data is the
9 single most compelling type of statistical proof in this
10 area, right?

11 MR. ZOUBEK: No, I wouldn't agree with that.
12 I don't -- I -- it is -- it's important but there are a
13 number of other items listed in the interim report that
14 are -- that are relevant to that. It's not the single
15 most important item. It is -- it is an item that we
16 believe, as it relates to the issue of discretion, it
17 more than any other statistics is telling, but in and of
18 itself doesn't necessarily answer the entire question.

19 MR. CHERTOFF: I didn't mean to say it's
20 conclusive proof. Would you agree with me that with
21 respect to the statistical evidence in the report, which
22 is all you had, it was the most compelling piece of
23 statistical evidence?

24 MR. ZOUBEK: I don't agree with your
25 characterization that that's all we have. We have a

1 reference in there that we relied on complaints, that we
2 relied on interviews of troopers, that we relied on
3 information that had come in in lawsuits, that we relied
4 on investigations, that we relied on audits. So, if I
5 can just clarify that for the record.

6 MR. CHERTOFF: Did you say in your report
7 information concerning consent searches is particularly
8 instructive?

9 MR. ZOUBEK: That's -- I think that's
10 consistent with what I just said. It's particularly
11 instructive.

12 MR. CHERTOFF: And, in fact, there was a
13 separate section dealing specifically with that because
14 of its significance, right?

15 MR. ZOUBEK: I don't disagree with you, Mr.
16 Chertoff. I just thought your prior characterization
17 made it appear that it was conclusive.

18 MR. CHERTOFF: In -- in the discussion with
19 the Governor and the others, did the Attorney General
20 ever indicate that he had been made -- the State Police
21 had made -- made him aware that they had compilations or
22 comparisons of consent to search data as far back as
23 1997?

24 MR. ZOUBEK: Not in that meeting.

25 MR. CHERTOFF: Now, I want to step back

1 because as we had -- the state of play as I understood
2 it between March 16th and April 17th, this one month
3 period is, on March 16th you show the blue notebook to
4 Mr. Verniero, including the undated Gilbert memo,
5 correct?

6 MR. ZOUBEK: Correct.

7 MR. CHERTOFF: He indicates to you in one or
8 two meetings that he has never seen the document before?

9 MR. ZOUBEK: Correct.

10 MR. CHERTOFF: He does not indicate to you
11 whether or not he's familiar with the information,
12 right?

13 MR. ZOUBEK: Not until we had a subsequent
14 discussion about the meeting issue.

15 MR. CHERTOFF: Okay. At that meeting, he
16 doesn't indicate anything about being familiar with the
17 information, correct? On March 16th.

18 MR. ZOUBEK: I didn't ask him that question.

19 MR. CHERTOFF: Okay. And he doesn't volunteer
20 it, right?

21 MR. ZOUBEK: Right.

22 MR. CHERTOFF: Then you have a conversation
23 with Dunlop where Dunlop says, hey, you know, there was
24 a meeting where this stuff was discussed, correct?

25 MR. ZOUBEK: Correct.

1 MR. CHERTOFF: You go to the Attorney General
2 and he says, I don't remember any meeting like that,
3 right?

4 MR. ZOUBEK: Given the description I -- I gave
5 about what I said to him before, I stand on the record
6 of that, yes.

7 MR. CHERTOFF: And you go back to Colonel
8 Dunlop and you say, the Attorney General doesn't
9 remember that, right?

10 MR. ZOUBEK: Consistent with my prior
11 statements, yes.

12 MR. CHERTOFF: Then there comes a point in
13 time you decide you think you need to look into this a
14 little bit further, right?

15 MR. ZOUBEK: Correct.

16 MR. CHERTOFF: What made you decide to do
17 that?

18 MR. ZOUBEK: It was my review of the report
19 and the issue of the significance of what you had talked
20 about before as to whether documents were being produced
21 or not by the State Police and going back and double
22 checking that issue before the report was issued.

23 MR. CHERTOFF: You got nervous about the
24 statement in Page 23 about things being withheld, right?

25 MR. ZOUBEK: I was nervous about a lot of that

1 report, Mr. Chertoff. It was a significant report and I
2 was trying to make sure that it was as accurate as I
3 could make at that time.

4 MR. CHERTOFF: And you understood that an
5 allegation that the State Police withheld information
6 from the Attorney General would be a very significant
7 allegation, right?

8 MR. ZOUBEK: Yes.

9 MR. CHERTOFF: So, you went back and you
10 talked to Rover and Fahy to see if they were aware that
11 the information about consent to search figures, at
12 least generally speaking, had been made available to the
13 Office of the Attorney General, correct?

14 MR. ZOUBEK: I did not have that discussion
15 with Fahy and Rover -- I went back -- at what time did I
16 go back, Mr. Chertoff?

17 MR. CHERTOFF: Well, I'm asking you. Did
18 there come a time that you went to Fahy and Rover and
19 asked them whether there had been any conversation about
20 the consent to search figures back in '97?

21 MR. ZOUBEK: I had some discussions with them.
22 Some of them may have been prior to the issuance of the
23 report. Some of them may have been after the issuance
24 of the report.

25 MR. CHERTOFF: Okay. Tell us about the

1 conversations prior to the issuance of the report?

2 MR. ZOUBEK: Well, I think there was some
3 discussion at some point in time. I can't remember
4 whether it was Mr. Fahy or Mr. Rover who said -- in a
5 discussion I had, there some discussion of a meeting.
6 Do you recall a meeting? And the say, yes, I recall a
7 meet -- they recalled the meeting that had occurred.
8 They didn't tell me what date it was in which there was
9 some discussion relative to the Justice Department
10 investigation.

11 MR. CHERTOFF: And when you got that
12 information from them, did you go back to Mr. Verniero?

13 MR. ZOUBEK: I believe I did.

14 MR. CHERTOFF: What did he say?

15 MR. ZOUBEK: And again, I can't recall if he
16 said this to me before the issuance of the report or
17 after the issuance of the report, was that if there was
18 a meeting like that, it was never in the context that -
19 - the -- that the numbers meant that racial profiling
20 was occurring.

21 MR. CHERTOFF: Well, what was in the -- what
22 did he say it was in the context of?

23 MR. ZOUBEK: It was in context of the review
24 of the -- for the Justice Department and the statement
25 that -- that the -- that the State Police made to him

1 that there was no racial profiling occurring at the
2 State Police.

3 MR. CHERTOFF: Well, let me back up. I want
4 to make sure. What prompted you to -- you go back to
5 Fahy and Rover on one occasions or two occasions to
6 press the issue of this meeting?

7 MR. ZOUBEK: I -- I didn't say I went back to
8 them to press it. I said, I had conversations with
9 them. What I did do to go back and double check was I
10 went back because my understanding was the filter into
11 the Department was George Rover. So, that if I went
12 back and personally took a look at what was in Rover's
13 files, that would give me an indication of what had come
14 into the Department because if the representation was in
15 the report -- it didn't say to the Attorney General. It
16 said the Office of the Attorney General and the Division
17 of Criminal Justice. I knew that it had not come into
18 the Division of Criminal Justice. I was Director of the
19 Division of Criminal Justice and we were able to confirm
20 that.

21 As it relates to the Office of the Attorney
22 General, I went back and looked at Rover's files and I
23 saw some of the underlying data that would comprise or
24 was similar to the undated Gilbert memo. I, therefore,
25 went back and changed the final drafts of the report to

1 reflect what I still think is accurate today, which are
2 some of the documents had not been produced by the State
3 Police and what I mean by "some" it's the '97 and '98
4 compilation out at Moorestown and Cranbury which had not
5 been produced.

6 MR. CHERTOFF: Now, what -- the conversation
7 about the meeting with Mr. Rover, why did you have that
8 conversation?

9 MR. ZOUBEK: I think that may have been more
10 closely timed to -- prior to the Attorney General's or
11 my appearance before this Committee.

12 MR. CHERTOFF: Because at that point -- so,
13 that would have been after the report was issued?

14 MR. ZOUBEK: That's --

15 MR. CHERTOFF: Right?

16 MR. ZOUBEK: -- I mean, it -- with --

17 MR. CHERTOFF: Within an amount of days?

18 MR. ZOUBEK: -- this was a very busy period of
19 time and I cannot discern the exact dates of when those
20 conversations occurred.

21 MR. CHERTOFF: All right. So, as best as you
22 can recall it, you tone down Page 23 because when you
23 look at Mr. Rover's files, you see a lot of -- of the
24 raw material in fact was furnished. Is that correct?

25 MR. ZOUBEK: I attempted to make Page 23 as

1 accurate as I could.

2 MR. CHERTOFF: And then you have -- there's
3 this meeting with the Governor and she reacts, among
4 other people, to this issue about the State Police
5 withholding information, right?

6 MR. ZOUBEK: If -- if I can. I believe that
7 the record reflects that I -- I changed the draft on
8 either the 19th -- 18th or the 19th. That was after the
9 meeting.

10 MR. CHERTOFF: Okay. Then, in other words,
11 you made a decision -- well, let's step back a little
12 bit. I want to make sure I have it right. So, you go
13 into the meeting on the Saturday. The Governor and
14 others react to the allegation that the State Police had
15 withheld documents, correct?

16 MR. ZOUBEK: Correct.

17 MR. CHERTOFF: The Attorney General agrees
18 that the State Police have withheld documents, right?

19 MR. ZOUBEK: Again, I've answered those
20 questions before and you -- he made statements with
21 respect to what he believed he had not received before.

22 MR. CHERTOFF: What did he say he believed he
23 hadn't received before?

24 MR. ZOUBEK: I think as I testified a mere ten
25 minutes ago on -- on that, I -- what I said was that he

1 said that there were documents that were collected by
2 the Superintendent that had not come over to the
3 Attorney General Office.

4 MR. CHERTOFF: Now, after that meeting --

5 MR. ZOUBEK: And I believe -- and at that
6 point in time, in part, the Attorney General was relying
7 on the representations that I had in the report.

8 MR. CHERTOFF: Rather than his own memory or
9 knowledge?

10 MR. ZOUBEK: You have to ask him that
11 question, but I'm saying, you know, I had made that
12 representation to him.

13 MR. CHERTOFF: Then you decide you want to go
14 back and further alter the language on that page, right,
15 the next day?

16 MR. ZOUBEK: Either the -- that Sunday or --
17 or on -- or Monday. That I -- no, what I wanted to do
18 is I wanted to go back and check. I went and looked at
19 Rover's files. I saw that some of the documents that
20 were in the blue binder had been in Rover's files that -
21 - that were part of the underlying data for the undated
22 Gilbert memo.

23 MR. CHERTOFF: Would that include, for
24 example, the patrol issues concerns at Moorestown
25 Station which appears both in the blue binder and also

1 in the memo of July of 1997 which you later came to
2 learn went up to the Attorney General?

3 MR. ZOUBEK: Actually, what I was focused on,
4 I think you actually tried to show me this document
5 before, was a 7/10/97 document, which shows that Gilbert
6 was doing some underlying data analysis for consent
7 searches at Moorestown and Cranbury and Newark and that
8 those had been provided to Mr. Rover and I think if you
9 check the -- the February 22nd, 1999 letter, those were
10 not separately identified by Mr. Rover as not having
11 gone over to the Justice Department.

12 MR. CHERTOFF: So, this review which you
13 undertook of Mr. Rover's files, which led you to tone
14 down Page 23, this actually occurred after the meeting
15 with the Governor?

16 MR. ZOUBEK: Correct.

17 MR. CHERTOFF: Is the reason -- why did you
18 decide to undertake this last minute double check? Was
19 it because of the reaction of the people in the room?

20 MR. ZOUBEK: In part.

21 MR. CHERTOFF: Was it because you understood
22 from the reaction of the Governor that as they initially
23 read this allegation, they took it as a very serious
24 problem?

25 MR. ZOUBEK: Well, I knew it was -- I knew it

1 was a serious problem. I knew it was -- it was an issue
2 that was particularly focused on and I did go back and
3 check after that.

4 MR. CHERTOFF: And then when you went back and
5 checked, you saw that, in fact, it looked like there was
6 a good deal of documentation that had been furnished to
7 the Office of the Attorney General, correct?

8 MR. ZOUBEK: For the period of time up until
9 sometime in 1997 and I think I have said and I have said
10 to this Committee that the period of -- that documents
11 which had not come over were in the '97 and '98 period
12 of time.

13 MR. CHERTOFF: Now -- and therefore, you made
14 some adjustment in the language on Page 23 to -- to
15 reflect what you had discovered in Rover's file,
16 correct?

17 MR. ZOUBEK: I made some substantial
18 adjustments.

19 MR. CHERTOFF: Now, up until the time that
20 this report his filed on April 20th, is it fair to say -
21 - is it -- well, actually, before you made the change,
22 you talked to Mr. Verniero about it, right?

23 MR. ZOUBEK: I was present during the
24 conversations at the Governor's residence.

25 MR. CHERTOFF: I'm sorry. You misunderstood

1 my question. Again, in sequence, you have the
2 conversation at the Governor's residence about Page 23,
3 right?

4 MR. ZOUBEK: Correct.

5 MR. CHERTOFF: About the allegations against
6 the State Police, correct?

7 MR. ZOUBEK: Correct.

8 MR. CHERTOFF: You go back the next day or the
9 next -- or two days later, you review the file, you find
10 a lot of documents in Rover's file that are raw data
11 that came from the State Police, right?

12 MR. ZOUBEK: I find some documents, the
13 documents that I identify.

14 MR. CHERTOFF: You then go and report that to
15 Mr. Verniero, right?

16 MR. ZOUBEK: Correct.

17 MR. CHERTOFF: His reaction is what?

18 MR. ZOUBEK: His reaction was he wanted to
19 know whether or not there was any reflection that that
20 document had gone to him.

21 MR. CHERTOFF: In other words, he wanted you
22 to tell him whether there was any indication on the
23 documents or in the files that he had received copies of
24 it?

25 MR. ZOUBEK: Correct.

1 MR. CHERTOFF: What did you say?

2 MR. ZOUBEK: Not based upon the way in which
3 Rover's files were set.

4 MR. CHERTOFF: What did he say?

5 MR. ZOUBEK: He -- he didn't have a reaction
6 at that point.

7 MR. CHERTOFF: Did he explain to you why he
8 was concerned about whether there was any record in the
9 file about whether he had gotten the documents?

10 MR. ZOUBEK: Well, I thought that -- I -- it
11 didn't strike me as being unusual. I thought that was a
12 natural reaction.

13 MR. CHERTOFF: And as of this point, you
14 hadn't yet gone to speak to Fahy and Rover about the
15 meeting in May 20th, right?

16 MR. ZOUBEK: I -- as I said, Mr. Chertoff, I'm
17 not sure as to when those occurred. I did have those
18 discussions with them. It's not necessarily that I
19 sought them out for that specific issue, when I had --
20 I spoke to them about that.

21 MR. CHERTOFF: But in this meeting that you
22 have where you talk about the Rover file with the
23 Attorney General, again, he doesn't say, you know, maybe
24 some of this stuff was mentioned to me in a meeting back
25 in 1977? He doesn't raise that issue with you, correct?

1 MR. ZOUBEK: Correct.

2 MR. CHERTOFF: Then there comes a point in
3 time where you -- you say in anticipation of the
4 testimony here on April 26th, you decide you better go
5 talk to Fahy and Rover to see about this meeting, right?

6 MR. ZOUBEK: Now, as I said, I think I
7 talked to Fahy or Rover beforehand. I think one of them
8 I had a discussion with respect to the -- the May
9 meeting in which they had said to me, that they
10 remembered there was some general discussions with
11 respect to consents and I went back and advised the
12 Attorney General of that and I -- and advised him of
13 that -- that someone else had -- and I had testified
14 this at my deposition that I did receive additional
15 information from others who were at that meeting.

16 MR. CHERTOFF: So, wait a second. They tell
17 you one or more or both of them tell you at some point
18 close in time to the hearing where your -- you and Mr.
19 Verniero are going to testify, that they recall that
20 there was discussion about consents in a meeting in May,
21 correct?

22 MR. ZOUBEK: That the subject matter of
23 consents had come up -- there was no -- the record --
24 now we have the benefit of the May 20th, 1997 -- I
25 didn't know when the meeting was but that there had been

1 a meeting discussing the Justice Department issue, but
2 the response back -- that I got back from the Attorney
3 General, there may have been those discussions, but it
4 never was in the context that that meant that racial
5 profiling was occurring.

6 MR. CHERTOFF: I'm sorry. I -- I was slightly
7 distracted. You -- I want to make sure I have this
8 piece by piece. You tell the Attorney General about
9 your conversation with Rover and Fahy about this prior
10 meeting, right?

11 MR. ZOUBEK: Rover and/or Fahy.

12 MR. CHERTOFF: Right. You tell that to the
13 Attorney General, right?

14 MR. ZOUBEK: Correct.

15 MR. CHERTOFF: Now, whereas previously when
16 you told him what Dunlop said he had said there wasn't
17 any meeting like that, now he changes his position,
18 correct?

19 MR. ZOUBEK: I think he said if there was that
20 meeting it was not in the context of the discussion
21 being that the -- any issue with respect to consents
22 meant that there was racial profiling occurring, that
23 the consents didn't -- didn't conclude the matter.

24 MR. CHERTOFF: I'm -- he say -- he said there
25 wasn't a meeting but if there was a meeting I remember

1 it wasn't about racial profiling?

2 MR. ZOUBEK: No. Well, you had gone through
3 the chronology in which there was a discussion with
4 Dunlop and I -- with Dunlop I said to the Attorney
5 General that I was told that there was this presentation
6 and all this was reviewed with you, the statistics were
7 reviewed with you and he said, "No, that didn't happen."

8 MR. CHERTOFF: Now you come back at him with --
9 -- with additional information from other witnesses?

10 MR. ZOUBEK: I come at with him -- with more
11 general -- additional, but more general information
12 which is I'm hearing that there was a meeting in which
13 there was some discussion of -- of consents and -- and I
14 had already had the Dunlop discussion with him and then
15 he responded to me that any discussion that there may
16 have been of consents was in the context that it didn't
17 meant that there was racial profiling that was
18 occurring.

19 MR. CHERTOFF: So, in other words, he
20 indicated now he did remember the meeting once you
21 present him --

22 MR. ZOUBEK: I think he said --

23 MR. CHERTOFF: -- with this additional --

24 MR. ZOUBEK: No, I --

25 MR. CHERTOFF: -- witness --

1 MR. ZOUBEK: -- I think he said to me, if
2 there -- if there was a meeting, I didn't have the
3 benefit of the -- the agenda to go back and refresh his
4 recollection. That was the context of the discussion I
5 had with him.

6 MR. CHERTOFF: I -- I'm -- it's a very simple
7 question. You tell him now that there's additional
8 witnesses who say there was a meeting about consents.
9 Did he say he remembered the meeting?

10 MR. ZOUBEK: Mr. Chertoff, in fairness, I
11 answered the question before. You asked me additional
12 witnesses. I said I went back and said either Rover or
13 Fahy had told me that there was a meeting.

14 MR. CHERTOFF: And he --

15 MR. ZOUBEK: And he said that -- and he didn't
16 go into specifically of whether he recalled the meeting.
17 If there was a meeting, if there was a discussion, it
18 was in the context that consents didn't mean that there
19 was racial profiling actually occurring.

20 MR. CHERTOFF: And who did he say told him
21 that consents don't mean that racial profiling is
22 actually occurring?

23 MR. ZOUBEK: I didn't follow up with him on
24 that question.

25 MR. CHERTOFF: Why not?

1 MR. ZOUBEK: Perhaps I should have.

2 MR. CHERTOFF: Well, let me ask you this. Was
3 there a point in time that you actually were
4 investigating the question of whether documents had been
5 withheld by the State Police from the Attorney General's
6 Office?

7 MR. ZOUBEK: I was looking into that issue by
8 looking at the documents, talking to people and part of
9 those discussions were the discussions I had with
10 Dunlop, Rover and Fahy and then I took the additional
11 steps of looking at Rover's documents and those were the
12 steps that I had taken before the time that I had
13 appeared before the Committee on April 26th, 1999.

14 MR. CHERTOFF: So that by the time you
15 appeared, you had concluded you -- this investigation,
16 this examination of what happened, correct?

17 MR. ZOUBEK: No, I think it was left that that
18 in -- that and the impression that the Attorney General
19 had with that was an open investigation, I subsequently
20 -- when I became Acting Attorney General, in particular,
21 after I received a call from -- I got beeped at a little
22 league game by Carl Williams who called and told me that
23 someone from The Philadelphia Inquirer was calling him
24 and asking to confirm that he was under investigation
25 for obstruction of justice. I told him that was wrong.

1 I would contact the reporter to make sure that they knew
2 that that was wrong and I told him that we would take
3 care of that.

4 When I became Acting Attorney General, I made
5 a determination that -- that there was -- there didn't
6 seem to be any further purpose to engage in that kind of
7 investigation and -- and move forward with the reforms
8 of the State Police.

9 MR. CHERTOFF: Here's my question. Did the
10 Attorney General Verniero, before April 26th, ever
11 direct you to investigate how and why documents were
12 withheld by the State Police?

13 MR. ZOUBEK: Yes, and I think if you look at
14 Z-16, I think this -- Z-16 which is a memo to --
15 Verniero's memo to the file dated March 16th, 1999 the -
16 - it says, "The First Assistant, the Director and I
17 discussed the need to determine why this information was
18 produced to us by the State Police only at this time."

19 MR. CHERTOFF: And when did you determine
20 that? When did you determine the answer to that
21 question?

22 MR. ZOUBEK: I had reached a preliminary
23 conclusion as to some of the data I had gone over. I
24 did not go back and do any inquiry of Carl Williams,
25 Dunlop, Gilbert --

1 MR. CHERTOFF: Here's the simple question.
2 When did you reach the conclusion that that memo
3 indicates you were going to reach?

4 MR. ZOUBEK: I don't think I reached an
5 ultimate conclusion as to who received what and when by
6 the time I became Acting Attorney General.

7 MR. CHERTOFF: After -- after April 26th, when
8 the testimony concluded here, what single step did you
9 ever take to investigate what happened with those
10 documents?

11 MR. ZOUBEK: I think after I got the
12 impression that some of the testimony that was given on
13 April 26th led the impression that Carl Williams was
14 under some investigation for obstruction of justice and
15 given what I had viewed to be the confusion as it
16 relates to who received what documents and not, I did
17 not take any further steps. What I tried to do is move
18 towards remedy this situation.

19 MR. CHERTOFF: Here's the question, what
20 single thing did you or anybody at your direction do to
21 investigate the issue of why or how documents were
22 withheld, after you left this room on April 26th, 1999?

23 MR. ZOUBEK: I made a determination, as I
24 said, none. Based upon my determination that I didn't
25 think it would be in the public interest to do so at the

1 time.

2 MR. CHERTOFF: Did you make that determination
3 while you were sitting in the hearing room?

4 MR. ZOUBEK: No.

5 MR. CHERTOFF: When you came in the hearing
6 room, when you were asked questions about documents
7 being withheld and then you answered, "There was an
8 investigation." Was there an investigation at that
9 time?

10 MR. ZOUBEK: The Attorney General answered the
11 question that there -- there was -- by way of -- by way
12 of investigation, I think he had an impression that I
13 might be following up on that issue and when I became
14 Acting Attorney General I made a determination not to do
15 so.

16 MR. CHERTOFF: Where did he get the impression
17 that you were following up on the issue when he sat here
18 on April 26th, 1999?

19 MR. ZOUBEK: Oh, I -- I had told him that I
20 had looked at the documents that were in Rover's files
21 and he had given me this assignment and not many others
22 back in -- back in March and I think that was what he
23 was operating from at the time.

24 MR. CHERTOFF: If before April 26, 1999 there
25 was an investigation about who got what documents, did

1 you ever interview the Attorney General?

2 MR. ZOUBEK: The Attorney General used the
3 phrase "investigation." In my book, "investigation"
4 means a criminal investigation. There was never a
5 criminal investigation with respect to this and I was
6 looking at that from the context of -- of what had --
7 what had happened, what had been produced and I made a
8 determination that instead of trying to deal with this
9 constant battle between the Attorney General's Office
10 and the State Police, to try to remedy that in the final
11 report of the State Police Review Team.

12 MR. CHERTOFF: Here's my question. When you
13 have in the memo that there was a need to determine why
14 information was produced to us, why in -- this
15 information was produced to us by the State Police only
16 at this time, are you telling us that the -- you had not
17 determined the answer to this by --

18 MR. ZOUBEK: I did not --

19 MR. CHERTOFF: -- April 26th?

20 MR. ZOUBEK: -- I did not, by way of example,
21 go and ask Carl Williams who had just left the New
22 Jersey State Police and said, Carl Williams, can I
23 interview you to ask why you didn't forward over the '97
24 and '98 documents from Moorestown and Cranbury and why
25 John Hagerty represented to all the newspapers on

1 February 8, 1999, I made a determination, particularly
2 after I talked to Carl Williams who thought the press
3 thought he was under investigation for obstruction of
4 justice, that it was not in the public interest of -- to
5 continue that investigation and that was the
6 determination I made and --

7 MR. CHERTOFF: When did you --

8 MR. ZOUBEK: -- and I stand by it.

9 MR. CHERTOFF: -- and when did you make the
10 determination?

11 MR. ZOUBEK: I think I made the determination
12 at some point in time certainly after I talked to Carl
13 Williams. I had -- I had just gone through a period of
14 time, Mr. Chertoff, of being the -- I was now Acting
15 Attorney General, First Assistant Attorney General,
16 Director of the Division of Criminal Justice and head of
17 the State Police Review Team. I have to set priorities
18 and I made a determination that -- that was not an
19 investigation I thought warranted further work.

20 MR. CHERTOFF: In anticipation of the hearing,
21 when you took -- let me step back. This got really
22 sharply focused before the April 26th hearing, didn't
23 it? This issue about what was known and what was
24 withheld by the State Police, right?

25 MR. ZOUBEK: That was certainly part of the

1 report and it was focused -- it had been focused for a
2 number --

3 MR. CHERTOFF: You prepared for the April 26th
4 hearing with Mr. Verniero, correct?

5 MR. ZOUBEK: Correct.

6 MR. CHERTOFF: You focused his attention on
7 the fact that the issue of withheld documents would come
8 up, correct?

9 MR. ZOUBEK: Correct.

10 MR. CHERTOFF: Before that hearing, you had
11 already determined that there was some kind of a meeting
12 at which Mr. Verniero had been told about the consent to
13 search numbers, correct?

14 MR. ZOUBEK: Correct.

15 MR. CHERTOFF: And after you confronted him
16 with that new information, he allowed -- how -- well, if
17 there was a discussion about it, it was in the context
18 of saying that there was no profiling, correct?

19 MR. ZOUBEK: Correct.

20 MR. CHERTOFF: And, in fact, did he tell you
21 that it -- he understood at the time that, although the
22 numbers could be viewed as a problem, the advise he had
23 received was that they weren't ultimately determinative
24 in the Justice Department investigation?

25 MR. ZOUBEK: Correct.

1 MR. CHERTOFF: Did he tell you who gave him
2 that advice?

3 MR. ZOUBEK: He told me that that was -- I --
4 I knew who had been working with him at that point in
5 time. I had also seen, by that point in time, the April
6 22nd, 1997 memo that Rover had provided to Waugh that
7 went to the Attorney General that said consents were
8 irrelevant to the analysis. I disagreed with that
9 analysis. I thought they were relevant to the analysis,
10 so it was consistent with what I had seen in that memo.

11 MR. CHERTOFF: Who did he say gave him the
12 advice that it wasn't determinative?

13 MR. ZOUBEK: Well, I -- he -- I -- he did not
14 say, but I had already reviewed the memo from April --
15 from 1997 in which he had received that -- that advice
16 in part.

17 MR. CHERTOFF: So, he didn't tell you. He
18 just said he got advice. Is that right?

19 MR. ZOUBEK: Correct.

20 MR. CHERTOFF: Now, you went to the hearing,
21 right?

22 MR. ZOUBEK: Correct.

23 MR. CHERTOFF: Were you present at the
24 following testimony?

25 MR. ZOUBEK: I was present during all the

1 testimony.

2 MR. CHERTOFF: On Page 26, Senator Lynch asked
3 the question --

4 "Let me ask the question again. At the time
5 you filed this brief in Soto in March of 1997, did you
6 consider the need for a survey to determine whether or
7 not there was, in fact, the fact of profiling going on
8 the Turnpike?"

9 Answer by Attorney General Verniero. "Based
10 on the briefings that I have received and the assurances
11 that I received, no, I did not consider a need to have
12 independent review done at that time.

13 SENATOR LYNCH: And so, there was no
14 statistical analysis ongoing under your watch until some
15 time after the shooting in April of 1998, correct?

16 ATTORNEY GENERAL VERNIERO: If there was an
17 analysis going on at that point in time, somewhere in
18 the Department of Law and Public Safety I was not aware
19 of it in July of 1996, no."

20 MR. CHERTOFF: You were there for that, right?

21 MR. ZOUBEK: Yes.

22 MR. CHERTOFF: Now, let me as you this
23 question. If I were to ask you the question, was there
24 no statistical analysis ongoing under Attorney General
25 Verniero's watch until some time after the shootings in

1 April of 1998, the answer to that would be, that's
2 incorrect, right?

3 MR. ZOUBEK: Based upon my understanding of
4 the record today, there was analysis that had occurred
5 within the Department of Law and Public Safety. At the
6 time that I attended the hearing, I was relying upon my
7 understanding at the time.

8 MR. CHERTOFF: Now, you also knew as of the
9 time of the hearing --

10 MR. ZOUBEK: No, I --

11 MR. CHERTOFF: -- that --

12 MR. ZOUBEK: -- Mr. Chertoff, I --

13 MR. CHERTOFF: Let me --

14 MR. ZOUBEK: -- I don't think that's fair. I
15 just said that I didn't know that at the time of the
16 hearing and you just said "also."

17 MR. CHERTOFF: All right. Let me -- you --
18 you did know, however, at the time of the hearing which
19 was on April 20th of 1999 that in -- sometime in 1997
20 the Attorney General had been made aware that there was
21 at least a statistical analysis of consent to search
22 data that had already been performed somewhere in the
23 boughs of the Department, right?

24 MR. ZOUBEK: Somewhere with -- somewhere
25 within the Department.

1 MR. CHERTOFF: So that the correct answer to
2 the question of Senator Lynch is that before April of
3 1998 there was at least some kind of statistical
4 analysis ongoing because you knew the Attorney General
5 had been notified about that, sometime in 1997, right?

6 MR. ZOUBEK: Some analysis that had occurred
7 in the Department, but I think it's important the line
8 of questions that were being asked at that time was, why
9 did the Attorney General's Office do something pro-
10 actively.

11 MR. CHERTOFF: But forget the line for a
12 second. I just want to make sure I understand that --
13 the -- what the facts are and what the answers are. So,
14 you'll agree that -- and, of course, you were not around
15 in 1997 dealing with this issue. That's fair to say,
16 right?

17 MR. ZOUBEK: Correct.

18 MR. CHERTOFF: Okay. So -- but you -- based
19 on what even the Attorney General had acknowledged to
20 you finally before the hearing, it was clear that he was
21 aware, at least some time in 1997 that there was some
22 kind of statistical analysis ongoing somewhere in
23 Department of Law and Public Safety. Is that fair to
24 say?

25 MR. ZOUBEK: I don't agree with that based

1 upon what -- my knowledge as to what he said to me, is
2 that there was a general discussion with respect to
3 consents. He didn't go through that there was a
4 statistical analysis, Mr. Chertoff. I -- I respectfully
5 suggest -- I can only answer what -- what I knew my
6 understand at the time and for -- to ask me to go into
7 the mind of the Attorney General I don't think is
8 appropriate.

9 MR. CHERTOFF: Well, I don't want you to go
10 into his mind. I want -- let's go to Page 220 of the
11 deposition.

12 "Did you, at that point, question in your own
13 mind exactly the degree in which the Attorney General
14 had an understanding of what the documents were and the
15 existence of the documents and whether he was being
16 completely forthcoming with you concerning his own
17 role?"

18 Answer: "I think prior to the hearings, his
19 statements to me were, I heard about the numbers. They
20 might not have been good numbers, but in context now,
21 but that the advice he had received was that it wasn't
22 right for -- " and -- and then you go onto another
23 answer.

24 But you'll agree with me based on that answer
25 that he had told you prior to the hearings that he had

1 heard about numbers, right?

2 MR. ZOUBEK: Well, he had heard about numbers.
3 You said -- and I don't want to get into a debate here.
4 There's statistical analysis -- what he said to me,
5 there was no presentation of a statistical analysis.
6 Given the testimony as it relates to -- I don't know. I
7 wasn't there on May 20th, 1997 as to whether statistics
8 were discussed or other -- all I'm saying is based upon
9 what the Attorney General told to me, I stand by my
10 deposition testimony and other than that, I wasn't there
11 on May 20th, 1997.

12 MR. CHERTOFF: We -- we understand. My only
13 question is this, you'd agree with me that if -- that
14 you, at least, knew going in that num -- that the
15 Attorney General was aware that numbers had been
16 compiled by the State Police in 1997, which would be, of
17 course, before April of 1998, right? Because the
18 Attorney General essentially acknowledged that to you?

19 MR. ZOUBEK: Well, he said -- he said what he
20 said, whether he's aware of -- of some numbers
21 generally, but that's the -- that's the limit of what
22 and my discussions with him were.

23 MR. CHERTOFF: And you knew from Fahy and/or
24 Rover, that they believed and they recalled numbers
25 having been discussed, right?

1 MR. ZOUBEK: They said consents were discussed
2 and the knowledge that they were and the State Police
3 concerns, but again, whether or not there was a
4 presentation of statistics and exact numbers, I -- I've
5 given you the limit of what I recall from those
6 discussions.

7 MR. CHERTOFF: Now, then -- and you weren't
8 there, of course, but -- but then when Mr. Verniero
9 answered Senator Lynch's question, he answers this way.

10 "If there was an analysis going on at that
11 point in time, somewhere in the Department of Law and
12 Public Safety I was not aware of it in July of 1996,
13 no."

14 Did it strike you as odd that he answered a
15 question about events occurring prior to April 1998, by
16 answering saying, "I wasn't aware of it in July of
17 1996."?

18 MR. ZOUBEK: I -- I stand by my deposition
19 testimony which is, I didn't catch that at the time.

20 MR. CHERTOFF: As you look back on it, does it
21 strike you as odd?

22 MR. ZOUBEK: I don't think I'm here to opine
23 as to what's odd or not.

24 MR. ROBERTSON: Mr. Chertoff, in -- in
25 fairness, isn't July of '96 the time at which he had

1 became Attorney General?

2 MR. CHERTOFF: Yes.

3 MR. ROBERTSON: And --

4 MR. CHERTOFF: Yes.

5 MR. ROBERTSON: -- wasn't there a line of
6 questioning about what he knew at that time?

7 MR. CHERTOFF: I think actually it was a line
8 of questioning at a different point in time.

9 MR. ROBERTSON: Oh, okay.

10 MR. CHERTOFF: And a different part of the
11 hearing.

12 MR. ROBERTSON: No, I'm talking -- oh, at a
13 different part of the hearing --

14 MR. CHERTOFF: Different part of the hearing.

15 MR. ROBERTSON: -- subsequent to this?

16 MR. CHERTOFF: Yeah. Subsequent or earlier.
17 Now, did you have a conversation with -- and again, I
18 want to just make sure we have everything we can -- we
19 can glean from what happened in your conversations with
20 him in anticipation of the hearing. Did there come a
21 point in time you had a conversation with Mr. Verniero
22 before the hearing that there had been a conversation --
23 -- did you -- let me withdraw the question.

24 Did you pre -- did you, in fact, present to
25 him at a point in time what you had heard from Fahy and

1 Rover that there had been a conversation comparing the
2 Maryland numbers with the New Jersey numbers relating to
3 consent to search?

4 MR. ZOUBEK: No, but I -- I really do believe
5 that I -- I've given you the -- my best memory of those
6 -- those conversations.

7 MR. CHERTOFF: Well, let me go back into the
8 deposition. We're here at Page --

9 MR. ZOUBEK: Is it -- let me -- let me make
10 clear, what -- it -- what -- you were talking about the
11 period of time of preparing for the hearings?

12 MR. CHERTOFF: Right up to the moment that you
13 both walked into this hearing, at any point did you
14 simply say to him, that based on what you had learned he
15 had been a meeting where there had been a comparison
16 comparing -- a conversation comparing the Maryland
17 numbers and the New Jersey numbers relating to consent
18 to search? Did you present him with that?

19 MR. ZOUBEK: I believe what I had said to him
20 was there was a meeting that I had heard about in which
21 there was the discussion of consents. I don't hear --
22 recall whether I said Maryland or not. If I said
23 something at my deposition, you may refresh my
24 recollection.

25 MR. CHERTOFF: I will. Page 210.

1 "Now, in connection then at the same time,
2 there's a hearing scheduled for April 26 before the
3 Judiciary Committee, correct?"

4 "Correct."

5 "And you're preparing Mr. Verniero for his
6 testimony, right?"

7 "I was assisting him in preparation.

8 And the question arises about whether he's
9 going to be asked about when this information about
10 statistics and consent to search data was first
11 conveyed to him, right?"

12 "THE WITNESS: Right"

13 "And based upon -- yes. Based upon what I had
14 heard from others, I had focused on that issue with
15 him."

16 "And what was his initial answer to that
17 question? Was his initial answer that he hadn't heard
18 anything about this?"

19 "No. I talked about the initial answer which
20 was on March 16th but in terms of the preparation, it
21 was that the documents -- I mean -- and/or the
22 statistics that he ever saw on the issue were always
23 presented to him in the context. At the same time he
24 was being told by State Police that racial profiling was
25 not a problem."

1 Question: "But at that point, I take it he
2 did not deny that there had been a conversation
3 comparing the Maryland numbers and the New Jersey
4 numbers relating to consent to search."

5 "THE WITNESS: He did not. He did not deny
6 that and responded as I said, if there was discussion of
7 statistics this was my reaction to the statistics."

8 MR. CHERTOFF: Is that accurate?

9 MR. ZOUBEK: Yes, but it -- I said, "If there
10 was a discussion of statistics . . ." That's the way he
11 had put it to me and -- and that's the way I think I put
12 it in my deposition. He did not say to me that he
13 recalled specifically the Maryland comparison. It was
14 if there was a discussion of statistics it was in the
15 following context.

16 MR. CHERTOFF: Now, what happened to the Troop
17 D Audit?

18 MR. ZOUBEK: I received a -- a recommendation
19 from the State Police sometime in June that the audit ha
20 reached a point in time in which there were no
21 additional significant productive results occurring in
22 the audit and I received the recommendation from
23 Lieutenant Colonel Fedorko when I was Acting Attorney
24 General, which would have been some time in June that
25 the -- the purposes of the audit which was to find race

1 based discrepancies, had been accomplished, that they -
2 - because of the length of the time between the period
3 they were looking at, which was the first four months of
4 1998 to now June of 1999, that they weren't receiving
5 sufficient results and that the recommendation I
6 received from Lieutenant Colonel Fedorko was that they
7 didn't believe that it would be fruitful to continue
8 with that and I authorized him not to continue with that
9 but to complete whatever Internal Affairs' reviews had
10 to be completed and to complete what he needed to finish
11 with it.

12 MR. CHERTOFF: Well, did he give you some kind
13 of a written explanation of why -- what it meant to say
14 that the Troop D Audit was no longer being fruitful?

15 MR. ZOUBEK: Well, I had -- I had a discussion
16 -- I think I had some discussions with either him or
17 Lieutenant Colonel Fedorko that what was happening is
18 when they were getting -- I think it was to -- I can't
19 remember if it was in the context of the phase where
20 they had completed Phase I and Phase II of, I think, of
21 all of -- of the barracks, but as they were getting into
22 the random phase three, they were finding that they were
23 not getting sufficient responses because of the lapse of
24 -- of time and that most of the discrepancies were not
25 race based that they were finding.

1 MR. CHERTOFF: So, he told you that they had
2 actually, with respect to each of the three barracks,
3 done a Phase III analysis and were not getting --

4 MR. ZOUBEK: No, they had begun --

5 MR. CHERTOFF: -- sufficient responses --

6 MR. ZOUBEK: -- they had begun -- he had said
7 that they had completed Phase I and Phase II and they
8 had -- wherever they were at that point in time, which I
9 believe was -- was Phase III, was they were not getting
10 productive results and I think that is consistent with
11 the -- with the testimony that Lieutenant Sachetti is
12 given.

13 MR. CHERTOFF: So, he told you the audit was
14 complete then in -- in 19 --

15 MR. ZOUBEK: No, he told me that it reached a
16 point where what they had done -- we had previously
17 testified -- I previously testified about the need to
18 increase the number of people working on that audit.
19 So, we increased the number of people working on that
20 audit. There was an ability to complete portions of the
21 audit and now they had reached a point in time in which
22 they didn't find that the audit was being productive in
23 an investigative sense.

24 MR. CHERTOFF: So, did you say, let's write up
25 a final report?

1 MR. ZOUBEK: I've told them to complete
2 whatever referrals there would be and -- and to go
3 forward with whatever they need to do with respect to
4 the administrative inquiries.

5 MR. CHERTOFF: Well, was a final report
6 prepared?

7 MR. ZOUBEK: Well, at -- at that point in
8 time, my focus on was make all the Internal Affairs
9 referrals that need to be made, and then move forward
10 with whatever you would move forward with internally on
11 the State Police. As I emphasized before, there was
12 race based discrepancies and there were some -- some
13 other violations that were identified and my presumption
14 was that Lieutenant Colonel Fedorko would move forward
15 with those and -- and I don't -- I do not typically
16 receive -- I would not receive the "final report" on
17 administrative violations.

18 MR. CHERTOFF: Sir, in oral conversation,
19 Colonel Fedorko -- there's nothing more they can do and
20 you basically tell them to wrap it up. Is that fair to
21 say?

22 MR. ZOUBEK: No. I think -- I -- he reviewed
23 with me the problems that were -- they were obtaining at
24 that point in time, and I would note that Lieutenant
25 Sachetti testified in his deposition that he met with

1 Lieutenant Colonel Fedorko on April 19th and told him
2 that it was going to take a year to a year and a half
3 from that point in time to complete the audit, and now
4 I'm learning for the first time ever in this -- the
5 course of these proceedings that -- that the additional
6 30 people that were assigned were at some point in time
7 -- it's news -- the first time I'm learning this -- were
8 -- were sitting around because they didn't have things
9 to do on the -- on the audit.

10 So, I would presume that that provided the
11 basis for Lieutenant Colonel Fedorko's recommendation to
12 me to move those troopers to some -- some sort of
13 productive use.

14 MR. CHERTOFF: Well, I'm puzzled because
15 didn't you, in fact, make specific -- a specific
16 reference in the interim report to this ongoing Troop D
17 falsification audit as a significant factor in the way
18 you were looking at the State Police?

19 MR. ZOUBEK: Absolutely, but I had no idea
20 that on April 19th, Lieutenant Sachetti had met with
21 Lieutenant Colonel Fedorko and said that it was going to
22 take a year to a year and a half to complete that.

23 MR. CHERTOFF: Well, when Colonel Fedorko told
24 you there wasn't anything more that he could do, given
25 the fact that you had indicated that this was additional

1 inquiry, examining stops made by troopers that still
2 pending, didn't you feel the need to examine or explore
3 what was left to be done and how it could be expedited?

4 MR. ZOUBEK: My -- my concern because the
5 original focus that Lieutenant Colonel Dunlop and I had
6 was to ensure whatever Internal Affairs investigations
7 need to be done would be -- would be established and
8 done and that was what was -- that was what was focused
9 on. This was staff inspection doing an audit, making
10 referrals over to Internal Affairs and what I wanted to
11 make sure happened was that the Internal Affairs work
12 was completed and then there were referrals over to the
13 Division of Criminal Justice and that occurred during
14 the summer and fall of 1999.

15 MR. CHERTOFF: All right. So, let's see where
16 we are. It's fair to say that after April 26, 1999
17 there's no further acts of investigation regarding
18 withholding information by the State Police, correct?

19 MR. ZOUBEK: I made the determination not to
20 pursue that, when I became Acting Attorney General --

21 MR. CHERTOFF: So, I --

22 MR. ZOUBEK: -- which was May 15th.

23 MR. CHERTOFF: -- so, I am correct that no
24 further acts or undertaking of investigation regarding
25 withholding of data after you walked out of the hearing

1 room with the Attorney General on April 26, correct?

2 MR. ZOUBEK: Ultimately, that's correct.

3 MR. CHERTOFF: Ultimately and not ultimately
4 it's correct, not -- I mean -- I just want a straight
5 answer on this.

6 MR. ZOUBEK: Well, Mr. Chertoff, I don't think
7 it's fair to --

8 MR. CHERTOFF: Nothing --

9 MR. ZOUBEK: -- to give the impression that I
10 walked out of this room and made a decision as I was
11 driving back to the Hughes Justice Complex.

12 MR. CHERTOFF: My question is simply was
13 anything else ever done afterwards?

14 MR. ZOUBEK: And -- well, my answer was no.

15 MR. CHERTOFF: Okay. Now then, you also have,
16 sometime in May or June, the Troop D Audit which is
17 mentioned in the report, that also lapses, correct?

18 MR. ZOUBEK: It was terminated as of June 9th,
19 1999 and then subsequent referrals were made.

20 MR. CHERTOFF: And then with respect to those
21 referrals over to Criminal Justice, none of those ever
22 resulted in an indictment, correct?

23 MR. ZOUBEK: That's my understanding.

24 MR. CHERTOFF: And those come back, right?

25 MR. ZOUBEK: Correct.

1 MR. CHERTOFF: And do you know whatever
2 happened to the discipline with respect to those
3 troopers and what happened with that?

4 MR. ZOUBEK: I think there has been -- there
5 is -- I don't know if -- there are some charges that
6 have -- may have been brought. I don't know if they've
7 ultimately been resolved.

8 MR. CHERTOFF: But that wasn't followed up by
9 --

10 MR. ZOUBEK: What wasn't followed up by --

11 MR. CHERTOFF: I mean, you don't -- you can't
12 tell -- you didn't actually want to report or any
13 follow-up information concerning tracking what happened
14 with respect to those troopers, correct?

15 MR. ZOUBEK: No, I was -- I was happy to
16 remove one hat that I had which was as the head of the
17 State Police Review Team. When we established the
18 Office of State Police Affairs, that was -- assignment
19 was brought over to the State Police Affairs and to the
20 new Superintendent.

21 MR. CHERTOFF: By the way, in the interim
22 report to the extent there is reference to data, actual
23 or statistical data based on arrests and stops, things
24 of that sort, isn't that really -- that's all the State
25 Police data that was either in Mr. Rover's file that you

1 subsequently received from the State Police when you
2 asked for more information, correct?

3 MR. ZOUBEK: Yes -- the data --

4 MR. CHERTOFF: In other words --

5 MR. ZOUBEK: -- data on the New Jersey State
6 Police was --

7 MR. CHERTOFF: Right.

8 MR. ZOUBEK: -- from the New Jersey State
9 Police.

10 MR. CHERTOFF: In other words, between the
11 time your Review Team was inaugurated in February and
12 the time your report was issued on April 20th, the
13 Review Team, itself, didn't know statistical analysis or
14 compilations? It simply took what the State Police had
15 done and put it into this document, right?

16 MR. ZOUBEK: Yes. Someone was assigned to see
17 if statistical -- additional statistical analysis could
18 be done and given the expedited nature of the report, we
19 relied on the documents that have been provided to the
20 State Police Review Team.

21 MR. CHERTOFF: And so, specifically, as it
22 relates to consent to searches, that's really all the
23 material that Gilbert compiled in 1996, 1997 and 1998,
24 right?

25 MR. ZOUBEK: No, because Gilbert had those

1 documents, but he did not compile the '97 and '98
2 monthly summaries. Those went through the regular chain
3 in command of the State Police and he -- they had them
4 in his possession.

5 MR. CHERTOFF: By the way, did anybody ever
6 tell you they had specifically asked for '97 or '98
7 consent to search data?

8 MR. ZOUBEK: Dave Hesse had told me that there
9 was a request for recent data. I don't know if it was
10 broken down to '97 and '98.

11 MR. CHERTOFF: And, also, just to be clear in
12 your -- in your interim report, to the extent you have
13 consent data from '94 and '96, that would come from that
14 undated document we've been putting up on the -- on the
15 television screen, correct?

16 MR. ZOUBEK: That or whatever underlying
17 documents relate to that.

18 MR. CHERTOFF: Now, let me ask you as it
19 finally as it relates to consent -- the consent to
20 search issue. Either in going over the report with the
21 Attorney General or in preparation for the hearings, did
22 you discuss with the Attorney General the statement in
23 the final report that said, "Certain consent to search
24 data provided to us are a sufficient cause for concern
25 as to warrant careful case by case review to be

1 undertaken by the Superintendent."

2 MR. ZOUBEK: I did not -- he read the interim
3 report. I did not have a specific discussion with him
4 on that.

5 MR. CHERTOFF: Do you actually agree with that
6 statement?

7 MR. ZOUBEK: Yes.

8 MR. CHERTOFF: So, in other words, your belief
9 is that the consent to search data that was provided as
10 significant in and of itself to warrant a case by case
11 review of the underlying cases, right?

12 MR. ZOUBEK: Yes.

13 MR. CHERTOFF: Now, did you have any
14 discussion with the Attorney General about his view of
15 consent to search data as it relates to what he had been
16 told in the past about consent to search?

17 MR. ZOUBEK: Only to the extent to which he
18 informed me that he had -- was told that it was not
19 relevant or determinative of the issue of whether racial
20 profiling was occurring.

21 MR. CHERTOFF: Did he tell you when you talked
22 to him in preparation in a meeting that he had received
23 a memo from Deputy Attorney General Rover exclusively
24 discussing the significance of the consent to search
25 numbers in New Jersey -- withdrawn. That he received a

1 memo for Deputy Attorney General Rover specifically
2 discussing the significance of consent to search
3 information as it related to Maryland?

4 MR. ZOUBEK: No. I don't recall that.

5 MR. CHERTOFF: Did he tell you that in July of
6 1997 he had received documents relating to the number of
7 stops on the -- in Moorestown and in the Cranbury
8 Stations in '95 and '96?

9 MR. ZOUBEK: No, that was not discussed.

10 MR. CHERTOFF: By the way, did the Sachetti
11 audit data that was generated in February or later --
12 February '99 or later by Lieutenant Sachetti ever find
13 its way into the interim report?

14 MR. ZOUBEK: Yes and no.

15 MR. CHERTOFF: Show me where the answer --
16 show me where "yes" --

17 MR. ZOUBEK: It had an -- when I received it
18 on February 10th as the ultimate head of the State
19 Police Review Team what I saw with respect to stops had
20 an impact on the -- what we -- what we relied on was the
21 -- it had squadded individual trooper information. What
22 we relied on was the -- the monthly summaries. So, the
23 receipt of that data on February 10th had an impact on
24 Ms. Stone and an impact on myself. The data that's
25 included in the report in the charts is out of what was

1 received on March 15th.

2 MR. CHERTOFF: The -- my questions is, is the
3 actual data -- is the actual data provided by the
4 Lieutenant Sachetti in the report in any place?

5 MR. ZOUBEK: No, because it was broken down by
6 trooper and by squad.

7 MR. CHERTOFF: So, the answer's -- it's not in
8 the report?

9 MR. ZOUBEK: No, the exact numbers are not in
10 the report.

11 MR. CHERTOFF: There were station totals in
12 the Sachetti document, correct?

13 MR. ZOUBEK: Yes.

14 MR. CHERTOFF: Are those in the report?

15 MR. ZOUBEK: No, because they covered a
16 similar period of time to the monthly compilations and
17 we relied on the monthly compilations.

18 MR. CHERTOFF: So, they're not in the report?

19 MR. ZOUBEK: That's what I -- I said that.

20 MR. CHERTOFF: By the way, was there a power
21 point presentation presented to you shortly before the
22 report was issued on April 20th concern -- containing
23 some additional information?

24 MR. ZOUBEK: I believe it was the morning of
25 April 16th.

1 MR. CHERTOFF: And was that included in the
2 report?

3 MR. ZOUBEK: Some of it was footnoted. That
4 presentation I received from the State Police on April
5 16th was basically, we're making this presentation
6 because we believe that racial profiling does not occur.
7 I rejected some of the analysis and I included some of
8 their data.

9 MR. CHERTOFF: Was there a request to -- by
10 them to delay the report so as to allow a fuller
11 analysis in the numbers they provided?

12 MR. ZOUBEK: No, but I would have made -- if -
13 - if I thought it was appropriate, I would have made a
14 determination to -- to delay.

15 MR. CHERTOFF: Would you agree with me --
16 well, you've since looked at the July -- at the
17 Moorestown data from 1996 that's included in the July
18 29th, 1997 memo that went to the Attorney General that
19 says, 62 percent of the people searched or asked for
20 consent to search were minorities. You'd agree with me
21 that that is a significant number that would have
22 warranted case by case review as you recommended in the
23 interim report, right?

24 MR. ZOUBEK: It's consistent with your
25 approach in the interim report, yes.

1 MR. CHERTOFF: And that was as true in 1997 as
2 is was true -- as true in 1999, correct?

3 MR. ZOUBEK: I think the conceptual position
4 would be the same.

5 MR. CHERTOFF: Now, in 1999 at the same time
6 or rather the day before the report was issued, there
7 was an indictment of Troopers Hogan and Kenna for
8 falsification of documents, correct?

9 MR. ZOUBEK: Correct.

10 MR. CHERTOFF: And was there a meeting that
11 you had in -- earlier in the year with the Attorney
12 General concerning the timing of that indictment?

13 MR. ZOUBEK: Yes.

14 MR. CHERTOFF: Who was present at the meeting?

15 MR. ZOUBEK: It was myself, the Attorney
16 General, Debra Stone and James Gerrow.

17 MR. CHERTOFF: And what was the discussion?

18 MR. ZOUBEK: The Attorney General had asked
19 for -- my calendar reflects, I believe, that the -- the
20 meeting which was on March 10th says, 7A or status of 7A
21 and it was a meeting to discuss the status, as I
22 understood it, of the investigation relating to Troopers
23 Hogan and Kenna.

24 MR. CHERTOFF: And what was said in the
25 meeting?

1 MR. ZOUBEK: The meeting started off with a
2 request from the Attorney General to have an update as
3 to the -- to the status of those -- those cases or those
4 investigations, I should say. I recall that Jim Gerrow
5 advised the Attorney General as to the status as to the
6 shooting portion of the investigations and that it would
7 be a number of months before that could be completed
8 because the -- the case had become quite complicated
9 once we had brought in Dr. Henry Lee and there being a
10 request to have a reconstruction or re-enactment out on
11 the -- the Turnpike.

12 MR. CHERTOFF: And so what was said next?

13 MR. ZOUBEK: The Attorney General then asked
14 if he was aware of the falsification portion of the case
15 and that the falsification portion of the case had not
16 been put into the shooting Grand Jury, that had -- the
17 shooting Grand Jury -- the record reflects in that case
18 it had already met beginning sometime, I think, in
19 December or November, December or January. No portion
20 of that case had gone in and he asked whether or not the
21 falsification investigation was completed at that point.

22 MR. CHERTOFF: And what was he told?

23 MR. ZOUBEK: He was told that the
24 falsification investigation with respect to Hogan and
25 Kenna was completed --

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MR. CHERTOFF: But not --
MR. ZOUBEK: -- at that time.
MR. CHERTOFF: -- but not with respect to any other troopers?
MR. ZOUBEK: We were focusing on Hogan and -- on Kenna at -- at that time. I don't know if there was a Troop D discussion at that time.
MR. CHERTOFF: And when the Attorney General was told that the falsification case against Hogan and Kenna was complete, what did he say?
MR. ZOUBEK: He said, "Can we move the falsification portion of the case."
MR. CHERTOFF: Did he explain why he wanted to do that?
MR. ZOUBEK: He said that the anniversary of the shooting was coming up, that there was a substantial amount of focus and pressure with respect t that upcoming anniversary and that there was substantial criticism of the length of time the investigation's -- that Mr. Gerrow was involved in, was taking.
MR. CHERTOFF: And so, what was said in response to that?
MR. ZOUBEK: Well, what we discussed with the Attorney General was what the -- what the options were at that point in time and what the -- the risks of

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moving publicly a falsification case.
MR. CHERTOFF: And what were those risks?
MR. ZOUBEK: We identified that the primary concern would be because there was a pending Grand Jury on the shooting, that we would have to be concerned as it relates to any potential taint to that first Grand Jury by any public action that may be taken in the falsification case.
MR. CHERTOFF: And --
MR. ZOUBEK: We then explained to the Attorney General that given the amount of publicity with respect to these investigations, that those risks were substantial in -- in those cases, under the circumstances and we reviewed with him that what would have to occur is something referred to as a "Brook-Murphy Hearing" in which the first Grand Jury, the shooting Grand Jury, all of them would be interviewed by the DAG under the supervision of the -- the Grand Jury judge to ensure that there haven't been any improper taint. If there was improper taint by the release of a falsification case, what could happen is you would -- you could lose that -- that Grand Jury and have to re-present to another Grand Jury.
MR. CHERTOFF: And what did the Attorney General say in response to you -- you -- people in the

1 room having identified this problem?

2 MR. ZOUBEK: Well, I -- we had a discussion of
3 -- of the -- what had happened so far as it relates to
4 the steps that have been taken on Brook-Murphy with
5 respect to the first Grand Jury and it was emphasized to
6 him that significant steps have been made to instruct
7 the Grand Jurors not to view what was in the -- what
8 was in the press. We then had a -- there was then a
9 discussion in which the Attorney General identified that
10 -- that he believed it was important to move forward
11 with the falsification case to the Grand Jury at this
12 time before the anniversary of the shooting.

13 MR. CHERTOFF: Did the other people in the
14 room, besides the Attorney General, ultimately agree
15 with the decision to move -- take the risk and move
16 forward with this falsification indictment?

17 MR. ZOUBEK: Well, I think what happened in
18 that meeting, Mr. Chertoff, was essentially we were
19 providing advice to the Attorney General. Debra Stone,
20 Jim Gerrow and myself identified the risks that were
21 going to be -- would come with, if you will, indicting
22 that -- having that case presented to the Grand Jury
23 before the shooting Grand Jury voted and we identified
24 that there were some -- I think I used the word
25 "substantial" risks as it relates to -- to taking that

1 approach. They could be cured by an appropriate Brook-
2 Murphy hearing and that was the advice that he was given
3 at the time.

4 MR. CHERTOFF: And, by the way, a Brook-
5 Murphy hearing would, you know, be somewhat time
6 consuming in require, among other things, a judge to
7 participate in that hearing, correct?

8 MR. ZOUBEK: Yes, particularly under the
9 circumstances of -- of this case and the pub -- the high
10 publicity that it was receiving.

11 MR. CHERTOFF: And the Attorney General made
12 what decision?

13 MR. ZOUBEK: The Attorney General instructed
14 us to move forward with the falsification presentation
15 prior to the anniversary of the shooting, which was
16 April 23rd that year.

17 MR. CHERTOFF: And when you and the other
18 people who had met with the Attorney General left the
19 room, did you have a discussion amongst yourself
20 concerning the meeting?

21 MR. ZOUBEK: Yes.

22 MR. CHERTOFF: What was the discussion?

23 MR. ZOUBEK: Well, I met with Debra Stone and
24 Jim Gerrow and sat down and said, look, we all have to
25 be absolutely comfortable with this, given the risks

1 that are entailed here and I want to hear from anyone if
2 we're not comfortable with this approach.

3 MR. CHERTOFF: And what was said?

4 MR. ZOUBEK: Well, it was the discussion that
5 there were risks that were being taken by this -- this
6 approach, but there was no further objection raised to
7 the Attorney General.

8 SENATOR GORMLEY: What we're going to do is -
9 - oh, excuse me -- what we're going to do is we'll ask
10 the witness -- the balance of the test -- questions will
11 -- coming from the Members of the Committee, we ask that
12 the witness be available for Monday for questions from
13 Members of the Committee and possible additional
14 questions from Mr. Chertoff and there are certain
15 matters we -- Scott -- we want to Scott to hear -- the
16 record right now.

17 MR. WEBER: Just wanted to make part of the
18 official record of these proceedings the following
19 documents: the certification of Paul H. Zoubek dated
20 February 13, 2001, as one of the custodians for the
21 record; a letter dated January 30, 2001 from Robert E.
22 Fabricant, then Chief Counsel to Governor Whitman as
23 custodian of the record; the certification of Howard E.
24 Butts dated January 30, 2001, as a custodian of the
25 records; the certification of Debra Stone dated February

1 13, 2001, as a custodian of the records; March 20, 2001
2 submission by Former Attorney General Robert Del Tufo, a
3 letter as well as a binder containing documents and
4 copies of articles; and a March 26, 2001 letter from
5 Robert Mintz's attorney to Justice Peter Verniero as
6 well as a summary and analysis of deposition and
7 interview testimony from the Senate Judiciary
8 Committee's racial profiling investigations, copies of
9 which have been provided to all the Committee Members.

10 SENATOR GORMLEY: Okay. One -- one additional
11 matter that I discussed earlier. Senator Lynch and I
12 were going to do a review of the four-way on the nominee
13 to be Treasurer. We have been informed and that the
14 review of that nominee at the current time they're
15 gathering additional information.

16 The people who are doing the review or
17 investigation, if you will, are conducting it or were
18 conducting it recently and consequently instead of
19 pulling them in from those duties, we said it's
20 obviously more expeditious for them to complete their
21 review, the gathering of that additional information.
22 So, they're in the midst of gathering that information
23 in terms of the nominee for Treasurer. So, that's still
24 ongoing.

25 We will convene tomorrow at 10 o'clock.

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C E R T I F I C A T I O N

We, PAT KONTURA, TAMMY DiRISI, KAREN HARTMAN
AND JOY K. BRENNAN, the assigned transcribers, do hereby
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