
Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

ASSEMBLY JUDICIARY COMMITTEE

*“The Committees will receive testimony from
New Jersey Transit Executive Director Steven Santoro, and other invited guests,
on various issues concerning the agency, including personnel practices”*

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: August 25, 2017
11:00 a.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Robert M. Gordon, Chair
Senator Loretta Weinberg, Vice Chair
Senator Thomas H. Kean Jr.

Assemblyman John F. McKeon, Chair
Assemblyman Gordon M. Johnson, Vice Chair
Assemblywoman Elizabeth Maher Muoio
Assemblyman Andrew Zwicker
Assemblyman Michael Patrick Carroll
Assemblywoman Nancy F. Muñoz



ALSO PRESENT:

Miriam Bavati
Sarah A. Fletcher
*Office of Legislative Services
Committee Aides*

Mark J. Magyar
Senate Majority
Kate McDonnell
*Assembly Majority
Committee Aides*

Theodore Conrad
Christopher Emigholz
Senate Republican
Derek DeLuca
*Assembly Republican
Committee Aides*

***Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***



ROBERT M. GORDON
Chairman

LORETTA WEINBERG
Vice-Chair

M. TERESA RUIZ
PAUL A. SARLO
THOMAS H. KEAN, JR.
JOSEPH M. KYRILLOS, JR.

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New Jersey State Legislature

SENATE LEGISLATIVE OVERSIGHT COMMITTEE
STATE HOUSE ANNEX
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TRENTON NJ 08625-0068

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE

FROM: SENATOR ROBERT M. GORDON, CHAIRMAN

SUBJECT: COMMITTEE MEETING - AUGUST 25, 2017

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The Senate Legislative Oversight Committee will jointly meet with the Assembly Judiciary Committee on Friday, August 25, 2017 at 11:00 AM in Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.

The committees will receive testimony from New Jersey Transit Executive Director Steven Santoro and other invited guests on various issues concerning the agency, including personnel practices.

Issued 8/18/17

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New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
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COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE

FROM: ASSEMBLYMAN JOHN F. McKEON, CHAIRMAN

SUBJECT: COMMITTEE MEETING - AUGUST 25, 2017

The public may address comments and questions to Miriam Bavati, Committee Aide, or make bill status and scheduling inquiries to Denise Darmody, Secretary, at (609)847-3865, fax (609)292-6510, or e-mail: OLSAideAJU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

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SENATOR ROBERT M. GORDON (Chair): This joint meeting of the Senate Legislative Oversight Committee and the Assembly Judiciary Committee will come to order.

Could you all please rise and join me in the Pledge of Allegiance? (all recite pledge)

SENATOR GORDON: Thank you.

May I have a roll call, please?

MS. FLETCHER (Committee Aide): Senator Gordon.

SENATOR GORDON: Here.

MS. FLETCHER: Senator Weinberg.

SENATOR LORETTA WEINBERG (Vice Chair): Here.

MS. FLETCHER: Senator Kean.

SENATOR KEAN: Here.

ASSEMBLYMAN JOHN F. McKEON (Chair): Please, on the Assembly side, roll call.

MS. BAVATI (Committee Aide): Assemblywoman Munoz.

ASSEMBLYWOMAN MUNOZ: Here.

MS. BAVATI: Assemblyman Carroll.

ASSEMBLYMAN CARROL: Here, reluctantly.

MS. BAVATI: Assemblyman Zwicker.

ASSEMBLYMAN ZWICKER: Here.

MS. BAVATI: Assemblywoman Muoio.

ASSEMBLYWOMAN MUOIO: Here.

MS. BAVATI: Assemblyman Johnson.

ASSEMBLYMAN GORDON M. JOHNSON (Vice Chair):
Here.

MS. BAVATI: Chairman McKeon.

SENATOR KEAN: Wow; look at that -- commanding presence. (laughter)

ASSEMBLYMAN McKEON: Present.

SENATOR GORDON: Good morning, everyone.

Last Tuesday, our good friend and colleague, Senator Jim Whelan, passed away. And I believe this is the first meeting of the Legislature since then. And I think it would be appropriate just to pause for a moment and keep him in our thoughts. (moment of silence)

Thank you very much.

Good morning, everyone. I'm Senator Bob Gordon and I am the Chair of the Senate Legislative Oversight Committee. And this is a continuation of our joint hearing, with the Assembly Judiciary Committee, on New Jersey Transit.

The last several hearings have been dominated by safety, and operational, and service issues in the wake of the massive delays that followed the April derailments and Amtrak's major repairs at New York's Penn Station; and the New Jersey Transit, PATH, and New York waterway's response to the shutdown of 25 percent of the Penn Station track capacity.

That work is on schedule for completion by September 1, as planned; and the transit agencies and our commuters did a greater job in preparing for and developing alternative ways to get to New York.

Today's hearing returns to some of the major issues raised in our earlier hearings into New Jersey Transit's operations, administration, and personnel policies.

Joining us today are two attorneys, Nancy Erika Smith and Rav Sattiraju, who are experts in employee law, and they will talk about a disturbing pattern of practices pertaining to New Jersey Transit's handling of discrimination complaints and lawsuits.

We also welcome New Jersey Transit Executive Director Steve Santoro, and recognize that these endemic problems go back years in the agency, long before he took over as Executive Director.

We will also be focusing heavily on New Jersey Transit's management and hiring practices; and the continuing allegations about patronage that have come into our offices and are the subject of informational subpoenas issued by the Assembly Judiciary Committee, about which my Co-Chair John McKeon, I'm sure, will have something to say.

We will also return today to questions about the ability of New Jersey Transit to fill key operational and safety positions; about backlogs in the hiring of engineers; and about New Jersey Transit's ability to transition back to its regular schedule without another round of train cancelations due to staff shortages.

With that, at this point, let me turn to my Co-Chair, Assembly McKeon.

ASSEMBLYMAN McKEON: Thank you, Co-Chair.

And as much as it's wonderful to be with all my colleagues, I always like to take the time to thank you for your intellectual approach to all of this and working so cooperatively, Senator Gordon. I appreciate that much.

And thanks, on behalf of all of us, to both partisan and nonpartisan staff, who have been amazing through this process.

I'm going to be very brief in opening. I concur with my Co-Chair; I think we have talked a lot about the capital budget -- the dearth of funding. We've talked about how that's matched, unfortunately, with a significant increase in ridership. We've talked, in general, about the many incidents -- that they're well-chronicled -- and the reasons for them; and we've spoken much about the Summer of Hell which, happily -- and to a lot of people's credit -- is drawing to an end with the least bit of inconvenience as there could have been -- not that they deserve any -- to the commuters.

But today I think is a little bit different, as far as the hearing is concerned. Today is about leadership, about internal operations, and about the culture of NJ Transit that has to be a part of the solution as we get through these hearings and we turn over a new leaf come January, with a new Administration and a new Governor.

So with that, again, I thank you, Chair--

SENATOR GORDON: Thank you.

ASSEMBLYMAN McKEON: --and look forward to today's spirited hearings.

SENATOR GORDON: Let me turn to the Majority Leader, Senator Weinberg, and then we'll hear from Senator Kean.

SENATOR WEINBERG: Okay; thank you very much to the Co-Chairs; thank you to all of the legislators who did manage to get here on Friday (laughter), and to enable us to have this important Committee meeting.

You know, as we try to set policy for probably one of the most, -- if not the most important agencies in the State of New Jersey -- in order to rebuild our state, we need this infrastructure, and we need it working and we need to be able to get people through our state and around our state.

But policy only gets carried out by the people who are working there. So I think that this morning's hearing is very important, because we need to have a properly staffed Department of Transportation, and certainly a properly staffed New Jersey Transit, with people in the right positions; and with a culture that respects all of its employees, and with a culture that represents the diversity of the State of New Jersey that these fine employees are being called upon to serve.

So I'm glad we're having this hearing, and I am looking forward to hearing, most particularly, from the two attorneys who are represented here today.

SENATOR GORDON: Thank you, Senator Weinberg.

Senator Kean.

SENATOR KEAN: Thank you, Mr. Chairman.

I echo your sentiments to Senator Whelan; he was a kind and decent individual, and he will be sorely missed. And thank you for recognizing that moment of silence, sir.

And it is necessary and appropriate that we, as a Legislature, look at what's going on in the Executive Branch because, obviously, their actions impact the lives of all of our constituents; all the people who are trying to get to and from work, people who are trying to get to and from their families. And there needs to be an integrated system that works well, is predictable, and makes sure that there is communication to these people

who are relying on -- whether it's New Jersey Transit, or the Department of Transportation, or anybody else in State government -- to plan their lives, and plan their days, and to get to work and home to the family. It's an important part.

I am concerned today about the witness list, in that it's-- I know in our Legislative Offices, if there is an active lawsuit, in any way, we are actually barred from engaging the State agency in any way, shape, or form. And the fact that these two first witnesses actually have active lawsuits against New Jersey Transit -- it is my sense-- So I have some very significant concerns about the nature of having to take testimony, which the agency will, by definition, be unable to answer in any way, shape, or form. And so I think that I have great concerns regarding this witness list to start.

Secondly, if we are going to focus on personnel issues, I really think we need to continue to focus on issues like the absenteeism. Because those types of individuals, who are leaving their jobs for seemingly inappropriate reasons, with no notice, are imperiling the health, safety, and welfare, and also the predictability, of our citizens.

So, if I may, I just wanted to start this hearing by registering my objection to the fact that we have witnesses who can't, by any way, be unanswered; and there may also be a very inappropriate nature of the testimony to begin with.

SENATOR GORDON: Thank you, Senator Kean. Your concerns are noted.

Okay; I know that Senator Weinberg has wanted to hear about hiring practices and discrimination -- allegations of discrimination in this agency. We have, I think, not been -- we have not been entirely satisfied by

some of the responses that we have been getting from the agency, and I think that is why we've looked to alternative sources.

So I'd like to begin this hearing by calling these two attorneys, who can share some information about how this -- at least from their perspective -- how this agency operates.

And we are calling Nancy Erika Smith and Rav Sattiraju; either one of you, please begin.

NANCY ERIKA SMITH, Esq.: Good morning.

SENATOR WEINBERG: Bob--

SENATOR GORDON: Excuse me.

SENATOR WEINBERG: --excuse me.

Just hold on one moment.

(confers with Chair)

SENATOR GORDON: Senator Weinberg raises a good point.

We are -- and in response to Senator Kean's concerns -- we are not going to be delving into the details of any of this litigation. These two individuals have been -- who we are going to hear from -- have had a good deal of interaction with this agency, and I think had we been able to get the information that we have been requesting for a number of months, we might not have had to pursue this route. But I'm sure what we'll be hearing today is more of a general impression of their interactions with New Jersey Transit and their personnel policies.

With that, let me allow our witnesses to proceed.

MS. SMITH: Thank you Senator; and thank you, Senators and Assembly members, for having me.

I will not talk about the pending litigation, although I wish I could.

My name is Nancy Erika Smith; I'm a partner at Smith Mullin in Montclair, New Jersey. I'm a Civil Rights lawyer; I've been a Civil Rights lawyer for 37 years.

About 10 years ago, I became aware of the toxic, corrupt, sexist, and racist atmosphere at New Jersey Transit. It continues to this day.

In 2006, Theresa Frizalone sued New Jersey Transit for sex discrimination and retaliation. A client of mine was a witness in the case. That case was defended for three years by the Office of the Attorney General -- of course, supported by the taxpayers of the State of New Jersey -- and during a month-long trial in Essex County. The jury awarded Ms. Frizalone \$549,000 on her failure to promote claim; \$210,000 for emotional damages for the retaliation; and \$1 million in punitive damages because it found that New Jersey Transit acted maliciously against Ms. Frizalone.

Then the Court ordered New Jersey Transit to pay another \$736,000 for attorneys' fees and interest. That means taxpayers paid \$2,285,650 after paying the lawyers in the Office of the Attorney General to defend this behavior.

My first case against New Jersey Transit was filed in 2009. With Kevin Barber, my firm represented 10 African American New Jersey Transit police officers with significant claims of race discrimination, including failure to promote, unfair discipline, and a hostile work environment. During discovery, it was learned that longtime Chief of New Jersey Transit Police, Joseph Bober, engaged in open racism. For instance,

he refused to shake the hands of African American police officers at public ceremonies. His e-mails to other executives at the New Jersey Transit Police Department included the n-word and referring to African Americans as “porch monkeys.”

We learned that an outside consultant was hired and found discrimination at New Jersey Transit; and that we believe the Board got that report and did nothing about it.

All 10 of these clients filed charges with New Jersey Transit’s Human Resources and EEO repeatedly. They got no help at all. In fact, Human Resources and EEO worked actively with the wrongdoers, and sat back while anyone who complained was retaliated against. This is after the million-dollar verdict that Ms. Frizalone got for retaliation.

This is an important fact. If HR and EEO won’t help victims -- and they don’t at New Jersey Transit -- and employees who complain are openly retaliated against, who in their right mind will complain? The message is getting out very clearly: If you complain, the wrongdoers will openly retaliate against you and nobody will help you.

During that case and others I have handled, we have had to fight tooth and nail for discovery of other complaints of discrimination. New Jersey Transit will probably come here -- and they have in the past -- and say that the EEO process is sacrosanctly secret. It’s so important that the EEO complaints be secret. Important for who? The wrongdoers. The victims don’t mind if they’re open. I’ve represented victims of discrimination for 37 years. The claim of secrecy helping victims is a complete falsehood; it’s hypocrisy. The people who want EEO complaints secret are the wrongdoers.

New Jersey taxpayers paid outside law firms millions of dollars to defend that lawsuit against New Jersey Transit Police. Three years after we filed, the case settled for \$5.8 million in 2012. If we tried the case in front of a jury, in my opinion, there would have been another zero at the end. Keep in mind, Ms. Frizalone got \$1 million for a one-plaintiff case. This was 10 very impressive, hardworking, African American New Jersey Transit Police Officers, who put their lives on the line every day for commuters in New Jersey, who were treated horrendously. And taxpayers paid to defend it.

During settlement discussions one year before we settled, the first thing we wanted to talk about was institutional change, not money. In fact, we refused to talk about money until we discussed institutional change. My clients had concrete ideas about how we could make New Jersey Transit safe for minorities and women to work in. The State of New Jersey wouldn't even discuss them. A year later, when it was clear that we were getting ready for trial and it could be a blockbuster verdict, New Jersey Transit agreed to one thing -- that they would hire an ombudsman to stand between victims who wanted to complain about discrimination and the useless HR and EEO process at New Jersey Transit. But we were not allowed to have any say in who the ombudsman was; the ombudsman was appointed from the AG's Office, which defends this behavior to this day. So nothing changed.

The next case that came to our office was eight African American employees in Operations, Procurement, Rail Operations -- the people who keep the trains, literally, running. We had extensive evidence of discrimination against black employees -- they're paid less for more work,

they're denied promotions while less qualified whites get them. They're denied perks, like working from home or having a private office. And they were subject to daily racist humiliations.

They, too, had filed numerous HR and EEO complaints, which went nowhere; none of them, not one of them ever got remedied.

The AG's Office, again, hired an outside law firm, and we litigated the case for years before it settled last summer for \$3.65 million, taxpayer money. Again, I believe a jury would have ordered a much larger verdict. Again, we tried very hard to make part of the settlement institutional change. Again, that was completely rejected.

Within weeks of the settlement, the lead plaintiff, Pia Wilson, was transferred from her office at Penn Plaza in Newark where she had worked for 27 years -- in a suit, in an office, 9 to 5. She was transferred to a rat-infested warehouse. That is subject to current litigation, so I will abide by Senator Kean's request that we not discuss that abomination.

I do have with me a court order in that case -- available to anybody who wants to read it -- where a judge ordered, on an order to show cause -- the first time I won one in my 37 years as a lawyer -- ordering Ms. Wilson out of that warehouse. It's very interesting reading from a judge about New Jersey Transit.

So what happened to the individual defendants in the cases that are not being litigated now? What happened to the individual defendants who the State of New Jersey defended -- did not make get their counsel? Jim Schworn, one of the worst actors, was promoted. Some of the other named defendants I think are on the witness list here today.

The lessons I've learned from these cases include: New Jersey Transit has a cancer that is festering and growing. Despite millions of dollars for outside lawyers, for the AG's Office, in settlements, nothing has changed. New Jersey Transit employees -- who are busy harassing minorities and women, discriminating against them, planning and executing retaliatory schemes, helping their friends get raises, dealing with political patronage, work-from-home deals for girlfriends and wives, kids' internships where the kids do no work -- they're not doing their jobs for New Jersey commuters. The victims of discrimination, who have to deal with daily humiliation -- more work, less pay, failing to get promotion after promotion -- they can't do their best work for New Jersey commuters.

The Board of New Jersey Transit has taken no action and has expressed no interest in any of these cases, despite the millions of dollars being paid. A Board Committee should be formed that oversees complaints of discrimination and that has to report to this body, once a year at least.

HR and EEO at New Jersey Transit should be disbanded. It's an abomination. If I could tell you about the most recent case -- and if anybody wants to hear about it, I would love to -- you would know that it is disgusting how HR and EEO protects wrongdoers.

Finally, the Office of the Attorney General should stop defending the indefensible and start representing the people of New Jersey and the values we hold, even including the values contained in the Law Against Discrimination.

I have two examples of how the AG's Office handles these cases now; but again, Senator Kean doesn't want to hear about them. If any of

you do, I have two very poignant examples of how the Office of the Attorney General treats these cases.

ASSEMBLYMAN McKEON: May I just interject?

I greatly respect Senator Kean. But if names are not used, and you can speak to us in general terms, I, again, respect his wishes, but I think this Committee would like to hear on the substance of what it is you want to discuss -- again, with privacy kept.

MS. SMITH: Thank you.

ASSEMBLYMAN McKEON: No one's better than you in being able to do so.

MS. SMITH: Okay; when my client was transferred to the rat-infested warehouse after 27 years in an office, she filed a retaliation complaint a year ago. Nothing happened; nothing. She wasn't interviewed; nothing. In fact, she was told, "It will take me about a year to get to this complaint."

That was funny because, in a prior case, I have a written document in which the same person at New Jersey Transit said, "We don't investigate claims that are more than a year old." That was funny, because the statute of limitations under the LAD is two years. This is documented.

Shortly thereafter, a white male employee came to work, last October 31, with a T-shirt with Hilary Clinton behind bars, "Lock her up;" in a Trump mask. My client is his superior; my African American female client is his superior. This white man kept putting his face with this Trump mask and this "Lock her up" in my client's face, repeatedly, during the course of the day. We don't have to guess about it; he bragged about it on Facebook. I have the pictures. And he bragged about her not liking it.

She said, openly, that she was going to file a complaint against him; he heard about it, he filed a complaint against her. Guess what complaint they investigated first? And they found there's nothing wrong with showing up at work with a Trump mask, "Lock her up," Hillary Clinton, getting in your supervisor's African American female's face. Didn't violate any policies at New Jersey Transit to do that. This is -- I have documents and pictures.

Regarding how the AG's Office handles these matters -- the court always asks us to go to mediation so that we don't all spend a lot of time and money when cases maybe can get resolved. I try to resolve every one of these cases before we litigate them; every single one. I've done that for 37 years. In this case, the court ordered us to go to mediation, and the Attorney General wrote a letter -- not *the* Attorney General, the Deputy Attorney General -- "Please be advised that although we intend to participate in the mediation process in good faith, we do not have authority to participate beyond two hours; and we don't have any authority to pay beyond the two hours; and I don't have any settlement authority from my client at this time. Furthermore, any mediation prior to depositions being conducted would be premature." That's the Attorney General saying, "We don't even want to discuss settling a case for somebody who has already won a case against them."

Second example: Using no names -- thank you, Senator -- we have a client who, for years, has worked close to her home. She had a car accident and has a severe back injury, so driving is difficult. When she returned to work after the accident, she was moved from her office -- which

is empty now, close to her home -- and told to drive 67 miles each way to work in a conference room.

We wrote a letter to New Jersey Transit, and we wrote it to this same lawyer who represents New Jersey Transit from the Office of the Attorney General. “Dear so-and-so, Enclosed please find a letter.” It’s called a negotiation letter; we write them all the time, trying to resolve things before litigation. The answer back to our paralegal, “Why did you send me this correspondence? I’m not authorized to accept service of this document on behalf of New Jersey Transit.” A lawyer from my office writes back, “Who should I address it to? I sent this to you because you’ve been representing New Jersey Transit in other matters. If you don’t want to review it, I’ll send it to the Attorney General himself.”

Now, for 37 years we do this. If I know a lawyer represents a client, I go right to that lawyer. Why am I going to communicate with that lawyer’s client? That’s unethical, if I know who the lawyer is. Or, sometimes lawyers change, and professional lawyers say, “I’ll forward your letter; I know who represents that client now.” Maybe even pick up the phone and talk to me. No; we got back, “Your office has either commenced or participated in numerous lawsuits involving the State of New Jersey and, in particular, New Jersey Transit; and it has done so without the advice or consent of this office. Given this history, your office’s resources should better enable to answer your questions in this regard.”

This is an Attorney General representing the taxpayers; we’re trying to say, “Can we resolve an issue?”

We wrote back, “Thank you. You’re correct that our office has successfully sued the State of New Jersey on many occasions. It’s good to

see that the Attorney General's Office remains committed to ignoring discrimination and retaliation in its many departments. We're just trying to start a conversation about why an injured woman now has to work in a conference room 67 miles away from her home, when her office near her home is empty, and we get nothing but snotty responses from the Attorney General's Office." Unprofessional responses.

Bear with me for one minute. I have received the Medal of Honor from the New Jersey State Bar Association; its highest honor. I have received the Gold Medal from NJAJ, the New Jersey Association of Justice, its highest honor. Justice Barry Albin gave me the Professionalism Award, which I'm very proud of. That response is unprofessional; that response is beneath every DAG in the office. That response not saying, "I can't handle it, but I will find somebody who can talk to you about this issue, whether we agree or not," is unprofessional. And that is not the way to represent the taxpayers of the State of New Jersey. That's the attitude in the Attorney General's Office, in New Jersey Transit HR, in New Jersey Transit EEOC. I'm the enemy, my clients are the enemy; the discriminators are the people who they represent again, and again, and again. And it's a travesty.

Thank you.

SENATOR GORDON: Thank you; thank you, Ms. Smith.

Just a question occurs to me. You've been doing this for 23 years. Have you seen situations like this before in other agencies or in other Administrations?

MS. SMITH: I have never seen an agency where the culture is so endemic; where HR and EEO actually participate in the retaliation. Never; I have never seen an agency of government that doesn't try to learn

from these kinds of multi-million dollar verdicts and settlements. I have never seen another municipality, county agency of the government in any Administration be used in such a corrupt way for political patronage and cronyism as this agency.

SENATOR GORDON: What accounts for this? I mean, why within this agency, and why now? I mean, what it is-- Is there some confluence of factors that give rise to this?

MS. SMITH: I really don't understand it; it doesn't make sense. It's almost like a personal vendetta. It's protecting their own; they do have a -- they have a kind of good thing going there. I mean, if you have an office in Newark and there are lots of kids there who could benefit from New Jersey Transit internships, but you can get your kid a paid internship where your kid doesn't have to do much, or where you can get your wife a job working from home-- I mean, it's a little group of people running a giant organization for their own benefit. And for some reason, the Attorney General's Office condones it and allows it.

SENATOR GORDON: I'm sure there are going to be a number of questions.

Let's hear from Mr. Sattiraju; would you please proceed?

R A V I S A T T I R A J U, Esq.: Senators and Assembly people, my name is Ravi Sattiraju, and I head an employment law firm in Princeton, New Jersey.

I greatly appreciate the opportunity to speak before this august body on this important issue.

The proper and efficient functioning of New Jersey Transit is of great importance to all New Jersey residents. I live and work in this state,

and I am raising a family here. It's my sincere hope that my four children will live in this great state and not have poor commuting impact the quality of their lives.

I'd like to share my perspective on how the rampant litigation at New Jersey Transit is compromising its long-term mission.

I've been practicing law for 19 years and have focused on labor and employment litigation for that entire time. For much of my career, I represented both private and public sector employers. I also spent time as an in-house employment counsel, where my primary role was counseling employers on human resources issues and minimizing the risk of litigation. For the past eight-and-a-half years, I have headed my own firm in Princeton, where I've primarily represented employees.

I'd like to discuss how this continued litigation is toxic for New Jersey Transit on numerous levels.

First, we have to acknowledge that the results of these litigations have been terrible. It is fair to say that any large employer is subject to a certain amount of employment litigation. However, as set forth by Ms. Smith, New Jersey Transit has been hit with a series of blockbuster verdicts and settlements. I am unaware of any other public entity, or private employer, in New Jersey that has suffered a similar streak of major verdicts and settlements in recent years. Unless action is taken and reforms are implemented, this troubling trend will continue and worsen.

Second, we have to acknowledge that the implication of these results is severe. When an employer is seen as being indifferent or hostile to the rights of its own workers -- as New Jersey Transit must after these results -- it has a deleterious impact on a workforce. Workers feel

demoralized if their rights are not respected and that their employer is fighting those who are standing up for themselves and others. Moreover, time spent in depositions, investigations, consulting with Human Resources and in-house counsel, all take New Jersey Transit employees away from their jobs.

Third, there is a major problem with recurring cases involving the same bad actors. When bad actors and decision makers stay in place, other claims are sure to follow, especially when plaintiffs are existing employees they are sitting ducks for retaliation by these same bad actors. The key issue here is a lack of consequence for people who cause these litigations to happen.

Punitive damage verdicts are only going to get higher because juries will have the impression that New Jersey Transit does not care about discrimination in its workplace. Any case that goes to trial now against New Jersey Transit in a punitive damage phase -- it's going to come up that this agency has been hit time, and time, and time again, and nothing has been done.

I understand that a public entity may want to fight frivolous cases. However, New Jersey needs to understand that in light of these results, the judgements of its decision makers have been wrong. The numbers that Ms. Smith is talking about in settlements -- they don't happen every day; these aren't settlements that are paid for frivolous cases. These are real cases where they are scared of going to trial and getting hit even harder.

Instead of admitting its mistakes and/or changing its approach, New Jersey Transit is doubling and tripling down on a flawed approach. I

have a client who has been subject to retaliation, but I will not discuss the facts and details, as per the earlier request. But this approach simply makes no sense.

Fourth, we have to remember that these are taxpayer resources. Taxpayers are paying in numerous ways because of this ongoing litigation. New Jersey Transit has paid millions of dollars in outside counsel fees from losses -- from losing cases. Our Deputy Attorney General is taking time and resources away from the Attorney General's Office to defend these losing cases. Moreover, diminished productivity and morale is the natural byproduct of this litigious environment, which harms the public.

Finally, we must identify steps to improve current conditions at New Jersey Transit. I respectfully submit that we need greater oversight and a new approach. The same decision makers should not be allowed to continue with the current course, as their judgement has been proven wrong on multiple occasions.

I have seen other public and private entities fix discriminatory and retaliatory work environments by acknowledging prior mistakes, reasserting their commitment to workers, and engaging their employees in this effort. I sincerely hope that's what happens for this crucially important agency.

Thank you for the opportunity to speak before you today.

SENATOR GORDON: Thank you very much.

ASSEMBLYMAN McKEON: Thank you.

SENATOR GORDON: I know that Senator Weinberg has some questions to raise.

SENATOR WEINBERG: I'm actually going to save most of my questions for New Jersey Transit, Mr. Santoro, who I don't see--

SENATOR KEAN: Is here.

SENATOR WEINBERG: Is he here?

SENATOR KEAN: Yes.

SENATOR WEINBERG: Yes; okay -- when he's called.

But I'm interested to know -- particularly from you, Ms. Smith, because you mentioned the New Jersey -- the Board of New Jersey Transit, which is a question I've asked as we were gathering these documents. Apparently there's a rule that any settlement of \$500,000 or below -- I guess that's just considered chump change -- doesn't go before the Board for discussion; but anything \$500,000 and above does.

Well, now, you have told us about millions of dollars in settlements; millions of dollars exclusive, as you said, of the Attorney General's cost in defending some of these cases. To your knowledge, has there been any discussion with the victims in these cases brought to the New Jersey Transit Board?

MS. SMITH: The Board has never been interested--

SENATOR WEINBERG: I'm sorry; turn on your microphone.

MS. SMITH: Oh, I'm so sorry. The Board has never been interested in speaking to me or my clients, ever.

MR. SATTIRAJU: And I would like to add -- many of these people are still existing employees.

MS. SMITH: Yes.

SENATOR WEINBERG: Many of both the wrongdoers and the victims.

MR. SATTIRAJU: Right.

MS. SMITH: Yes.

SENATOR WEINBERG: Yes; well, which is why it is very important that we get some answers here today. I mean, I think your testimony, without going into specifics -- just testimony about the settled cases-- And as you said, we haven't seen settlements like this; we're talking about \$3 million, \$5 million. We haven't seen settlements like this in other public agencies, to my knowledge.

MR. SATTIRAJU: Senator, if anyone is talking about a number -- making demand of \$3 million or \$5 million in the public sector or private sector, the answer that Ms. Smith and I would get -- and I don't want to speak for Ms. Smith, but the answer you're going to get is, "Well, go to a jury and go get it." We could litigate that case, try the case, and lose; and still may not have to pay that amount of money. The fact that they paid an entity -- any entity would pay that amount of money means that they felt that they were at substantial risk to have to pay even more -- a lot more.

MS. SMITH: Well, an important point -- every one of these cases could have settled early on for much less. And all of those clients would have taken even less if New Jersey Transit came to the table to include them in institutional change decisions.

SENATOR WEINBERG: And I'm glad that you mentioned that again, Ms. Smith. I would like to see whatever documents you might have in terms of the institutional change requests--

MS. SMITH: Requests?

SENATOR WEINBERG: --that were made on behalf of your clients.

MS. SMITH: I'll get those to you, Senator.

SENATOR WEINBERG: And I would like to know -- from New Jersey Transit, when they're ready to testify -- if they acknowledge or remember these documents, and where they went after they were delivered to New Jersey Transit.

Thank you.

MS. SMITH: Thank you.

SENATOR GORDON: Thank you very much.

Senator Kean.

SENATOR KEAN: If I may, through the Chair -- if we can have that for all the members -- for the purpose of the entire Committee.

SENATOR WEINBERG: Yes.

SENATOR GORDON: True.

SENATOR KEAN: Because one of the things we have been working on is always trying to figure out ways for the systemic change, whether it's this agency or any other.

MS. SMITH: Thank you.

SENATOR KEAN: So to the extent that there are recommendations out there, if you could share them, through the Chair, with the full Committee, that would be helpful.

MS. SMITH: Thank you, Senator.

SENATOR WEINBERG: If I may, if I said *I*, I should have used the more editorial *we*, obviously, on behalf of the Committee, in terms of the institutional changes. And in recognition of being bipartisan, some --

at least one of these lawsuits you talked about, started under the previous Administration.

MS. SMITH: Yes.

SENATOR WEINBERG: I'll point that out before Senator Kean does. (laughter)

SENATOR KEAN: I wouldn't discuss things like that, Senator. (laughter) You and I are both non-attorneys; I'm not sure what we can discuss and what we can't discuss.

SENATOR WEINBERG: Well, the case -- it was settled, we know the outcome of it, so we can certainly discuss it; and it pre-dates this Administration at its start. So, as I said, I want to put that on the record.

Thank you.

SENATOR GORDON: Thank you, Senator.

I want to add that we're not -- we haven't held all these hearings just for the purpose of embarrassing the Administration. The objective of these hearings is to try to find the root problems that give rise to these conditions. And my intention is to introduce legislation -- hopefully co-sponsored with others who participate in this process -- that will provide the reforms that we need; the transparency and the accountability, the whistleblower protections, the structural changes that may be necessary to prevent these problems from arising. That is certainly the end goal of this entire process. So I think whatever suggestions you can make for those structural changes would be appreciated.

Senator Weinberg.

SENATOR WEINBERG: Yes, one more question that I forgot.

Ms. Smith, you talked about the EEO complaint being secret.

MS. SMITH: Yes.

SENATOR WEINBERG: You're talking about the complaint lodged by the employee?

MS. SMITH: Yes. New Jersey Transit says in all these lawsuits -- and I'm sure says to you guys -- that the EEO process is secret; it's sacrosanct -- that the EEO process be secret. In the recent case, the day after the judge ordered my client out of the warehouse, EEO decided that they wanted to interview her, without me present, on her complaint -- before I sued them nine months earlier. And I couldn't be there because the process is secret and it's so sacrosanct that it be secret.

So again, I had to file another order to show cause; and for the second time in my 37-year career, I won another order to show cause. And the judge said, "No; you're not going to interview Ms. Smith's client without her there because *now* you're going to investigate her complaint of discrimination and retaliation." And they go to court -- and I have the transcripts -- "Oh, it's so important that the process be secret; it protects the complainant." I represent the complainant; it does not protect the complainant to keep these secret. What it does is make complainants feel alone, hide evidence of other discriminatory acts from complainants, and protect the wrongdoers. That's what it does.

MR. SATTIRAJU: And when we don't have access to other complaints -- a result of an investigation can be inconclusive if it's a he said/she said. But if there are four other people who made the same complaint, the complaint that Ms. Smith's client or my client would make all of a sudden becomes a lot more credible if the same person has been subject to the same accusation. So that's why, for purposes of what we're

talking about, it is important that we have a full view of what other complaints have been made.

MS. SMITH: Transparency is key.

SENATOR WEINBERG: If I may, Mr. Sattiraju -- you said you have served as an *employer* counselor.

MR. SATTIRAJU: Yes.

SENATOR WEINBERG: Is that usual -- keeping EEO complaints secret, or not?

MR. SATTIRAJU: Senator, there's a certain effort to try to do that. But the main effort behind doing that is they don't want people to know how many times they've been accused. So that's the reason -- the main reason employers have for not doing this. There are other mechanisms you can put in place in a litigation to protect privacy, including a confidentiality order or anything else. But the main reason that people don't want these complaints out is because it can lead to discovery on other issues of discrimination in that workplace. So that's the reason.

SENATOR WEINBERG: Okay; thank you.

SENATOR GORDON: Senator Kean.

SENATOR KEAN: If I may, just to follow up on Senator Weinberg's question.

Are there other areas of law or complaints that are similarly secret or kept confidential; or is this -- is there a different standard in EEO complaints?

MS. SMITH: The law does not require that they be confidential at all. New Jersey Transit will tell you that it does, but it doesn't. It's not the law--

SENATOR KEAN: Okay.

MS. SMITH: --it's their policies, picking up policies. You know, maybe the Department of Transportation has a policy that says, "We keep this secret." So they say that's the law; but it's not the law.

SENATOR KEAN: But are there other areas where-- Does this activity-- Is it mirrored in other areas of policy, in other departments, in other-- I'm saying, is this just-- If we're talking about, I guess, State government overall -- because this is going to go beyond just the issue; we're talking about the AG and everything else -- we're going to go beyond the simple, specific case to broader policy issues and changing legislation. Are there other areas that are similarly guided by policy, or by practice, or by law, kept not as transparent, if I could just phrase it that way? Or is this on personnel or other issues?

MR. SATTIRAJU: The only other thing is, maybe, an employee's medical records; there are HIPAA protections for things like that where--

SENATOR KEAN: From the Federal level; but from the--

MR. SATTIRAJU: Yes. But that would be the main area I would think of, off the top of my head, would be -- you want to maintain people's privacy in terms of medical issues.

MS. SMITH: Yes, I'm not -- I mean, certainly trade secrets are always subject to confidentiality; we all agree to that. Until we pass a really great equal pay act, salary is--

SENATOR KEAN: We've been working on that. (laughter)

MS. SMITH: I hope so.

SENATOR KEAN: My understanding is, we've been working on that for a while. (laughter)

MR. SATTIRAJU: We'll come back to that.

MS. SMITH: That's another area where transparency will help; transparency will help.

SENATOR WEINBERG: Pay equity?

SENATOR KEAN: We have been working on it for a while.

Thank you.

MS. SMITH: Just to respond to you, Senator, based on what I have learned, and what I know, and the evidence that I know is out there, and the evidence that I know I could present to a jury-- I mean, this is -- these cases are very valuable to me. I don't want this cash cow; I want to fix this. I'm so happy to try to work with you and have my clients work with you to try to fix this. I really do; I hope we can, I hope -- I admire you for having this hearing. I appreciate how involved and attentive everybody has been. I hope that this problem can go away. I don't want any more of these cases.

MR. SATTIRAJU: To amplify what Ms. Smith said, I think the most important thing you can do in these situations is to shine a light. Because sometimes people function behind closed doors; a lot of times decision makers are the people accused; people get their backs up -- nobody likes to be accused of these things, especially if they feel it's not justified. But there is a larger issue here. New Jersey Transit is not in existence in order to litigate employment claims. And this is really a distraction for the agency; and oversight, and shining a light on this, and having people bring

other perspectives to it, including this body, is going to go a long way to help resolve these issues.

SENATOR GORDON: Thank you.

We are great believers in shining light on the Executive Branch.

MS. SMITH: Thank you.

SENATOR GORDON: Chairman, you said you had some questions?

ASSEMBLYMAN McKEON: Yes, I have some quantitative information I want to share with the Committees, supporting what these witnesses are saying.

But, Assemblyman Johnson--

ASSEMBLYMAN JOHNSON: Thank you, Chair.

I just have, for clarification -- Ms. Smith, you said that you represented Ms. Frizalone?

MS. SMITH: I didn't represent Ms. Frizalone.

ASSEMBLYMAN JOHNSON: And you represented 10 minority police officers who -- in a discrimination case. During that testimony in -- during the trial, was it brought out, or was the system brought out-- In other words, if I had a complaint against New Jersey Transit and I went to EEO, what is the process? Did that come out through the trial? What is the process? Because I don't know what the process is.

MS. SMITH: During the Frizalone trial, it came out. I was not counsel for Frizalone; Claudia Reis and Chris Lenzo represented Ms. Frizalone, and successfully tried that case. During the case of the 10 African American police officers and the 8 African American Operations people, I learned a lot about the process.

ASSEMBLYMAN JOHNSON: Okay.

MS. SMITH: The process is, you go to EEO or HR and you file a charge. It used to be, until about two or three years ago, that you could just bring a document down and file it. Then, after the \$5.8 million verdict, EEO instituted a policy that you were not allowed -- after you got up your nerve, and wrote it down, and were brave enough to bring it down -- they wouldn't accept it. You had to meet with somebody in person first. Why would that be, do you think? So they could intimidate you and tell you -- these are the people who are supposed to be protecting you -- "We will no longer accept what you wrote, what you bravely bring down and hand us; you have to meet with us in person first, before we will take anything from you."

ASSEMBLYMAN JOHNSON: Is *us* a person from EEO?

MS. SMITH: That's a person from EEO.

ASSEMBLYMAN JOHNSON: You have an interview with a person from EEO--

MS. SMITH: Yes.

ASSEMBLYMAN JOHNSON: --prior to them accepting your allegation.

MS. SMITH: They will not accept it; yes.

Go ahead.

MR. SATTIRAJU: That is entirely at odds with the law. So if you're -- for purposes of a retaliation claim, if I send in a memo and they get it, they're on notice.

ASSEMBLYMAN JOHNSON: Okay.

MR. SATTIRAJU: So that policy is not consistent with what their legal obligations are and what would create liability for them.

ASSEMBLYMAN JOHNSON: Okay; now--
Go ahead.

MS. SMITH: The next thing that's supposed to happen -- in every other place but New Jersey Transit -- would be we'd sit down with the person and take information. New Jersey Transit in -- let me think; 10 times, 20 times -- at least 40 cases that I could show you the complaint, did nothing; absolutely nothing at all, ever.

ASSEMBLYMAN JOHNSON: Okay.

MS. SMITH: Then what's supposed to happen is, there's supposed to be an investigation.

ASSEMBLYMAN JOHNSON: Conducted by EEO?

MS. SMITH: Yes.

SENATOR GORDON: Okay.

MS. SMITH: EEO told my client, "It's going to take me a year to get to this; I'm so busy." I have a document which I can show you where they say they don't investigate claims that are more than a year old, even though the statute of limitations is--

ASSEMBLYMAN JOHNSON: Two years.

MS. SMITH: --two years.

ASSEMBLYMAN JOHNSON: Okay.

MS. SMITH: Then there should be some attempt to -- sometimes there's a conciliatory attempt, because you have two existing employees; how can we resolve this? Maybe somebody should not supervise somebody else. You know, maybe somebody needs training or

counseling. Maybe somebody should be fired; I don't think that's ever happened.

ASSEMBLYMAN JOHNSON: Right.

MS. SMITH: I look forward to finding that out. And then there's supposed to be a finding--

ASSEMBLYMAN JOHNSON: Okay.

MS. SMITH: You want me to go through the whole-- I'm sorry, Assemblyman. Go ahead; you stop me.

ASSEMBLYMAN JOHNSON: Well, I'm getting that now. So you have a complaint; you take it to EEO; they're supposed to investigate your issue without this pre-interview deal. And then there would be an investigation and a finding in the end and, hopefully, things work out between the two employees, or between the employee and the employer.

Now, who does EEO work for in this chain of command?

MS. SMITH: I believe HR.

ASSEMBLYMAN JOHNSON: They work for HR.

MS. SMITH: I believe they report up to HR; I could be wrong.

ASSEMBLYMAN JOHNSON: And who does HR work for?

MS. SMITH: HR works for the Executive Director.

ASSEMBLYMAN JOHNSON: The Executive Director.

MS. SMITH: Yes.

ASSEMBLYMAN JOHNSON: So it all stays under the Executive Director's response-- It's all his or her responsibility.

MS. SMITH: Absolutely.

ASSEMBLYMAN JOHNSON: So there's nothing outside the chain where a person can go, besides getting an attorney--

MS. SMITH: Absolutely.

ASSEMBLYMAN JOHNSON: --to seek a remedy if they feel they're being treated--

MS. SMITH: No.

ASSEMBLYMAN JOHNSON: Okay; that's interesting.

Okay; I have no further questions, Chair.

ASSEMBLYMAN McKEON: Thank you.

Assemblywoman Muoio.

ASSEMBLYWOMAN MUOIO: Hi.

MS. SMITH: Hi.

ASSEMBLYWOMAN MUOIO: Thanks for being here this morning.

I agree with Senator Weinberg. I think the bulk of the questions should be addressed to New Jersey Transit when they appear before us.

But you both sound like you have a lot of years' experience between the two of you in dealing with cases like these. And you mentioned, I believe -- and correct me if I'm wrong -- that this is the worst department you've ever seen anything like this. And nothing else kind of compares to--

MS. SMITH: Well, maybe Fox News. (laughter)

ASSEMBLYWOMAN MUOIO: Okay; well, in New Jersey.

MS. SMITH: Ah, right.

ASSEMBLYWOMAN MUOIO: We can't control Fox News.

But I'm curious-- I know -- I believe we've been told that fees for outside counsel to work on these cases on behalf of New Jersey Transit

have escalated in the past few years. Is it your impression-- And you mentioned the importance of shining light on the situation. And the reason it's important is because that's what we then use to try and fix the situation. Are you seeing that this is being fixed as more attention is being -- more light is being shone on the situation over the past couple of years? Or is your sense that it is trending worse?

MS. SMITH: My current case is being handled in one of the worst, most vicious pieces of litigation I've seen. As I said, I really hope somebody does want to read the transcripts of what the judge thinks. I have won two orders to show cause in the current case, and they won't go to a mediation and really discuss settlement.

So I think they've doubled down, digging in their heels.

ASSEMBLYWOMAN MUOIO: And I'm talking overall, though. I know you have this specific case, but do you see an increase in the number of cases? Do you get the feeling at all that things are getting better, or do you think they are getting worse?

MR. SATTIRAJU: No.

MS. SMITH: Things are getting worse

ASSEMBLYWOMAN MUOIO: Okay; thank you.

MS. SMITH: Thank you.

ASSEMBLYMAN McKEON: Assemblyman.

SENATOR WEINBERG: Bob? Oh, I'm sorry.

SENATOR GORDON: Let's give the Assembly a chance.

SENATOR WEINBERG: Yes. Don't get fresh. (laughter)

ASSEMBLYMAN McKEON: It was me getting fresh; I thought you forgot about us on this side. (laughter)

ASSEMBLYMAN ZWICKER: Thank you, Mr. Chairman.

Thank you, to you both, for your testimony today. It's really astounding to sit here and listen to you talk about both the cases you know directly; also about -- as you paint a larger picture of what's happening at this agency and your experiences elsewhere.

I want to follow up with a question about shining a light and even make it -- as my colleagues know, I am a scientist -- I'll make it a laser light: make it a very focused light. (laughter)

I'll ask you both, but I would like to start with you, Mr. Sattiraju, because of something you said in your opening testimony, if I heard you correctly -- is that you also-- You said you work as a litigator or an advisor. Is that what you said?

MR. SATTIRAJU: Yes; for part of my career, I was an in-house employment attorney.

ASSEMBLYMAN ZWICKER: Okay. So, you know, as we've heard, we're talking about -- and Ms. Smith, you said your first case was in 2006, right? -- so we're talking about multiple, different Administrations; we're talking about multiple Executive Directors. Yet, you're painting a horrifying, horrifying picture of discrimination, racism, sexism, low morale that's been going on clearly for a long period of time.

And so my question to both of you is, what is your expert opinion about why? You specifically mentioned *bad actors*. And so my question is, in a large organization like this, is it sufficient, is it one or two people who have been around for a long time? Executive Director after Executive Director comes in and doesn't do anything about it. You talk

about HR, and EEO and things like that. So if you could share with me your opinion, with all of us -- about what is the real core of the problem.

MR. SATTIRAJU: The problem with any organization that's been through this kind of issue is, you can have a new person at the top, but they're not the ones implementing this decision on a daily basis. What really has to happen is a commitment from the top down saying, "This stops." Any organization has all this historical memory, and people can get mired down in it; people have a vendetta, "They accused me of this; I'm going to show them." And they get into it. And it becomes this us-versus-them environment. And that's really what kind of dominates their day -- is thinking, like, "How am I going to get this person?" Or, "Oh, God, they're being a problem again."

And essentially what has to happen is leadership, through HR, has to send a message saying, "Look, there's a new sheriff; we're done. We're not doing this anymore. Here are our core values, here are our core principles." Establishing that, and having buy-in, and mandating buy-in at all the different levels of management, and all the different levels of oversight, and having HR present -- having people feeling like HR is someone where you can go. In an effective organization, people feel comfortable going to HR. They'll walk the-- I had a client where they had a big manufacturing facility. They literally walked the floor, where HR was a familiar presence and the people knew them. They could say hello; they knew their first names. When HR becomes an ominous place where you go if there is something happening, that becomes a problem.

So really, it's establishing core principles that, "We're having a new page, here's our policy, here's what we believe in, and we're going to enforce it. We're going to see it through."

Assemblyman, anyone can write a policy, and stick it on the wall, and say "All right, this is it." But that's not enough. You have to follow through; you have to walk the walk.

ASSEMBLYMAN ZWICKER: So -- but, keep on going, right? I mean, that's the philosophical piece. How could this possibly be Executive Director after Executive Director? This is so widespread, how could this not be known? If you come into this job as the CEO of an organization, this has to be known.

MR. SATTIRAJU: You have to-- Look, if I'm advising a CEO on a situation like this, you have to find out who the bad actors are. You have to make determinations about what happened, who's been responsible for it, and frankly, should they still be here. Because these positions -- it really comes down to judgement. You have the judgement of whether or not you're going to say something to someone; you have judgement about whether or not -- how you're going to act, what you're going to do. And these things -- especially in these cases -- it can be a lot of little things. It can be saying, "You're not going to be in your office anymore." It can be saying, "We're not going to accommodate your disability." It can be a lawyer saying, "We're not going to accept your letter" where we're trying to resolve an issue with someone who's disabled. These are all little things that it can be a death by a thousand cuts, but the law recognizes if -- all these micro aggressions or indignities that are being suffered, it comes down to judgement. People have to be trained to have the judgement not to do

that; to let things go. And if there are people who won't let things go, or can't let things go, then you have to think about whether or not they should be where they are. If there's no consequence, and people are going to stay where they are and get promoted no matter what they do, that's a problem.

MS. SMITH: I wrote down *consequences* as well. There are no consequences for the bad actors at New Jersey Transit. The past acting ED and the current ED, I believe, came up through the ranks; a lot of these people are people who they worked closely with, which is -- as human beings, it's hard for all of us to deal with that -- that when somebody you work with closely for years, and years, and years, and you grow up together, it's hard to address their wrongdoing because you've known each other for a long time. I get the human quality of it; but this is an important job for the taxpayers and commuters of New Jersey. The prior ED, you know, was there less than a year; she left. She left right before I took her deposition. (laughter) I don't know if those were related, but I was looking forward to it.

I think the culture issue -- we have some ideas about how to address it, including allowing employees to talk, allowing employees to have a forum and some input would be very valuable. Having some employees come and talk to you and feeling safe about it, which would be-- I would never (indiscernible) to somebody to feel safe about it, knowing the retaliatory atmosphere there. But training, consequences, and revamping EEO and HR, to me, are essential.

ASSEMBLYMAN ZWICKER: Thank you.

Thank you, Mr. Chair.

SENATOR GORDON: Senator Weinberg.

SENATOR WEINBERG: Yes; I have a more mundane structural question.

Shouldn't EEOC be independent of HR, rather than reporting to HR?

MS. SMITH: You know, I honestly don't--

SENATOR WEINBERG: Wouldn't that be more a appropriate structure?

MR. SATTIRAJU: Can we-- It doesn't have to be. I mean, you can separate it out, where EEO maybe doesn't report into HR; I've seen that to be effective. But honestly, I've seen a lot of times where you don't have a separate EEO office, and HR just comes in and does a good job investigating.

MS. SMITH: Yes.

MR. SATTIRAJU: Or sometimes, they'll still farm out the investigation. They'll have an outside entity -- that's not going to be the litigation counsel -- come in and say, "All right, do an investigation. You know, you have no skin in the game." Those people can come in, figure out what happened, and make a report. So there are different ways to do it.

SENATOR WEINBERG: Okay; thank you.

ASSEMBLYMAN McKEON: Just -- no question, but just a comment, as it relates to legal costs.

Going back to 2011, they were \$3.8 million; and that has steadily risen to the point of, through November of 2016, \$5.3 million. And that's for outside counsel; that doesn't even start to count all of the various Assistant Attorneys General who are dedicated to New Jersey

Transit. I don't know the exact number, but I would expect that it's at least 10.

MS. SMITH: Yes.

ASSEMBLYMAN McKEON: I mean, you take into mind pension and all other things, that's an incredible amount of money just paid; and, obviously, on the rise, by the math.

MS. SMITH: Right.

ASSEMBLYMAN McKEON: So thank you both for--

MS. SMITH: Thank you.

ASSEMBLYMAN McKEON: --your incredible time--

SENATOR GORDON: Thank you very much.

ASSEMBLYMAN McKEON: --and excellence.

MS. SMITH: Thank you so much.

MR. SATTIRAJU: Thank you.

ASSEMBLYMAN McKEON: Okay; if I might, Mr. Chairman, -- as is the prerogative of both of us as Chairs -- there has been an individual who has reached out to this joint legislative Committee, who would like to testify germane to what we are discussing throughout our hearings.

He had been the Chief Compliance Officer of NJ Transit, who was formally terminated about a week ago.

So with that, I'd like to call Todd Baretta, to hear testimony.

So if I can lead you off, Mr. Baretta, and just reminding all of us -- in 2010 through 2016, we learned that crashes were two times as common with New Jersey Transit as opposed to like rails or, actually, three times more compared to LIRR. Mechanical breakdowns in 2010 went from 1 in 170,000 miles; to, by 2015, 1 in every 85,000 miles. The FRA, in

2016, fined NJ Transit more than \$500,000; and found 76 major violations, 33 related to drug and alcohol policy and another 33 having to do with operations process.

In November, Mr. Santoro, along with Chairman Hammer, came to this Committee. Now, I don't want to read it all, but the sum and substance, as Mr. Santoro explained -- that there had been a Compliance Officer, but only related to Sandy; and that his vision was to absolutely expand this role to look over all the various departments -- bus, light rail, and rail. And he said, "I needed a central place to understand what was going on, and make sure that all that reporting was being done consistent throughout the organization and correctly throughout the organization."

Then Board Member Hammer assured us, as a Committee, and assured the State, as such, that the weak safety record was related to not having proper compliance; that we would now have a Chief Compliance Officer to make sure we're complying with the lengthy FRA regulations. "I assure you, working forward, Steve Santoro has been given the direction. Hiring a Compliance Officer will make sure there's a level of oversight, so were doing our very best, and these issues won't repeat themselves."

That was from the words of the Commissioner and the words of the Chairman, again, before this Committee.

So a request for a position went out; and Mr. Baretta was hired. Quickly, Mr. Baretta has an MBA from Quinnipiac University; a JD from Catholic School of Law; he had a dozen years of experience in IT and regulatory practice, as well as compliance. He applied for the job in December; had a 20-minute interview with Deb Prato by phone, who was impressed; came in for a one-hour interview, including with Mr. Santoro,

Wyckoff, Prato, and Herbold; and he was made an offer in February to be compensated \$180,000 a year. That was shortly reduced to \$175,000, based on Director Santoro wanting to keep him at a certain level, compared to others. And he was assured that he would be given a staff, and a budget, and the tools to accomplish that, and he accepted the position.

He moved his family from Connecticut here to New Jersey. And on March 6, he began in that very, very important position.

Now, sir, as a part of the conditions of your employment, I mentioned that you were promised a budget, correct?

T O D D C. B A R E T T A: That is correct.

ASSEMBLYMAN McKEON: And what was that budget to be utilized for -- that's absent your salary, of course.

MR. BARETTA: Compliance training, implementing the program, building a library of compliance-related documents, and availing ourselves to be able to get industry standard practice guides and implement those practices.

ASSEMBLYMAN McKEON: You had a compliance hotline, as well as software platforms and other tools to make certain that you had the ability to do your job, right?

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Okay. Were you ever given a budget, sir?

MR. BARETTA: I was never given a budget; no budget.

ASSEMBLYMAN McKEON: Okay.

I'm going to try taking this in chronological order as it relates to some of the aspects of your role in the last four months, and it coming to its conclusion.

One of the first things you got involved with was Hudson-Bergen Light Rail. And they had, give or take, more than a year -- just about a year had gone by where there had been a request from the Inspector General's Office wanting to know where Sandy money -- they believed Sandy money was used, and it was booked for ordinary maintenance. And that was the first thing that you got involved with -- again, about a year had gone by and they were getting upset that there was no response.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: So the first couple of weeks in the position, you persevered to get that information. And based upon the resistance that you got, you prepared a written memo to Mr. Santoro on April 14, and you indicated that, "You know, Boss, accessing information from employees is very difficult. I'm meeting resistance." Is that correct?

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: And you were called into a meeting with Mr. Santoro, and he indicated that you were being "too aggressive" in your attempts to comply with this request on the booking of Sandy money for general maintenance.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Is that a correct statement?
Okay.

So an important major part of your responsibilities -- as we know from the Director, as well as the Chairman -- was to be in a position to respond to the FTA audit, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And one of those many concerns of areas that the audit has, was policies and procedures, right?

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Now, examples of policies and procedures are things like HR, corporate compliance, safety, information systems, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: All right. And, in general, it's best practice to review those policies every three years.

MR. BARETTA: Every three years.

ASSEMBLYMAN McKEON: Okay. And in reviewing those policies -- which was, again, one of the first things you did -- you found that there were a dozen or more that hadn't been touched for 30 years.

MR. BARETTA: At least 12, yes.

ASSEMBLYMAN McKEON: All right. Now, there's a specific policy -- a little less than 30 years -- but one related to drug and alcohol policy. And it was last reviewed in 2004, when you took a look in 2017.

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: So that was 13 years.

MR. BARETTA: Thirteen years.

ASSEMBLYMAN McKEON: And that applied to engineers and anyone in a safety capacity, as it related to drug and alcohol policy as to those individuals, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: All right.

And now, between -- so we know between 2004 and 2017, were there substantive changes in Federal law as it related to those kinds of things?

MR. BARETTA: There were several regulatory changes.

ASSEMBLYMAN McKEON: And why don't we just highlight some of those changes that were made. So there was a big difference as to not having a policy that was so outdated.

MR. BARETTA: Sure. The regulations had changed. The types of drugs that were tested, the quantity levels, the cutoff levels for those drugs -- it had specified the procedures that needed to be -- different procedures that needed to be employed in certain types of testing. It provided--

ASSEMBLYMAN McKEON: Observation, relative to urine collection.

MR. BARETTA: It provided for direct observation of urine collection. And our policy was so old that it didn't include any of those provisions.

ASSEMBLYMAN McKEON: Okay.

MR. BARETTA: Return to duty testing and that type of thing.

ASSEMBLYMAN McKEON: So these were significant changes that weren't the policies being implemented, and you brought that to the attention of Administration.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Okay. And you attended, as such, a March 23 meeting that included the Executive Committee of Mr. Santoro, Ms. Herbold, Mr. Wyckoff, Ms. Prato, and Chris Baker, as well as others, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And at that time, you made a recommendation to that group that the policies and procedures -- all of them were so bad, that it was in our best interest to get in compliance with FTA -- after all, that's why you were there -- was to scrap them, do the model policies, adopt the model policies of FTA so you knew that they were in compliance. And then, if they needed to be tweaked thereafter -- to tailor it to NJ Transit -- "We'll get this done."

MR. BARETTA: Correct. That was definitely the best approach, and the one I recommended.

ASSEMBLYMAN McKEON: So on the next day you were called in by Director Santoro, correct?

MR. BARETTA: I was.

ASSEMBLYMAN McKEON: And you were told that, based on what you set forth -- and I paraphrased it, but that was a good gist of what happened -- that you had "embarrassed" Deb Prato, who was responsible, as the Director of HR, for all those things. And as such, you were to back off -- that this no longer was going to your responsibility; she'll take care of it.

MR. BARETTA: Correct. Her subject matter experts would take care of updating it.

ASSEMBLYMAN McKEON: Okay.

Now, sir, with respect to the FRA audit, they were very critical of our testing and qualifications, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And to explain that's inherent in our job at NJ Transit -- is to make sure that there's oversight and enforcement, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And some examples of testing and qualifications would be, you know, examples of blowing horns at intersections, not having cell phones while somebody's operating or working, equipment checks, brakes, etc. -- significant aspects like that.

MR. BARETTA: Sure.

ASSEMBLYMAN McKEON: That's supposed to be tested and observed, correct?

MR. BARETTA: Observed constantly and consistently.

ASSEMBLYMAN McKEON: And the audit revealed that the testing was actually just for minor items; none of those things, but things like, did an employee have safety glasses on? Correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And in addition, it wasn't random. There was no random testing going on; it was scripted.

MR. BARETTA: It seemed almost planned, is what the FRA had said.

ASSEMBLYMAN McKEON: And the testing, on top of everything else, was not even spread out. I mean, NJ Transit is a big operation; it would always be the same place, same time.

MR. BARETTA: Same places.

ASSEMBLYMAN McKEON: All right. So as a result of your findings and your recommendations, you chronicled that and put that in a memorandum prepared on April 26, 2017, on that topic. Correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And it was critical of lack of systems, and it was critical of lack of staffing -- to comply with this, with recommendations to change it.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: So after that memo on May 2, you were called into the office again by Mr. Santoro; and this time, including Amy Herbold. Is that correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: All right. And sir, would it be correct to say that you were admonished; that, "You should never put anything in writing, because we're a public agency, and we don't want anybody to find out."

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: And you were further told that, "We don't need a *gotcha* guy here."

MR. BARETTA: That's right.

ASSEMBLYMAN McKEON: Let me continue.

Now, you're also responsible, relative to issues of the FRA 2017 audit concerning the computer system, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: That was in your background; that was partially why they hired you, relative to your experience and your knowledge in that area, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: Now, I'm going to paraphrase the FRA in that audit, though, but they indicated it was the most antiquated system they had ever dealt with in managing the important function of testing. And it was so bad that they had a hard time even auditing, because they couldn't figure out what was going on. Is that a fair statement?

MR. BARETTA: Yes, sir. They had commented that this particular audit took them far longer to perform than it would in other railroads because of the difficulty in accessing the information.

ASSEMBLYMAN McKEON: And even more troubling is that, in addition, they indicated that the results of the testing were just too good.

MR. BARETTA: Right.

ASSEMBLYMAN McKEON: And they equated it to everyone in the high school getting a perfect score on the SAT; it just doesn't work.

MR. BARETTA: They said that the level -- the response rates to testing would put us as one of the most preeminent, best railroads in the country. And that clearly was not the case.

ASSEMBLYMAN McKEON: So they raised an issue -- a significant issue with actually the integrity of our data.

MR. BARETTA: They questioned it.

ASSEMBLYMAN McKEON: Now I'm going to jump ahead to May 26, because you had, as a part -- and other times as well -- you had an opportunity to observe the testing of those individuals, like engineers and others in the safety milieu who needed to have certain continuing education and updates, correct?

MR. BARETTA: And the training of those individuals, yes.

ASSEMBLYMAN McKEON: Right. And in making that observation, you saw that the instructors would give the test to the employees, and then give them the answers. Is that correct?

MR. BARETTA: Correct. The tests were done together, as a group, where the answers were given. And then everybody filled in the bubble with the answer that was given.

ASSEMBLYMAN McKEON: And in your professional judgement, of course, that's outrageous.

MR. BARETTA: *Outrageous* is an understatement.

ASSEMBLYMAN McKEON: Now, the testing was performed by the Rules Department. During your tenure -- or right before; I'm not exactly sure of the timing -- three key staff members left to go off to the MTA. And, in general, they were understaffed, correct?

MR. BARETTA: Grossly understaffed.

ASSEMBLYMAN McKEON: Okay. Now, this was all chronicled in that April 26 memorandum--

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: --along with your recommendations of what we needed to do to get into compliance.

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And again, this resulted in your admonishment, that they didn't need a *gotcha guy*, and, "Don't ever put anything in writing."

MR. BARETTA: Particularly about short staffing, yes.

ASSEMBLYMAN McKEON: So, on May 5, you had a meeting with Jackie Halldow.

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: She had worked with New Jersey Transit prior, and had left and was serving, I think, about a year as Governor Christie's Deputy Chief of Staff and Communications. Correct?

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: Which -- P.S., as a side bar -- the resume that was produced vis-à-vis a subpoena didn't have the position with the Governor's Office listed.

Now, you met with her for an hour, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And you went over your views of that April 26 memo, and the audit, and the significant issues regarding compliance, and all the things that needed to be done, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: All right. And so about a week later, on May 15, you were called into the Principal's Office again, I guess, to meet with Director Santoro and Assistant Executive Director Herbold, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And again, you were admonished that, notwithstanding what you were hired to do in the job description, that you were not to be involved anymore with personnel issues. Is that fair to say?

MR. BARETTA: I was told I was completely out of my lane, and that I had no business intermeddling with HR or staffing issues.

ASSEMBLYMAN McKEON: Even though HR would be an integral part of the FRA or FTA's audits, and all the things like policies and procedures that needed to come into compliance.

MR. BARETTA: Absolutely.

ASSEMBLYMAN McKEON: And so you were -- it was further indicated to you at that meeting, once again, "Never put anything in writing that we're understaffed. Don't you ever report that, or try to do anything differently."

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And, once again, "We don't need a *gotcha* guy; we have one already in the Auditor General."

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Now, after that day, May 15, would it be fair to say that your job environment changed?

MR. BARETTA: Significantly.

ASSEMBLYMAN McKEON: Okay. And you were told you could not speak to any employee, other than someone who was on the Executive Management Team, on a going-forward basis.

MR. BARETTA: Unless I had their express approval prior; that is correct. I was cut off from the staff.

ASSEMBLYMAN McKEON: And this, of course, impeded your ability to properly do the function that you were hired to do -- the critical function that we heard from, as to senior management, that you were being hired for.

MR. BARETTA: It rendered it virtually impossible.

ASSEMBLYMAN McKEON: You were no longer being invited to most meetings.

MR. BARETTA: Including the safety meetings.

ASSEMBLYMAN McKEON: And that included safety meetings that they weren't inviting you to anymore.

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: All right.

Now, ironically, on May 8 you received a memo from Rail Operations. There apparently was a safety violation involving two employees using their personal cell phones. Now, the memo from Rail Operations was that we -- you ask the FRA to enforce the penalties, because they didn't want to ruffle the feathers of any employees. Is that correct?

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: And in your professional judgement, is that inappropriate?

MR. BARETTA: The most absurd practice I've ever heard of.

ASSEMBLYMAN McKEON: And so as a result, you went to the -- one of the internal AGs and said -- because, in part, your role is risk management.

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And you said, "We're going to be the ones to ask them to admonish? Does that mean we have to pay their fines? Isn't this--

MR. BARETTA: That was my concern.

ASSEMBLYMAN McKEON: --a crazy precedent? Should we be doing this?"

MR. BARETTA: That was my concern.

ASSEMBLYMAN McKEON: And the Attorney General said, "Hey, you're right. "

MR. BARETTA: He absolutely said he does not think that we should be using a regulatory agency to effectuate the discipline of our employees.

ASSEMBLYMAN McKEON: And at that point, senior management at Rail Operations -- they shunned you.

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: Okay.

Now, I mentioned that part of your responsibilities included risk management; and I want to call your attention to an event of May 5. There was a Jersey City firetruck that was struck by one of the Bergen Light Rail trains, and they collided at a controlled intersection. Is that a good description?

MR. BARETTA: Yes, at a grade crossing.

ASSEMBLYMAN McKEON: And that was on May 5. On May 8, you sent an e-mail to the Police Chief and the VP of Light Rail and said, "Hey guys, you know, this isn't our fault. Why is it that we're just kind of keeping our head down? I know it was a firetruck; but, you know,

the firetruck went through a controlled intersection.” Something along those lines, correct?

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: And the response was, is that, “The 9th Floor” -- and I assume that’s a code for *senior administration*?

MR. BARETTA: Executive Director Santoro.

ASSEMBLYMAN McKEON: Yes -- “wants us to stand down because stuff like that is usually our fault.”

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: All right. And as it turns out, that rail car was found to have been going, you know -- so it was probably wise in your direction -- going 30 percent faster than it was supposed to.

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: But I guess that was the benefit of experience -- that, “Every time there’s an accident, it pretty much ends up being our fault, so let’s just low key.”

MR. BARETTA: That’s exactly right.

ASSEMBLYMAN McKEON: All right.

Now, sir, on May 17, there was an internal audit regarding issues concerning the internal implementation of the Family Medical Leave Act -- the FMLA -- correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And as the Chief Compliance Officer, your findings were that there were poor systems in place, there was understaffing, inconsistent applications, and an overall lack of systemic integration.

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: All right. And you reduced your findings and recommendations to a memorandum dated June 2, correct?

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Now, by the way, all these memorandums I am now referencing -- they were directed to Mr. Santoro, and they were marked *confidential*, and they utilized the words that Attorney Baker -- who was the AG on site, or the senior AG on site -- said to use for the sake of keeping them internal.

MR. BARETTA: Circumventing the Office of Public Records.

ASSEMBLYMAN McKEON: So you do follow that protocol.

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: Okay. And you got this memo to Mr. Santoro on June 2--

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: --and would it be correct to say that Mr. Santoro called you in and asked you to redact that memo?

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: And, in particular, he made you remove certain sections that he found -- that he didn't, kind of, didn't want to hear.

MR. BARETTA: He didn't want to hear.

ASSEMBLYMAN McKEON: Can you share with the Committee just one of the sections that you were told to remove?

MR. BARETTA: Sure.

“The perceived weakness and deficiencies are not entirely unique to the management of FMLA compliance, but rather represent a mere manifestation of the larger issues, coupled with defects in mindset and an overall poor corporate culture, that permeates and plagues our organization.

“Since central coordination and oversight are often absent, and operational budget constraints prevent employment of real subject matter experts by each department, each business operating line, instead, self-proclaims one of their own as the designated subject matter expert -- even though this person may or may not have any formal training or education on the subject matter, and even though the role, as a particular subject matter expert, may be conflicted with and/or in addition to multiple other roles. This self-proclamation serves to only further strengthen the walls encircling the siloed departments and results in key stakeholders becoming even more resistant to assistance and efforts to vertically integrate the corporation.”

ASSEMBLYMAN McKEON: Now, that was your arms-length, professional opinion that you got hired to do, so you can point out problems. And that memo went on to include systemic ways to change that, correct?

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: And nonetheless, you followed Mr. Santoro’s direction. I know there are other sections of the memo that he preferred not to see, and you removed those as well, and resubmitted them to him, in the redacted form, on the 5th of June.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Okay.

Now, the Chief Compliance Officer would attend Board meetings; and you would, correct?

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: And on June 14, you were in attendance when you questioned the wisdom of paying a \$500,000 settlement in a personal injury matter, correct?

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: I don't want to get into the details, but I think it was a highly intoxicated individual on a bus; and you felt it as if we weren't fighting hard enough.

MR. BARETTA: That's correct.

ASSEMBLYMAN McKEON: Now, I know that you were privy to seeing other litigated matters; and was it your opinion that there was a major difference between how things were being handled as they related to employee-related claims -- that they were being very aggressively defended and not satisfied -- versus personal injury claims?

MR. BARETTA: Tooth-and-nail against an employee, even when they were dead wrong; and almost like a claims settlement factory for personal injury.

ASSEMBLYMAN McKEON: So as you raised your issue with the highly intoxicated individual -- where we were suggesting a \$500,000 payment -- you raised that at the meeting, in front of Commissioner Hammer and Commissioner Finkle. And while you were putting forward your point of view, Mr. Santoro stopped you.

MR. BARETTA: Abruptly.

ASSEMBLYMAN McKEON: And you followed direction; and he pulled you out of the meeting thereafter, and told you never, ever to express your opinion again on a claim.

MR. BARETTA: In that Executive Session setting, he told me it was very inappropriate to ever contradict the opinion of the Attorney General.

ASSEMBLYMAN McKEON: Okay.

You went on a preplanned vacation, I think, to Disney World with your son, if I remember.

MR. BARETTA: I did.

ASSEMBLYMAN McKEON: And you returned on July 10 to be called into a meeting that included Mr. Santoro and Ms. Halldow, correct?

MR. BARETTA: Jackie Halldow, correct.

ASSEMBLYMAN McKEON: Yes. And you were advised that you were being demoted, and you would be reporting to a new Compliance Officer.

MR. BARETTA: One selected by Ms. Halldow.

ASSEMBLYMAN McKEON: And the reasons you were--

SENATOR WEINBERG: One selected by whom?

ASSEMBLYMAN McKEON: Ms. Halldow.

SENATOR WEINBERG: Okay.

ASSEMBLYMAN McKEON: And the reason you were being demoted was they needed to bring someone in with more experience in the *public agency culture*. (laughter)

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: On August 4, you were suspended. Sometime around then, you know, using a fuzzy face and a phony name, you reached out to members of this Committee.

And I appreciate, in my view, your heroism in coming forward to tell this story.

On April (*sic*) 16 you appeared with counsel, as directed by NJ Transit, for an investigation. Consistent with the attorneys who appeared before you -- after they conferred, they said, "We don't ever do investigations with counsel present," and they cut off the investigation.

However, they went on to the second part of it; mentioned to you that there was a subpoena -- which was something unbeknownst to you -- and that in compliance with that subpoena, you were directed to bring your computer within two days -- by Friday, August 16, correct?

MR. BARETTA: I was instructed to bring it by August 18, yes.

ASSEMBLYMAN McKEON: Or August 18; I'm sorry. Two days later, after August 16.

MR. BARETTA: Yes.

ASSEMBLYMAN McKEON: And you, indeed, brought that computer to NJ Transit, down to Newark, and dropped it off?

MR. BARETTA: Personally.

ASSEMBLYMAN McKEON: Yes. And I have in my hand what is the receipt signed by NJ Transit's Headquarters indicating that you brought the computer back.

MR. BARETTA: Yes, sir.

ASSEMBLYMAN McKEON: But yet, by letter of August 21, you were terminated on the basis that you failed to return your computer.

MR. BARETTA: That is correct.

ASSEMBLYMAN McKEON: Okay.

MR. BARETTA: The sole basis.

ASSEMBLYMAN McKEON: I'm just going to make a short comment, and then I'm going to ask you a bad lawyer question. But I'm not here as a lawyer; it's an open-ended question as to what you might want to share with the Committee that I didn't ask, or that you think needs to be aired in public -- as we bottom out and understand it's time to build, from the bottom up.

And that is, a couple of times I said that this Committee wasn't to be trifled with. And for months we stepped back from our subpoena power, and tried to be cooperative, and tried to work together, and gave everybody the benefit of the doubt. And then we continued to get dribs and drabs -- whether it was about personnel issues, whether it was about safety issues, or whatever it might be. And even when subpoenas came, there was this thing called a *rolling subpoena response* -- I don't know, I've never heard of such a thing -- but again, dribs and drab, some stuff is there, some stuff not.

Finally, we have someone with the courage to -- who, in my estimation, as I go through this -- was trying to do the right thing; was hired for that sole purpose, and was pushed in the corner every which way. Maybe everybody understands this Committee isn't to be trifled with.

And with that, sir, I'll give you the opportunity to address the Committee, and then open it to any members.

SENATOR WEINBERG: Mr. Chairman. I just have a point of order -- a question for you.

MR. BARETTA: Sure.

ASSEMBLYMAN McKEON: Sure.

SENATOR WEINBERG: Did we subpoena computers?

ASSEMBLYMAN McKEON: No, we subpoenaed memorandums. And I guess the memorandums that he may have had were on the computers. But to date, we have not received the very same memorandums that I know are in existence from that computer.

SENATOR WEINBERG: But we did not issue a subpoena for a computer.

ASSEMBLYMAN McKEON: Correct.

MR. BARETTA: Correct.

SENATOR WEINBERG: What I just heard is that he was told that there was a subpoena for his computer.

ASSEMBLYMAN McKEON: I don't-- I may have messed the words up -- he was told to turn in his computer, because on the computer would have been the information that they said was responsive--

SENATOR WEINBERG: Okay.

ASSEMBLYMAN McKEON: --to the-- I think that's correct.

SENATOR WEINBERG: So please clarify that for me.

MR. BARETTA: They asked me to bring my cell phone, my iPad, and my New Jersey Transit laptop computer so that they could see the information that was on it, and if anything was necessary to be produced.

SENATOR WEINBERG: Okay.

ASSEMBLYMAN McKEON: And I do believe that you advised that anything that was in your laptop was also on your desktop. So

if they needed to access anything in response to the subpoena -- which still hasn't been responded to--

MR. BARETTA: Correct.

ASSEMBLYMAN McKEON: --they could have done that.

MR. BARETTA: I told them that I had nothing -- no new additional producible documents on the laptop, and that the laptop was only used to access the desktop computer. So everything that was on the laptop was already there; they had full control of it.

ASSEMBLYMAN McKEON: I'll leave with you, then, the open-ended question, if you would like to address the Committee. And then, again, open it up to my Co-Chair.

SENATOR WEINBERG: Thank you.

ASSEMBLYMAN McKEON: Thank you.

MR. BARETTA: Sure.

Thank you, Mr. Chairman.

I wanted to add -- I relocated my family to New Jersey to accept what was posited as an extraordinary opportunity to not only lead the governance, risk, and compliance management functions, but to design and implement the compliance program for the nation's third-largest public transit system.

It was supposed to be an opportunity to help restore New Jersey Transit; to help it, once again, become a national model. I quickly learned that, instead, I had enjoined an embattled agency beset mostly by itself. Simply, it is a toxic environment that promotes a culture that was not accepting of any corrected course.

Although my tenure was extremely short in terms of time, I witnessed more occurrences of agency-wide mismanagement fueled by ignorance, arrogance, hypocrisy, incompetence, patronage, covering up, and corruption than one can reasonably expect to experience throughout an entire career.

Indeed, I drafted comprehensive plans, outlined compliance programs, and wrote countless memos on safety, risk, and opportunity. But the New Jersey Transit bureaucracy is not one that rewards logic, intelligence, and capability. Instead, it thrives on silence and affiliation. The degree of success you're allowed is dependent mostly upon your degree of political connection. Outsiders are ousted for any reason, or for no reason.

I certainly have little desire to be here today in this context; no one particularly enjoys delivering bad news. But outsiders do offer a unique, outside perspective. And as that outsider, I came here today to warn this Committee, and the general public, that the situation at New Jersey Transit isn't deserving of the level of criticism that the agency garners. In fact, it is far, far more grave. New Jersey Transit, in and of itself, is one giant runaway train.

ASSEMBLYMAN McKEON: Thank you, sir.

That's my questions for now.

Chairman.

SENATOR GORDON: Yes; thank you, Chairman McKeon.

One of the things that I've learned over the course of many years in management consulting, dealing with organizations, is that operation failures generally reflect organizational dysfunction of some kind.

And you pointed to many, many signs of organization dysfunction. I think it's-- I know I don't have to remind my colleagues about this -- in this situation, these failures are not reflected in bad operating results, or not making your numbers, or what the stock analysts are calling for. We've seen someone get killed on September 29; we saw people -- we are seeing people getting hurt, we're seeing our economy hobbled by a transportation system that is simply inadequate and, I think, poses a risk to our economic future.

So I want to thank you for being so open and forthright about this, or having the courage to come forward and telling us about this. You know, I might think that you were perhaps -- had some grievances that you -- and wanted to even out the score. But I have to tell you, my office has been approached by a large number of people; I won't say they're lining up at the door, but I have reports here that my staff compiled on the basis of interviews with people who came before us who have worked for New Jersey Transit for decades. And they are echoing the comments that you're making about rampant patronage, about the importance of connections to the Governor's Office; the same names are mentioned repeatedly about jobs not being posted and being filled; people being hired despite hiring freezes.

You know, this is very troubling. I know I'll want to hear from the other -- from Mr. Santoro and any others he may bring to us.

I just have a couple of questions I want to follow up on with you. You have provided the Committee with a memo -- I believe it was dated June 23 -- relating to your concerns that New Jersey Transit might not be making the December 2018 deadline to install Positive Train Control. Could you elaborate on that?

MR. BARETTA: Sure. I had been apprised of an inspection report that was issued by the FRA indicating that we were getting -- they were recommending a violation to be issued because we were not -- we were behind on the implementation plan. And I wrote that memo to Steve Santoro and indicated, at that time, that somehow I suspected that that was certainly the case. And I wrote there that, "I imagine this result ties well to the quarter one status report submitted to the FRA and publicly available on their website since May 25. I do respectfully note that in more than one candid and informal conversation, I've been told that we are very far behind and it is unlikely that we will meet the final, end of 2018, deadline. This was brought to light fairly well by the quarter one status report and the violation for not meeting the milestones identified in the implementation plan."

I then went on to ask if I should get involved; and I told him that I felt as though I could try to offer a little guidance in helping keep the project on target or on task. But I was careful to say that I didn't want to interfere with others who were managing that project.

SENATOR GORDON: Okay. As I recall, this Committee was told that there would not be any problem in achieving that December 2018 deadline.

MR. BARETTA: Right.

SENATOR GORDON: You also made some references to understaffing. Can you elaborate on that?

MR. BARETTA: Most of the Rules Department entirely -- that is responsible for training the engineers and trainmen -- they've all left and have gone to the MTA. And it's an agency that's really -- we're missing a

lot of-- Key positions are not filled, both in Safety and in Operations. I, for one, was promised a staff and never got a single person to report to me in the years there, despite having -- I'm sorry; in the months there, despite having submitted at least four different organizational charts on proposals for new positions that were absolutely necessary to be filled -- safety, critical functions.

SENATOR GORDON: Okay.

I want to give others a chance to ask any questions.

ASSEMBLYMAN McKEON: Andrew.

ASSEMBLYMAN ZWICKER: Sure; thank you.

I'm almost stuck on where to begin.

I guess I'll ask you a personal question. How do you feel about all of this? There are many things you could have done, as you lay out this horrifying story. You know, your family has been through so much, I have to assume; you have been through so much, personally. What are you feeling; and why are you here? What do you want to accomplish?

MR. BARETTA: I want to make -- I want to help cast a light onto the things that are really wrong. I want to set the record straight that all the rumors that are in the media, that constantly portray the problems at New Jersey Transit -- they are all absolutely true. I want the public to know that New Jersey Transit is an agency that's in peril, and in great need of assistance, and needs an entire new direction for its management. The entire -- Executive Director Santoro is unqualified to lead the agency, and the continued problems in Human Resources and staffing are a direct reflection of that. I want to be able to use my position -- in only the four months that I had there, since I wasn't able to truly help rehabilitate the

railroad, I'm hopeful to be here today to encourage the pressure so that someone else can do it and we have a safe system.

ASSEMBLYMAN ZWICKER: Thank you.

MR. BARETTA: Thank you.

ASSEMBLYMAN McKEON: Assemblywoman Muoio.

ASSEMBLYWOMAN MUOIO: Clearly, it's going to take us a little bit to digest everything you've presented us with. And I want to thank you for the courage to come in today. We've talked a lot about shining the light on the situation, and what you have shone has been incredible.

MR. BARETTA: Thank you.

ASSEMBLYWOMAN MUOIO: It sounds like we've been living within a lunar eclipse of our own lately -- solar eclipse. (laughter)

But we clearly have a serious problem, and it's shocking. This is a system that used to be considered the jewel of the transit system nationwide. It is the lifeblood of our economy in the state; it's responsible for transporting hundreds of thousands of New Jersey residents and workers every year; and it's responsible for oversight and care of its own employees, which we've heard earlier, is also at a toxic level.

I want to thank you again. I would like to, while we have you sitting here, and based on your experience -- as limited as it might have been, unfortunately, at New Jersey Transit-- The top three issues that you found during your tenure that you think are most critical to be addressed for New Jersey Transit -- what would you say those are?

MR. BARETTA: Staffing, filling the necessary positions.

ASSEMBLYWOMAN MUOIO: With appropriate personnel.

MR. BARETTA: Appropriate personnel. They need more people and they need proper people in the proper positions. They need organization; they need records management and identification. They need policies and systems to be able to figure out the information that they have. There is nothing -- nothing is documented at New Jersey Transit. The operations of the company existed largely in the minds of the employees. And as people retired and as positions were not refilled, no transfer of knowledge has occurred and a lot of the operational knowledge has been lost.

ASSEMBLYWOMAN MUOIO: All right; thank you.

ASSEMBLYMAN McKEON: Oh, please; Assemblywoman.

ASSEMBLYWOMAN MUNOZ: Thank you very much

Can I -- is it the opinion, on your part-- Do you feel that the public should feel confident and safe to travel on New Jersey Transit, since so many of us do, and our family members, and our constituents?

MR. BARETTA: The systems running New Jersey Transit are very antiquated and very out-of-date. While it's nice to think that they're failsafe, I also know that there is nobody on watch as backup.

I would prefer not to ride the system; I would prefer not to put my son on the system. I certainly wouldn't put my son on the system alone without me right there.

ASSEMBLYWOMAN MUNOZ: How old is your son?

MR. BARETTA: Eight.

SENATOR GORDON: I have a question.

ASSEMBLYMAN McKEON: The Chairman has a question.

SENATOR GORDON: Yes; meant to follow up on this.

You had mentioned -- we were talking about understaffing. What about the sufficient number of engineers. Do we have enough engineers?

MR. BARETTA: No; they're very short.

SENATOR GORDON: Okay.

MR. BARETTA: They need to have more engineers. That's a large part of the problems of why we had so many cancelled trains over this past summer.

SENATOR GORDON: Okay. Are there other critical positions that you feel are not adequately staffed?

MR. BARETTA: Safety and training, predominantly, are those; and then operations and staff.

SENATOR GORDON: And what's the -- why is that? Is it lack of budgetary commitment, is it the fact that other transportation agencies might be able to pay more money and are hiring these people away? Is it morale? I mean, what is contributing to the lack of sufficient staff resources, in your mind?

MR. BARETTA: Complete and utter incompetence in the Human Resources Department. Their failure to train, retain any employee. They basically do nothing.

SENATOR GORDON: Okay.

MR. BARETTA: Positions that have been approved for hiring take months, and months, and months before you can actually get the post out.

SENATOR GORDON: Okay.

ASSEMBLYMAN McKEON: Just a last follow up from me -- and I don't know if anyone else does -- there was a quote by one of the other witnesses of a little group of people ruling the organization for their own benefit. And I guess, in part, we're going to go on and talk about patronage hires. And I'm wondering, in the time that you spent there as the Chief Compliance Officer looking to get everything straight, if you thought patronage was an issue.

MR. BARETTA: It's a main issue. There is a definitely a club of individuals there; there are various names that they are referred to by other executives. But that particular group of individuals -- that *club* -- what they share in common is that each and every one of them has their own unique tie to the current Administration and to Trenton. And they use that influence to, frankly, terrorize every other employee -- fear-mongering, of their job security.

ASSEMBLYMAN McKEON: Thank you sir; I have nothing further.

MR. BARETTA: Thank you.

SENATOR GORDON: Thank you, again, for being here.

Senator Weinberg, did you have a question?

SENATOR WEINBERG: Yes; what do you mean *terrorizing* employees? Could you explain that a little bit?

MR. BARETTA: Sure. Keeping people in constant fear and shock that their position would be eliminated; that they would be next; that they are not playing nice with the way -- with the decisions that are made and the direction that the company is going. You're not allowed to speak

out against anyone, and you lie there-- It's a culture of either going along with what the political appointees want, or you lose and you get out.

SENATOR WEINBERG: And does that animosity spread through to employees who do lodge complaints?

MR. BARETTA: I'm sorry?

SENATOR WEINBERG: Is that animosity spread out to employees who do lodge complaints?

MR. BARETTA: Sure.

SENATOR WEINBERG: Could you--

MR. BARETTA: Well, I'm sorry; what is your question?

SENATOR WEINBERG: Well, the culture that you're describing -- and we heard a little bit of that described from the earlier witnesses -- so is there a special animosity or special "get even," or special terrorizing if an employee actually does file a complaint?

MR. BARETTA: Always; there's retaliation on almost -- on virtually every claim. That's a very, very tightly controlled, secretive process. For example -- although I don't want to get into it for-- In my own experience, when they told me that there was an investigation for my suspension, for three weeks they wouldn't tell me what the basis was, or the reasons. Everything was confidential; it's confidential -- to protect me. I said, "How is it confidential -- an HR investigation about me confidential to me? How is that protecting me?" And clearly, it was not; it's just to have a culture of secrecy -- less out there to contradict whatever they want to advance.

SENATOR WEINBERG: Well, I think Ms. Smith said this in her earlier testimony to us. But since I dealt with this as we try to update

the Open Public Meetings and Open Public Records Acts, I know that the Rice Notices to employees -- that they are going to be discussed in a closed session -- is to protect the employee, not to protect the people who are doing the discussion. That's the basis of our law here in New Jersey. I mean, I know it doesn't affect the internal portions of the agency, but if your case was brought before the New Jersey Transit Board, you have the right to ask for that to be done in public.

But what you're telling me is that they told you there was an investigation, but it was secret--

MR. BARETTA: It was secret.

SENATOR WEINBERG: --and they couldn't tell you?

MR. BARETTA: It was secret. I couldn't even know who was conducting the investigation or what the topic was.

SENATOR WEINBERG: Okay; thank you.

MR. BARETTA: It ultimately turned out to just be two people who were doing it; that's it.

SENATOR WEINBERG: Thanks.

SENATOR GORDON: Thank you very much.

MR. BARETTA: Thank you.

SENATOR GORDON: Executive Director Santoro is here. We would certainly like to hear the agency's side of this. I believe he has a statement to make. And as I understand it, he has senior staff here as well.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) Chairman, can we ask for a five-minute recess?

SENATOR GORDON: I think we all can use about a five-minute recess, actually.

That's fine; the Committee will extend a recess for five minutes.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike)

Thank you, Chairman.

(Committees recess)

(Committees return from recess)

SENATOR GORDON: Mr. Santoro, welcome back to the Committee.

I understand you have a statement; would you like to proceed?

STEVEN H. SANTORO: I, sort of, have a three-part statement.

So before beginning my prepared remarks, I feel compelled to respond to the over-the-top allegations made by Ms. Smith and Mr. Sattiraju, both of whom are vested in the employment cases against New Jersey Transit.

I cannot address allegations related to pending litigation matters; but I will tell you that New Jersey Transit has filed answers to each of their complaints, and has denied the allegations.

New Jersey Transit has a zero-tolerance policy on discrimination. We have taken and will continue to take steps to discourage unlawful discrimination, and assure a diverse and tolerant workplace. We are fully committed to equal employment.

In January, I reached out to every employee to remind them that New Jersey Transit values diversity, to make sure everyone understands how important equal opportunity and equal treatment is to the organization and to me personally. My written message encouraged all employees to review New Jersey Transit's nondiscrimination policy, a policy provided to each employee and redistributed to all employees annually. I

reinforced everyone's responsibility to ensure that we are doing what we can to make New Jersey Transit inclusive, welcoming, and fair to our fellow employees and customers every day.

New Jersey Transit conducts internal investigations into all allegations of discrimination. Corrective measures are taken where warranted to address any conduct engaged in by New Jersey Transit's employees that violates the agency's nondiscrimination policy. A written policy puts employees on notice that they are subject to an array of discrimination (*sic*) actions, including referrals for training, referral for counseling, written or verbal reprimands, reassignment, suspension, demotion, or termination of employment.

We also continually review our organizational policies, personnel practices, and procedures to ensure that we are -- that there are no barriers to access the utilization and implementation of equal employment opportunities.

I also want to make sure that you were aware that the New Jersey Transit workforce is quite diverse. Over 60 percent of our workforce is comprised of minorities. We do a semiannual utilization analysis; we compare the representation of women and minorities in our workforce to the availability of the labor pool. New Jersey Transit also takes affirmative steps to combat illegal discrimination in the workplace -- adopting a nondiscrimination policy, training employees on that policy, and enforcing a nondiscrimination policy are just a few examples.

So with regard to Mr. Baretta's testimony -- I can just say that in the context of his testimony, we're wondering how we're operating at all with this complete dysfunction, and if the leadership of New Jersey Transit,

including myself, is not fit nor capable of dealing with situations and running the organization. Mr. Baretta has known me for a few months, so how he can make that allegation is interesting; certainly interesting.

He was terminated; he is no longer an employee of New Jersey Transit -- just to put that on the record. And he was originally suspended for misuse of his vehicle; significant misuse of his vehicle. So that's all I will say about Mr. Baretta for now.

I'll get into my regular testimony.

Good morning, Chairmen, and members of the Committees. Before we get into the main issues I believe you have expressed an interest in, I want to thank two very important groups of people: New Jersey Transit customers and New Jersey Transit employees. The patience and understanding of our customers have been the greatest assets this summer. We knew from the very start that our summer services plan would only succeed if we were able to effectively communicate travel changes and choices to customers. They accessed the information we provided, processed it, and made an almost seamless transition from their old travel patterns to the temporary ones that were in effect throughout the Amtrak repair outage.

Yes, we did a good job communicating by using all available traditional and social media outlets to get the word out. But it was our customers who knew how to use that information, and they truly deserve a "job well done."

Our employees have been a great asset. New Jersey Transit employees -- from those who are daily on the front lines to the executive

management level -- have been invested in the success of the summer service plan.

But I believe our employee ambassadors represent the best example of the commitment of New Jersey Transit employees to helping our customers. These were men and women who staffed locations -- often far from home, early in the morning or late into the evening -- to courteously help customers find trains, ferries, and buses, read schedules, or locate a platform or find an exit. So I want this body to know that these employees represent New Jersey Transit at its best.

As you know, Amtrak has assured us that the summer track repair work will end in time for New Jersey Transit to resume regular weekday service the day after Labor Day, on Tuesday, September 5. And let me stress the importance of that assurance. It can only come from Amtrak, upon whose accurate representation of their progress all the regional transit agencies have depended. So we all anxiously await the conclusion of their work and hope that their repair effort was time and money well spent.

While many Morris and Essex customers had to significantly change their travel patterns, we also know that some customers experienced crowded conditions when New Jersey Transit was forced to combine trains due to crew shortages. Leaving customers waiting for trains on platforms or having customers crowded on a combined train because of crew shortages is unacceptable. Customers do not like it; but they understand it when their inconvenience is due to mechanical failure or aging infrastructure. But there is little patience or understanding when delays or disruptions occur because not enough crews are available.

So come September, there are number of things that will be happening to reduce the potential of trains having to be annulled or combined because of a shortage of engineers.

Many engineers had planned vacations during the summer, vacation times that contractually had to be selected by the end of last year. With summer vacations coming to an end, New Jersey Transit will gain an increase in engineer availability. The reversion to a regular schedule will also require fewer crew assignments.

Summer's end also will bring an end to the special beach trains. So when you combine these schedule and structural changes, it means New Jersey Transit will have a larger pool of engineers available.

Another measure New Jersey Transit is making to prepare for the resumption of regular weekday service is by maintaining our new, unified command center, the Emergency Operations Center -- the EOC -- so that all of the appropriate business lines -- rail, bus, police, customer service, social media, etc. -- are all in the same location, and can react and respond together if a situation should occur.

The EOC was the nerve center of our Summer Services Plan. Without its centralized ability to process, coordinate and respond to events, and then push out information in real time, we would never have been as effective as we were in moving customers, sending out service alerts, and keeping people safe and secure.

But our work isn't done. New Jersey Transit's employee ambassadors will remain at Hoboken Terminal and New York Penn Station to assist customers and welcome them back as we return to a regular service schedule.

Again, we also know that this has been a summer to remember for many of our customers, and we thank them for doing their homework before the new schedules went into place. It showed us, as the majority was prepared and knew their options. And we are grateful for their patience as we all navigated through the new schedule together.

We also want to thank our partners -- private bus carrier companies, PATH, and New York Waterway. Each helped to expand the travel choices that made it possible for thousands to complete the commute to work each day.

And while we expect most customers will return to their regular, pre-Amtrak repair commuting patterns, we also know that many have become familiar with new travel options and may consider using them in the future. We will be ready to respond to any changes in travel patterns, as we always do, by adjusting bus and rail schedules, lengths of trains, and so on to best align service with our customer demand.

Of course, ensuring that our customers had the best commuting and travel experience possible during Amtrak's summer repairs carries a cost. Those costs -- for cross-honoring on PATH and the ferries; for additional buses from Summit and South Orange and other communities, for example; for extra police and additional rail and other personnel -- are not yet finalized. However, I know the Committees are interested in what that number might look like, so I can report that our preliminary estimate is that providing the robust summer schedule with maximum travel options will cost approximately \$25 million.

New Jersey Transit will be discussing this issue with Amtrak within the next few weeks as we review our options on costs. But as the

Governor has said, one option is off the table: There will be no fare increase for Fiscal Year 2018.

While New Jersey Transit has been focused on providing safe, reliable summer service these past few months as Amtrak has been performing the Penn Station repairs, this has not been our sole focus. Last month, New Jersey Transit adopted a balanced budget for Fiscal Year 2018. The 2018 operating budget totals \$2.2 billion, and is 5.1 percent greater than the Fiscal Year 2017 budget.

The fiscal 2018 budget funds an additional 92 positions in critical areas of the agency, including 25 new police officers; 27 rail operations positions to augment track maintenance forces and front-line supervision in rail yards and of train crews; and 20 positions within departments such as the Office of System Safety, which oversees and coordinates safety for all our operating modes.

Regarding Fiscal Year 2019, New Jersey Transit and the Department of Treasury will begin developing the budget as a collaborative effort beginning in the October-November timeframe, as we do each fiscal year.

Since my appointment last October, New Jersey Transit has hired or promoted 1,029 individuals across the agency, 9 percent of our budgeted headcount of 11,513. This is a brisk rate of hiring, and reflects my pledge to fill safety inspection positions in the Office of System Safety, supervisory positions in Rail Operations to improve our supervision in the field, and to fill out the ranks of the Police Department, as well as other positions that help deliver service every day.

In addition, we have made key hires, including a new leader of our Equal Employment Opportunity Office, and a new head of our Procurement Department. We have also added staff in our Human Resources Department to help ensure we can efficiently recruit talented people across the agency.

Let me make sure everyone realizes the significance of these EEO and Procurement hires. We are investing in our employment and procurement functions, two areas that, if not properly resourced, can affect the staff or the materials and contracts a company needs to stay competitive and current. Without talented men and women behind the trains and buses, light rail vehicles, and Access Link paratransit, there would be no delivery of service, and our State's economy and quality of life would suffer.

We recognize that each day a position is vacant it affects our customers' experience and that of our current employees who are shouldering the operational load. We at New Jersey Transit must ensure we continue attracting talented employees, so we are re-examining how we recruit for the most critical roles at New Jersey Transit to position ourselves for the future.

The locomotive engineer's position is one of these key employment positions. We know there will be retirements among the engineer force each year, and we know that bringing new engineers into the ranks requires an extensive and rigorous 20-month, in-house training and Federal standards certification process. But finding qualified, interested candidates for those positions has become an increasing challenge, as younger job seeker's career aspirations change. Rail and transit, unlike biotechnology or IT, are not viewed as growth industries. The U.S.

Department of Labor projects rail employment, nationally, to decline by about 3 percent by 2024; and jobs for engineers to decline overall by 2 percent, despite openings from retirements.

And railroading is not a 9 to 5 job, nor will it ever be. That's why we're actively engaged in examining the profile of successful locomotive engineers, as well as the Human Resources activities involved in sourcing and interviewing suitable candidates. We seek to populate that candidate pool with the best and the brightest so we can deliver safe, reliable rail service.

Bus employees are also crucial for the daily delivery of service. On the bus side, this summer's Human Resources staff developed a plan to shorten our hiring cycle, setting up a special *speed hiring* recruiting day on Saturday, August 5, to attract candidates for nearly 90 bus maintenance vacancies, including cleaners, mechanics, foreman, and serviceperson.

The event was heavily publicized through a range of media, and we stressed that on that Saturday we would be performing testing, interviews, and contingent offer processing, all at one location at New Jersey Transit's Ferry Street facility. We had over 500 applicants apply during pre-registration, and we had over 600 walk-ins on the day of the event. As of today, we have made 66 offers.

We will review what went well and where we can improve, and are in the planning stages for similar Bus Operator hiring events in North and South Jersey.

And when it comes to hiring, I want to stress that New Jersey Transit is no different than any other business; and that we welcome

referrals from all sources, including other transit agencies, from the private sector, and from other branches of government.

What is important to remember, however, is that regardless of where these candidates come from, becoming an employee is a matter of qualifications and fit.

The Committees have expressed interest in the coordination between New Jersey Transit and the Governor's Office. When I took the job of Executive Director some 10 months ago, the Governor offered me his full support and that of his staff. And we have had that support; for example, as we worked to develop the annual budget and to prepare for a reauthorized Transportation Trust Fund. It bears noting that New Jersey Transit regularly interacts with government at all levels, on a wide range of issues, from the condition of a local train station, to the potential for new Light Rail service in a particular portion of the state, to interest in a new bus route, to Access Link service for a constituent.

The Committees have also expressed interest in discrimination lawsuits and complaints. New Jersey Transit maintains zero-tolerance with respect to discrimination within our organization, and we will continue to thoroughly address allegations of discrimination, whenever made.

And as I mentioned, we have a new leader of our EEO Office, Jeanne Victor, who came to us with more than 30 years of professional experience. New Jersey Transit also maintains an Office of Civil Rights and Diversity, led by Leotis Sanders.

New Jersey Transit policies and procedures regarding discrimination mirror Federal and State policies. For all internal complaint allegations, New Jersey Transit conducts a thorough investigation to

determine if there has been a violation of New Jersey Transit's non-discrimination policy. If the investigation finds probable cause that a violation of the policy has occurred, appropriate remedial action is taken.

While New Jersey Transit is prohibited by State law from disclosing disciplinary actions related to individual employees, I can share that lawsuits alleging discrimination continue to decline, from 10 filed in 2012, to 4 filed in 2016. And so far, through 2017, we have 4. During that same period, since 2012, there has been a total of 146 internal complaints filed alleging discrimination based on race, sex, or gender. Of those 146, some 108 have been investigated and closed.

Relating to those, some statistics are worth noting: 87 of those completed cases, or 80.5 percent, were resolved with either a finding of no probable cause, or were withdrawn, or were such that no finding could be reached, for instance, because the complainant failed to follow up. In 21 cases, or 19 percent, probable cause was found.

Counseling and reinstruction on the policy is a mandatory minimum action in all cases when there is a finding of probable cause. Additional remedial action may be imposed as appropriate, up to and including termination. Since 2012, the U.S. Equal Employment Opportunity Commission and the New Jersey Division on Civil Rights -- two independent enforcement agencies -- have not found probable cause that a violation occurred in any case that has been filed with them from New Jersey Transit; none.

I provide these facts for context, given the focus on discrimination issues in the joint Committees' most recent questions to New Jersey Transit. I want to assure the Committees that, under my

leadership, I have intensified our efforts to enforce a zero-tolerance policy and an environment for nondiscrimination. For instance, I decided to restructure EEO and Diversity into two separate departments -- one department in charge of and focused fully on EEO complaints and investigations, ensuring New Jersey Transit's zero-tolerance policy on discrimination is carried through in all the agency's policies and practices; and the other department focused on diversity and inclusion, to create a high-performing workforce and organizational culture that embraces inclusion and empowers all employees to perform to their highest potential, while delivering results to our customers.

So I am heartened by the trend line in the statistics I have provided to you, and the context they provide in relation to the size and number of employees at New Jersey Transit -- which is, again, over 11,000.

So I thank you for the opportunity to address the Committees, and I am ready to take some questions.

SENATOR GORDON: Thank you, Mr. Santoro.

As I indicated before, I know that Senator Weinberg has a particular interest in this subject, and I know she has some questions. So I am going to defer to her to ask her questions.

SENATOR WEINBERG: Okay; thank you very much, Mr. Chairman; and thank you, Mr. Santoro, for being here.

I'm sure this is a difficult experience for you, as it is for us to be hearing the kinds of issues that have been raised by the people who came before you. And I will point out that you have been the Executive Director for 10 months; it probably feels, to you, like 10 years. And most of what

we talked about -- and will talk about -- predates your being in that top position. So I preface it with that.

But before getting to the real questioning, based upon information that New Jersey Transit supplied to us about your workforce and your speaking about it, trying to be inclusive, I did a pretty good rundown of the workforce, in terms of descending salary order -- that is, from the highest salary on down. And I picked a cutoff of a \$120,000 a year.

You have about 470-some-odd employees who are earning \$120,000 or above; and 77 percent of them are men, and 23 percent are women. So I just want to point a couple of these things out to you as we talk about inclusion.

By race: 83 percent of them are white, and about 17 percent are minorities of various kinds -- African American, Hispanic, Asian.

So the figures of high-salaried employees doesn't make it look like there's a lot of upward mobility or a lot of inclusion in those figures. I point that out; and I'm not really requesting an answer from you, but something that, hopefully, you will be looking into.

I'd first like to ask you about New Jersey Transit -- about the Board. Where did the rule come from that anything below \$500,000 in settlements is not reported to the Board?

MR. SANTORO: I don't know.

SENATOR WEINBERG: So is that an internal rule of New Jersey Transit, or is it a Board rule? Do you know?

MR. SANTORO: No, I don't know.

SENATOR WEINBERG: Okay; I'd appreciate your finding that out.

MR. SANTORO: Sure.

SENATOR WEINBERG: Now, the somewhat large settlements that we heard about earlier -- we were talking about \$3 million, \$5 million, exclusive of lawyer fees. Were those cases reported to the New Jersey Transit Board?

MR. SANTORO: I can't confirm that; but I would assume, based on a \$500,000 limit, that they were. But off the top of my head, I can't confirm that.

SENATOR WEINBERG: Do you know, Mr. Wyckoff?

P A U L W Y C K O F F: Senator, I can only refer to the rule -- that the cases are, in general, reported to the Board.

SENATOR WEINBERG: So there were \$3 million, or \$5 million in settlements, and you have no idea whether they were reported to the Board or not? You know that there was a rule, but who would have reported those to the Board?

MR. SANTORO: The typical way we present any legal case to the Board is that we would put it on a Board agenda item -- not with a lot of detail; we would discuss the settlement, if it's a settlement, in executive session; and then the Board would go out and vote on that particular item, based on discussions within executive session.

SENATOR WEINBERG: So it would be the outside attorney who handled the case who would do the reporting, or--

MR. SANTORO: Depending on the case. But the outside attorney, to the best of my knowledge -- the AGs are there presenting the

case. I wouldn't suggest that that doesn't exclude -- that the outside counsel would not be there. But I don't know if there's a rule or a custom relative to outside counsel.

SENATOR WEINBERG: Okay; well, on behalf of the Committee I would like to request that, at least in these very large settlement cases, that you give us the information on when they were reported to the Board and if there was any action recommended to the Board. I'm talking about cases that have been settled, not cases that are still in litigation.

SENATOR KEAN: For--

SENATOR WEINBERG: I'm sorry?

SENATOR KEAN: I'm sorry -- for clarification, that would be for anything -- if I may -- anything that was -- for the standard of \$500,000 or higher, not just these particular ones.

SENATOR WEINBERG: Right.

SENATOR KEAN: But for all--

SENATOR WEINBERG: Right.

SENATOR KEAN: For the purposes of clarification, if the rule was followed in every instance of \$500,000 or above.

Sorry.

SENATOR WEINBERG: To your knowledge, does the Board have any oversight function in these cases?

MR. SANTORO: The ultimate oversight function is that they vote to approve any settlement presented to them.

SENATOR WEINBERG: Okay. Can you give us a little bit of clarification-- Well, they vote to approve, based upon whatever it is the

AG's Office tells them, I guess. Can you give us some clarification on the role of the Attorney General and the Board -- how the Attorney General interacts with the Board in settling these lawsuits? And do you have an Attorney General assigned -- a DAG assigned to you to represent NJ Transit?

MR. SANTORO: Yes. New Jersey Transit does not have any legal representation but for the DAG -- the Attorney General's department. They represent New Jersey Transit.

SENATOR WEINBERG: Do you have a specific DAG assigned to you?

MR. SANTORO: It used to be Chris Baker; I think there -- I don't know who the current DAG is now. I don't know if it's an acting role-- Hold on; maybe someone knows.

(confers with staff)

So a Mr. Joe Snow--

SENATOR WEINBERG: I'm sorry?

MR. SANTORO: Mr. Joe Snow is our-- I don't know if he's our officially acting yet; he is the lead DAG for New Jersey Transit.

SENATOR WEINBERG: So does the Attorney General actually participate in settlement discussions?

MR. SANTORO: Yes.

SENATOR WEINBERG: Okay. And who does that DAG report to in New Jersey Transit as the settlement discussions are going on?

MR. SANTORO: They report directly up to the Attorney General. They don't report to anyone at New Jersey Transit. That's my understanding.

SENATOR WEINBERG: So there are settlement discussions going on from the Attorney General's Office, but you don't get any information on that?

MR. SANTORO: No; we have, in any type of settlement-- New Jersey Transit's representation in that process is within our Risk Management Department.

SENATOR WEINBERG: Okay; so does whoever heads up Risk Management -- do they report to you, on any quarterly basis, monthly basis, what's going on in terms of, perhaps, problems of racial unrest or bias in the agency?

MR. SANTORO: The DAGs have a quarterly report that goes to myself and to the Board.

SENATOR WEINBERG: Okay; and what does the quarterly report consist of?

MR. SANTORO: A summary of the status of the cases.

SENATOR WEINBERG: And that goes to the NJ Transit Board?

MR. SANTORO: Correct.

SENATOR WEINBERG: Okay, all right. Does anybody ask any -- do you get involved, as the Executive Director, or does your HR person get involved in saying, "Hey, look, we've got a lot of these complaints coming in, or we've got this lawsuit, and we settled this lawsuit and we really should be looking at what went wrong here or what we did right or--"

MR. SANTORO: So that's a broader question; it goes to the interaction between EEO, and Civil Rights, and HR.

So let me turn to--

J E A N N E M. V I C T O R, Esq.: (off mike) My name is Jeanne Victor; I was recently appointed--

SENATOR WEINBERG: Can you come to the front, here, please?

Thank you.

MS. VICTOR: Good afternoon. My name is Jeanne Victor; I was recently brought on and appointed as the EEO Officer for New Jersey Transit.

SENATOR WEINBERG: And when were you brought on in that position?

MS. VICTOR: It's been three months now, this week.

SENATOR WEINBERG: Three months?

MS. VICTOR: Yes.

SENATOR WEINBERG: And were you an employee at NJ Transit prior?

MS. VICTOR: No, I came from the New Jersey Department of Transportation.

SENATOR WEINBERG: Okay; so were you-- Because you worked for DOT, were you familiar with NJ Transit before you came into this position?

MS. VICTOR: I have about 25 years of experience with the State, and I did EEO for the State for most of that time.

SENATOR WEINBERG: Okay; all right. So you have some information you wanted to answer here?

MS. VICTOR: Would you just mind, please, repeating the question one more time?

SENATOR WEINBERG: Well, I-- What I would really like to get at -- because we heard so much about the culture and about the necessity for institutional change -- that when a case is settled, whether it's under \$500,000 or more than \$500,000, who looks at this, with an objective, dispassionate eye, to say, "Okay, these are the five things we did wrong; these are the five things we did right; and this employee needs to be called in for counseling, training, probation -- whatever."

MR. SANTORO: So I won't answer the question, but I'll give some context. And then Jeanne can answer you.

So Jeanne's new; as I said in my testimony, we are trying to focus on EEO issues within New Jersey Transit and get towards our zero-tolerance goal. And so it's not on-- I don't know if we can answer the question on a specific-by-specific case basis, but in the broader picture, there is data being collected, and information being collected; and that, I think is what Jeanne can talk about in terms of -- that's not just lawsuits; it's complaints and reporting -- as I said in my testimony -- to the Civil Rights Diversity -- Civil Rights Department and others.

And in that context, Jeanne can talk about what she's going to be doing, in terms of dealing with, again, working towards the goal of zero-tolerance, or getting to that point in the future.

MS. VICTOR: Okay. I have a degree in law; I practiced law for a while. So I've become the liaison person between the Attorney General's Office and New Jersey Transit, in terms of the lawsuits that are taking place. So I've been working with the Attorney General's Office to

provide documentation and be that liaison person. So I'm aware of a lot of the cases that are going on. Then I take that to my boss and discuss those kinds of cases. I know that there are periodic meetings with Risk Management, and they go over cases as well. And as I said, I work with the DAGs as well.

SENATOR WEINBERG: Have you had any interaction with the Board of New Jersey Transit?

MS. VICTOR: No, I have not.

SENATOR WEINBERG: Have you met them?

MS. VICTOR: Yes, I know who the Board members are.

SENATOR WEINBERG: So you were introduced, at least.

MS. VICTOR: Yes.

SENATOR WEINBERG: Okay. Can you answer something that was raised earlier about the way an EEOC complaint is handled -- that you don't accept something in writing, but you must have an in-person interview with the complainant?

MS. VICTOR: EEOC would be an external agency, and the employee would normally go to the EEOC.

SENATOR WEINBERG: No, I'm talking about an internal.

MS. VICTOR: On an internal complaint, we handle complaints however they want to come in. If someone wants to submit it in writing, we accept it in writing. I always invite people to come in and see me, because I'm sure they want some face-to-face contact. But we accept complaints in any format.

SENATOR WEINBERG: So that is not correct -- what we heard earlier. Was that a prior policy before you came in?

MS. VICTOR: No, I don't think so. I know that when a complainant files a complaint, we like to speak to that person; but it's not mandatory. It's not that we say we're not going to accept the complaint.

SENATOR WEINBERG: Okay. Is the employee made aware that that request is not mandatory?

MS. VICTOR: It's not in our policy that they have to speak with us.

SENATOR WEINBERG: Well, I know it's not in the policy. But when you request the-- If an employee gets a request to come into the EEO Office, do you tell them that that's not mandatory that they respond?

MS. VICTOR: Well, we--

SENATOR WEINBERG: That their written complaint is sufficient?

MS. VICTOR: Well, we kind of say it the other way. We say that, "We'd like you to come in because we'd like you to be able to flesh out the complaint." So there are two phases to this. An employee can file a complaint; but eventually we will probably need to meet with the employee, at least to flesh out the facts to find out who their witnesses are; to get any documentation that they might have that supports the complaint. Very often the written complaint may not be sufficient.

SENATOR WEINBERG: So the employee -- the bottom line is, the employee is not told that this is not a mandatory appearance.

MS. VICTOR: No, the employee is not told that it's mandatory.

SENATOR WEINBERG: Okay. And the complaint is kept secret, and is the investigation kept secret? We heard a lot about the

secrecy of these, even when it affects a particular employee who doesn't want it secret.

MS. VICTOR: We are required to keep the investigation confidential to the extent that we can. It's our policy that only those who need to know will be told about the complaint, and there are a multitude of reasons for that. Primarily we want to make sure that the workplace doesn't become divided and divisive. And we want to make sure that people who file complaints feel free to file complaints -- not that their complaint is discussed in the workplace and they may feel uncomfortable having that happen.

Also, there are respondents who may not have committed the infractions that they are being accused of committing, so it would be unfair to have them branded in the workplace. We also would like to make sure that witnesses are not tainted, so that when we speak to witnesses, they haven't gotten together, and gotten their stories straight, or misunderstood the facts, or misremembered the facts. So yes, we like to keep the matters confidential to the extent that we can; yes.

SENATOR WEINBERG: And is an employee told that they cannot bring a lawyer in if they so choose, if they're represented by an attorney?

MS. VICTOR: That has not been my experience here. Since I've been here, no one has asked to have representation. But it is typically -- it has been a typical response that if someone wishes to bring their attorney in, the attorney can come, but the attorney cannot participate in the investigation.

SENATOR WEINBERG: Okay. But you wouldn't -- you've only been there for three months, so you can't tell us about what the policy was prior to your being there.

MS. VICTOR: Correct.

SENATOR WEINBERG: Is the person you replaced still an NJ Transit employee?

MS. VICTOR: Yes, he's here; yes.

SENATOR WEINBERG: Can we ask him anything, since he has a much longer history on it?

SENATOR GORDON: Sure.

ASSEMBLYMAN McKEON: Is that Mr. Sanders, is it?

SENATOR WEINBERG: Thank you, by the way.

LEOTIS SANDERS: Thank you.

SENATOR WEINBERG: Can we have your name?

MR. SANDERS: Yes; my name is Leotis Sanders.

ASSEMBLYMAN McKEON: Can I just ask, before you pick up again -- Mr. Sanders, you were in that position for how long before Ms. Victor came in?

MR. SANDERS: From April 2009 until this past June.

ASSEMBLYMAN McKEON: Okay. And you're now in a diminished capacity, relative to the position you were in; or is it lateral? What are you doing differently?

MR. SANDERS: EEO was a collateral responsibility that I had, along with DBE/SBE compliance, Title 6, ADA compliance, and diversity for the organization.

ASSEMBLYMAN McKEON: So was the move because you needed help, you had too much to do, or-- Explain that to me.

MR. SANTORO: We wanted to focus on EEO, and we separated the two functions. So we, again, focus on EEO on one hand; and Leotis can focus on his responsibilities on the other hand.

ASSEMBLYMAN McKEON: Okay; fair enough. Thank you.

I'm sorry, Senator; thank you.

SENATOR WEINBERG: Okay.

And thank you for coming forth. You probably will be better able to answer some of these questions.

MR. SANDERS: Yes.

SENATOR WEINBERG: So is it so that any attorney has been prevented from -- if not participating directly, at least observing and being with his or her client during a hearing, or during a meeting?

MR. SANDERS: Yes, it has been our practice, when it comes to complaints that we're investigating internally, not to have attorneys be present; and for NJ Transit not to have attorneys be present.

SENATOR WEINBERG: Okay.

MR. SANDERS: And that was with agreement, in consultation of our DAG's office, that we did not allow that.

SENATOR WEINBERG: Okay. And was it true that employees were told to come in for personal interviews before the written complaint would be accepted?

MR. SANDERS: That is incorrect. All written complaints have always been accepted. As Ms. Victor explained, it is necessary, often,

usually, to have someone come in, in order to complete a thorough investigation; in fact, to even begin one.

SENATOR WEINBERG: But employees are not routinely told that they don't have to come in if they choose not to.

MR. SANDERS: No, they are not told that they don't have to come in.

SENATOR WEINBERG: Okay; but they *don't* have to come in; is that correct?

MR. SANDERS: That is correct, yes.

SENATOR WEINBERG: Okay.

Did you interact with the New Jersey Transit Board during all the years you've served in this, kind of, multitude of situations at New Jersey Transit?

MR. SANDERS: Yes. In my various capacities, I interacted with the Board.

SENATOR WEINBERG: Did you report to them in person, or in writing, about the settlement of any cases over \$500,000?

MR. SANDERS: I did not. Settlements are handled by our DAG's Office, as the Executive Director explained.

SENATOR WEINBERG: Okay. Did anybody in New Jersey Transit ever call you in to find out -- particularly in the larger settlements -- what employees were responsible for this? What is happening to those employees? Were you ever called in directly, or through the Executive Director, to report that so that the Transit Board has some oversight as to what is going on here?

MR. SANDERS: Not to the Board. When there is an investigation or litigation that is proceeding related to EEO, it has been typical that I'm involved in that directly. So I'm aware of the details. Usually during that litigation there's an exploration of any breakdowns in policies and procedure that might have been a part of the allegations made in that particular litigation. And in the few instances in which there has been a significant settlement, there's usually been discussion between my office, the Human Resources AED, and Risk Management, as well as Area Management, on any protocols that need to be addressed, any policies need to be changed, or coaching or training that needs to happen.

SENATOR WEINBERG: Okay. So out of some of these -- out of these larger cases, what kind of policies would change, what kind of retraining was done, what kind of counseling was done, and was anybody disciplined?

MR. SANDERS: So I can't talk specifically about specific instances of cases.

SENATOR WEINBERG: I'm not asking for specific instances--

MR. SANDERS: Okay.

SENATOR WEINBERG: --or anybody by name.

MR. SANDERS: All right.

So in the instances that I recall, usually there's a breakdown in protocol. Area Management may have attempted to handle an issue that should have been referred to the EEO Office for management. And so there is coaching and there's guidance; reinstruction on what the appropriate protocols are for handling issues; for the way to handle issues that arise in the workplace disputes between employees; and the appropriate time to get

EEO involved. Usually it's been training; if there has been an instance where there's been discipline, it was usually assessed before the settlement in the course of the investigation, internally.

SENATOR WEINBERG: And do you have any idea what-- Well, can you give me a for-instance of the kind of discipline that would-- I mean, we're talking about cases here that cost the taxpayers millions and millions of dollars. That could buy a lot -- to relieve--

SENATOR GORDON: Women's health -- \$7.4 million.

SENATOR WEINBERG: --our transportation infrastructure problems. So were any employees in any of these cases specifically disciplined -- I'm not asking for names -- but any employees in any of these cases called in by Human Resources, called in by your office; specifically disciplined -- reduced in salary, job title; sent to what kind of counseling and retraining?

MR. SANDERS: So I think it's important to clarify that my office, or the EEO Office, does not administer any discipline. Discipline is always administered by Area Management. So there may be a recommendation for appropriate discipline, but it's not carried out. So I wouldn't necessarily be privy to the details of all discipline administered.

I will say that in the cases that I'm recalling, specifically, there have been -- in the agreement ranks, and so the types of discipline that are warranted are usually prescribed by the limits of the collective bargaining agreement. So those could--

SENATOR WEINBERG: So who is -- if I may interrupt you -- who is *Area Management*? What is that?

MR. SANDERS: So for instance, if it is in Bus, it might be their local management -- the garage, the supervision there -- who would administer the appropriate discipline.

SENATOR WEINBERG: So you don't make recommendations in that respect?

MR. SANDERS: We do make recommendations; we don't administer the discipline. It's usually done in consult--

SENATOR WEINBERG: Well, okay; then let me rephrase the question.

MR. SANDERS: Okay.

SENATOR WEINBERG: Have there been specific incidences, in some of the aforementioned cases, where you recommended that an employee be disciplined in some way: a reduction in salary, a demotion in job assignment, whatever?

MR. SANDERS: Yes, there have been recommendations for suspension and demotion in my time there.

SENATOR WEINBERG: And to your knowledge, were those recommendations followed--

MR. SANDERS: Yes.

SENATOR WEINBERG: --by the Area Management?

MR. SANDERS: Yes.

SENATOR WEINBERG: So we have specific incidences where employees were demoted, put on probation--

MR. SANDERS: Yes; given discipline, warnings, suspension. I'm not 100 percent sure about demotions, specifically. I know about suspensions and warnings.

SENATOR WEINBERG: But they were given suspensions.

MR. SANDERS: Yes.

SENATOR WEINBERG: Okay. Well, it would seem to me if we lost a \$5 million suit, I wouldn't want to just give the employee a warning about the future. (laughter)

But I would like to know exactly how that policy is carried out. You make a recommendation; the Area Manager executes it, or doesn't, as he or she sees fit. So I would appreciate--

MR. SANDERS: So the recommendation--

SENATOR WEINBERG: You know, you don't have to do it right now--

MR. SANDERS: Okay.

SENATOR WEINBERG: --but letting the Committee know that.

MR. SANDERS: Got it.

SENATOR WEINBERG: Do you consider mandatory counseling in some of these cases?

MR. SANDERS: If there is a finding of probable cause -- in my time, counseling and reinstruction has always been a minimum remedial action to address it -- corrective action.

SENATOR WEINBERG: Has been a minimum-- I'm sorry.

MR. SANDERS: Corrective action.

SENATOR WEINBERG: What is--

MR. SANDERS: Remedial, actually.

SENATOR WEINBERG: What is counseling; can you tell me what-- If there is-- Is there mandatory counseling in these cases and, if so, what does that consist of?

MR. SANDERS: There is--

SENATOR WEINBERG: Who does that?

MR. SANDERS: It is always carried out by the EEO Office. So usually my staff and the EEO unit would have a conversation with the individual for whom the allegations were substantiated. They would be reminded of the policy; they would be advised of the prohibition against retaliation. If there were specific things that they did that violated the policy, they would be told how, and how their behavior needed to be changed in the future; and advised that if there was any future infractions, that it would incur discipline.

SENATOR WEINBERG: All right. Since 2012 -- based on the information we've received -- there were 146 internal discrimination complaints; 108 of which have been resolved, and probable cause was found in only 21 of the resolved cases. Does that kind of sum up?

MR. SANDERS: Yes.

SENATOR WEINBERG: So all of these other complaints had no basis in fact?

MR. SANDERS: There was no finding.

SENATOR WEINBERG: So do you have anything to attribute the kind of disproportionate number of claims compared to the finding of cause? I mean, employees just--

MR. SANDERS: Not -- it's not--

SENATOR WEINBERG: I'm sorry; go ahead.

MR. SANDERS: I was going to say that it's not disproportionate if you, sort of, look out at even other agencies; you know, there are a number of complaints that come through. In the time when I was benchmarking against other agencies, we were in the trend line for complaints received. When it comes to there being "no finding" in these complaints, a number of these complaints arose out of people applying for positions, and feeling that there was a reason they didn't get the position linked to their race or gender; people who receive discipline who thought that the discipline that they received was invalid. And so a lot of those types of complaints are typical of complaints we see in the EEO; and a large majority of the time discrimination was not a motivating factor. There was a defensible business reason why a candidate was chosen, why a person received discipline, etc.

SENATOR WEINBERG: Well, I don't know that we can go into this now, but there is some discrepancy in the numbers that you supplied to us in answer to some of the questions we raised here, really, from Mr. Santoro.

In November, New Jersey Transit -- this is based upon information-- I'll give you the confusion that seems to reign here, and maybe Mr. Wyckoff, at some point, can help bring some light to bear.

In November, NJ Transit indicated that 50 employee discrimination lawsuits were brought against New Jersey Transit since 2012. Then, in January, they identified 62 employee discrimination suits since 2012, excluding 7 complaints that were filed between November and January. And then, in July, you provided us with a chart listing all race and sex discrimination cases filed since 2012; several of the cases listed were

filed before November, but do not appear to have been included in either the November or January responses.

So I would appreciate your looking at that, and clarifying those figures for us.

Let me put another question to the EEO Officer. Do you regularly look at the breakdown of your employee -- your whole employee force by salary, title, and the racial and gender breakdown?

MR. SANDERS: Those kinds of comparative analyses aren't required. We need to do more of them; we haven't done them recently. I will say we've been focused on complaint investigations in my unit and looking at that, primarily. But we have done them in the past. And when you do them, you do them at the level of the job category; so you don't do them overall in the way it seems like might have been done when you were looking at it. You look at the people in that job, at that level, and you compare like individuals.

SENATOR WEINBERG: When was that last analysis done?

MR. SANDERS: It was several years ago; I'm not sure specifically. But it has not been in the last two years.

SENATOR WEINBERG: Okay; maybe it's a suggestion--

MR. SANDERS: Absolutely.

SENATOR WEINBERG: --that it should be done.

MR. SANDERS: Yes.

SENATOR WEINBERG: How do you relate to-- How did you, as the EEO Officer, how did you relate to HR? I mean, what was your reporting--

MR. SANDERS: It's a requirement from the Federal Transit Administration that the EEO Officer be at least a dotted-line report to the Executive Director. I've, since I've been at Transit, been a report to the Executive Director or the Deputy Executive Director.

SENATOR WEINBERG: So, wait a minute; I'm confused.

MR. SANDERS: Yes.

SENATOR WEINBERG: Which is pretty easy to do, I guess.

The EEO Officer -- you, as the EEO Officer, reported directly to the Executive Director, not to HR.

MR. SANDERS: That's correct.

SENATOR WEINBERG: I thought we got -- maybe I don't remember correctly -- that we got some testimony opposite.

So Mr. Santoro, you, as Executive Director, get all of this -- these EEO issues -- reporting directly to you? Is that correct?

MR. SANTORO: From the EEO perspective, yes. And the data that we've been collecting for these hearings, since my initial -- at the beginning of my tenure here, has been very interesting in terms of crafting the need, as I've said in my testimony, to get more resources in here -- into New Jersey Transit and, specifically, Jeanne Victor -- very experienced -- freeing up Leo to do Civil Rights and DBE, which are all requirements as well.

So yes, I've seen the results; and I certainly -- at the previous hearings you, Senator, have suggested that \$5 million and \$3 million is a lot of money for settlements. And something certainly needed to be done about that, and we're starting that process to improve, as I said, heading towards a zero-tolerance goal.

SENATOR WEINBERG: Well, in order to establish a zero-tolerance policy, I think it has to begin with the employees who are responsible for the workplace actions that resulted in these kinds of lawsuits and these kinds of settlements. So the zero-tolerance policy has to start out with the people -- were they disciplined? And I think the idea that you sent it back-- in some cases, they might have been the Area Managers themselves -- were they just disciplined? Was anybody every fired?

MR. SANTORO: Yes; fired?

SENATOR WEINBERG: Yes.

MR. SANTORO: Yes; there was one individual fired, relative to the two lawsuits that -- the two larger lawsuits; yes.

SENATOR WEINBERG: So there was somebody fired?

MR. SANTORO: Correct.

SENATOR WEINBERG: Well, that's good to hear.

SENATOR KEAN: (off mike) The \$5 million person was fired.

SENATOR WEINBERG: Excuse me?

SENATOR KEAN: So one person was fired; \$5 million.

SENATOR WEINBERG: In the \$5 million lawsuit, you were saying; yes.

MR. SANTORO: Correct.

SENATOR WEINBERG: Well, as I said, that's good to hear.

So does a firing like that set a standard for employees to say, "Hey, look, you know, even if I don't feel like carrying out policies and protocols of equality, that's the culture in the place in which I am working"?

MR. SANTORO: In specifically in the Police Department, or just in general?

SENATOR WEINBERG: In general.

MR. SANTORO: No; I would disagree with what I've been told was reported out this morning or -- yes, I guess, earlier this morning -- that New Jersey Transit has a pervasive culture of discrimination. I don't believe that to be the case. We have the issues that you've been focusing on; that we are now focusing now, and we focused on before, but we want to do a better job to deal with the situation.

SENATOR WEINBERG: Well, obviously, there's some disagreement here on whether or not employees feel that their rights are being protected and that they are working for an agency that everybody is guaranteed a workforce that's free of retaliation; of patronage threats; of the kinds of things that we've heard from two attorneys and a, I guess, just former employee of yours.

So, you know, I know that you're here to run a transportation infrastructure, Mr. Santoro; and I know very well that you are aware that the best way to do that is to have the resources necessary, and to have the employee workforce that feels that they are functioning in the appropriate environment -- particularly public employees, who get enough grief from the public, I'm sure, on a regular basis.

So to provide that kind of increased transparency, to do away with secrecy, to know that the Transit Board is exercising oversight -- which they can only exercise if they know what's going on there, and they should be getting regular reports, it seems to me, about lawsuits, internal complaints, numbers, and what's happening with all of those things. We're

never going to run a great agency if our employees feel threatened. And that's some of the testimony that we've heard here today -- that threats are very usual and happen often.

And I don't know if that's a line of questioning that you are going to take up; and if it is, I'll be happy to defer to you to do that -- to the Co-Chairs. It might be a good segue for you.

ASSEMBLYMAN McKEON: Well, I -- Senator, I don't want to stop you at all.

SENATOR WEINBERG: Yes, go ahead.

ASSEMBLYMAN McKEON: I was planning on deferring to other members of my Committee, because I wanted everybody to have a chance.

SENATOR WEINBERG: Okay.

ASSEMBLYMAN McKEON: And I was going to start with Liz; thank you.

ASSEMBLYWOMAN MUOIO: My questioning was really focusing on the information we've been receiving from New Jersey Transit in response to our requests; and then, unfortunately, what was necessary -- the two subpoenas that were issued earlier this year, in the summer.

And I'll just preface my questioning with-- Although there were deadlines in both subpoenas, New Jersey Transit has adopted, evidently, a *rolling response*, which Chairman McKeon referenced earlier. I'm not quite sure about the validity of a rolling response; it's hard to imagine a court would allow a respondent to provide information on a rolling response basis in a case. But be that as it may, we just received, evidently, last night at 8:00 p.m. in the office, roughly 4,000 pages of additional responses, which

we have not had a chance to go through. So it could be that some of these answers are provided within those documents that we received last night.

But, first, I just want to go through-- In response to the Committee's October request-- We had three requests for documents: October 24, November 10 -- both in 2016 -- and then February 24 of this year. The two subpoenas were dated July 24 and August 11 of this past summer.

In the October request, we had requested information on senior staff at New Jersey Transit; and you sent an organizational chart that contained 15 positions identified by Transit as *senior staff*. Earlier this month, in response to our July subpoena, you provided a list of employees -- including job titles, salary, and date of hire-- that earn at least \$70,000. Six of the 15 positions contained in your October organization chart are not included in the list of employees provided in response to the subpoena. And it appears from other sources that those six employees still do work at New Jersey Transit. Do you know why they weren't included in the response to the subpoena?

MR. SANTORO: No, I don't; but we'll look into that.

ASSEMBLYWOMAN MUOIO: Okay; thank you.

In November, the Committee requested information on employees earning at least \$70,000; and our July subpoena was nearly identical to the November request. But your responses to the two requests were different, significantly different. The response to the subpoena does not include 46 résumés that had previously been provided in response to the November request. Do you know what the difference -- why the difference?

MR. SANTORO: I don't, but I will look into that as well.

ASSEMBLYWOMAN MUOIO: Okay.

I'll just-- Some of the titles that are missing from the response to the subpoena -- I'll just, so that you have a place to start -- include the Assistant Executive Director; Communications and Customer Service; Vice President/General Manager of Rail Operations; VP and GM of Business Operations; VP and GM of Light Rail and Contract Service; Chief Information Officer; and Vice President, Civil Rights and Diversity Programs which, obviously, is a position that's been filled. But that did not appear in this subpoena -- the July documents.

You also provided résumés of those earning at least \$70,000 in response to the July subpoena; the requested résumés. But the list of the employees that you provided did not -- doesn't match up with the résumés provided. You provided résumés for 31 employees who are not included in the employee list; and then you did not provide résumés for 19 employees who *are* included in the employee list. So your list of résumés and employees does not match up.

MR. SANTORO: I don't know why that is, and I will look into that as well.

ASSEMBLYWOMAN MUOIO: Okay.

The July subpoena also requested job postings for all the positions that are occupied by the \$70,000-plus personnel. You did provide several job postings in response; but only one of the postings is dated, which makes it difficult for us to verify that the others were actually used to advertise for the positions. Could you get us dated job postings?

MR. SANTORO: If they are available, yes, certainly. I don't know if they are or not; I don't know why they wouldn't be, but we'll (indiscernible) that.

ASSEMBLYWOMAN MUOIO: Okay. And there were no job postings provided for the two newly created or reclassified positions -- the Assistant Executive Director of Asset Management and the Chief Policy and Strategic Planning title. Were those jobs posted -- those two titles?

MR. SANTORO: I don't know, off the top of my head. We'll get that.

ASSEMBLYWOMAN MUOIO: You're not sure if the positions were posted or not?

MR. SANTORO: No.

ASSEMBLYWOMAN MUOIO: Okay.

And if they were, would you provide us with those postings -- dated postings?

MR. SANTORO: Yes.

ASSEMBLYWOMAN MUOIO: Okay; thank you.

Also, we have a discrepancy between testimony and responses -- written responses. You identified the Chief Policy and Strategic Planning position, currently held by Mr. Drewniak, as a reclassified position in your responses that you provided in November and March. But in your testimony in November, and in Mr. Drewniak's testimony in the Bridgegate trial, you both said that his position was newly created for him. Can you just say which one it is? Is it newly created or is it a reclassified position?

MR. SANTORO: I'll have to get back to you on that. I don't know.

SENATOR GORDON: Mr. Santoro, I don't mean to interrupt.

I'm just wondering whether your HR person, Ms. Prato -- who I believe is here -- could answer some of those questions and, perhaps, others that have been raised?

(confers with staff)

DEBORAH PRATO: Good afternoon.

SENATOR GORDON: I am wondering whether we should just repeat some of those questions.

ASSEMBLYWOMAN MUOIO: I'll start with the last one I just asked.

During testimony -- in written responses, we were told that the position of Chief Policy and Strategic Planning was a reclassified position, because we had asked for documentation on the reclassified positions. And then -- but in testimony, Director Santoro, in November, and Mr. Drewniak, during Bridgegate -- the Bridgegate trial -- had said that the position was newly created for Mr. Drewniak. Can you just say which one--

SENATOR GORDON: Before you do, could you just identify yourself for the record -- and your position?

MS. PRATO: Deb Prato; I'm the Assistant Executive Director of Human Resources.

SENATOR GORDON: Thank you.

MS. PRATO: It preceded my time; my understanding is the position that Mr. Drewniak occupies was reclassified from another position.

ASSEMBLYWOMAN MUOIO: Can you tell me, then, what the former title was of the position it was reclassified from?

MS. PRATO: I cannot off, the top of my head; but I will find that out.

ASSEMBLYWOMAN MUOIO: And who held that.

Thank you.

Let's see -- oh, the August subpoena also demanded all information related to the job search for the Transit's Chief Compliance Officer, including job postings, interview notes, résumés, recommendations. It requested all reports authored by the Compliance Chief and any performance review or internal investigations concerning the Compliance Chief. As of -- before 8:00 p.m. last night -- and I want to say, again, I have no idea what's in the 4,000 pages that were submitted by NJ Transit last night; but as of 7:59 last night, the response consisted of 131 résumés. When can we expect the rest of the information that was requested in the subpoena?

MR. SANTORO: I'll have to get back to you on that. I know we're working on it; I don't have a date yet.

ASSEMBLYWOMAN MUOIO: Okay. Of the 131 résumés -- and you may know this -- do you know how many of them were relevant to the initial search -- the one where Mr. Baretta emerged as the Compliance Officer -- or are they-- And how many of them are relevant to his replacement? I understand there are 131 résumés; the last résumé that was in the list was for Ms. Baker, who I think is currently in that position now. So were the other 130 for the initial hire, and there was one for the replacement?

MR. SANTORO: I think that's correct, yes. All of the 130--

ASSEMBLYWOMAN MUOIO: One hundred and thirty-one.

MR. SANTORO: --were the initial solicitation. But Mr. Baretta was appointed; we did not post the Chris Baker job -- the job after Mr. Baretta was -- the situation evolved and we appointed, consistent with our policy, Chris Baker.

ASSEMBLYWOMAN MUOIO: Okay.

My last question is about privilege logs. Both subpoenas had requested the privilege logs of any responsive documents that are withheld for confidentiality. And we've received, to date -- again, I don't know what came in last night -- no privilege log in response to either subpoena. Is that -- are you indicating that there is no privilege log, or you just haven't had a chance to produce it yet?

MR. SANTORO: We haven't had a chance to produce it yet.

ASSEMBLYWOMAN MUOIO: Okay. And these follow-up documents that you've said you're going to provide -- can you give us a timeframe?

MR. SANTORO: I cannot; I'll have to get back to you on that.

ASSEMBLYWOMAN MUOIO: Okay; all right. Thank you.

ASSEMBLYMAN McKEON: Andrew.

ASSEMBLYMAN ZWICKER: Thank you, Mr. Chair.

I have several questions.

Before I follow up on my colleagues' questions, I want to circle back to some of the testimony that we heard earlier today which was, honestly, very troubling -- in particular around safety. You have been here, in front of us, many times; and we focused quite a bit on Positive Train Control. You've testified in front of us that the agency was going to meet its December 2018 deadline for Positive Train Control; and you have

strongly affirmed that previously. We've heard testimony earlier today that questioned that. So the question for you is, is New Jersey Transit going to make its deadline of December 2018 for Positive Train Control?

MR. SANTORO: So back -- I don't know the exact date; earlier this year, in March or April, we went to the Board for additional funding that will be provided to our contractor, Parsons Transportation, and their subcontractor, Alstom Engineers. We rebaselined our schedule with that change order as well. The contractor committed to completing that date -- completing the project in December of 2018, as part of those renegotiations, as part of that change order. So at that point in time -- I don't know the exact date -- we rebaselined it.

So there are a couple of things that have been going on since then. We have been ahead of schedule in certain elements of the project; and, currently, we are falling behind in -- our contractor, Parsons, is falling behind in the delivery of what we call *production vehicles*, which is equipping our commuter cabs and locomotives with this Positive Control System. They have fallen behind schedule; we have met with them several times. The Commissioner and the Chairman of the Board -- the New Jersey Transit Board, Commissioner Hammer, has met with them, I've met with them, and we have expressed our significant concern with those delays. They have assured us that -- *they* being Parsons -- has assured us that they will be putting together -- and its due at the end of August, which is days away -- a recovery plan to deal with the production schedule that they are currently not meeting. We are waiting for that; there are alternatives that we've talked about, in terms of how they are going to increase their

production to get back on schedule. We are awaiting that, and I can report out when I get that information.

ASSEMBLYMAN ZWICKER: What did you mean when you just said there was also a *request for more money*?

MR. SANTORO: Yes; when we went to the Board and did this rebaselining, we, New Jersey Transit, recommended to the Board -- as a result of negotiations with the contractor for change orders, scope changes that we had asked for; which does a fair amount of issues that we had to deal with but, predominantly, scope changes. So with that, we did ask the Board, and the Board approved -- we recommended to the Board additional funding to fund those change orders that we had requested over the course of several years. And as part of all of that negotiation, that change order, a new schedule -- contractual schedule that was included in the change order was-- And the final date for the implementation of the contract and the completion of the project is December 2018.

ASSEMBLYMAN ZWICKER: How much money did you ask for and receive approval for?

MR. SANTORO: I believe it was \$40 million; it was in that order of magnitude.

ASSEMBLYMAN ZWICKER: And how much have you spent so far?

MR. SANTORO: Well, that was the change order; I don't know how much we've spent of the change order. But I don't have the number spent to date for the project, off of the top of my head.

ASSEMBLYMAN ZWICKER: Do you have a global number for how much has been spent -- or how much you anticipate spending?

MR. SANTORO: I believe the new contract amount, in round numbers, is about \$200 million.

ASSEMBLYMAN ZWICKER: So, I wasn't quite sure I could follow your whole answer. At this moment in time, with these change orders and this approval for more money, is it your expectation that you will meet the December 2018 deadline?

MR. SANTORO: It is our expectation that we will meet the 2018 deadline, yes. But that will clearly depend on the contractor's ability to come up with a recovery plan. They have committed to do so.

ASSEMBLYMAN ZWICKER: I'm sorry; and *recovering* from what?

MR. SANTORO: Recovering from their not meeting the, what we call *production schedule*, which is installing the equipment and software on our rail rolling stock.

ASSEMBLYMAN ZWICKER: Okay; thank you.

One more safety question. So we heard earlier today from Mr. Baretta -- something very, very troubling when it comes to safety training. And he testified that he personally observed safety training occurring where the participants in the training received the training and received the answers. Is that true?

MR. SANTORO: Bob?

R O B E R T L A V E L L: Hi; my name is Bob Lavell; I'm the Vice President and General Manager of Rail Operations.

I heard your question; I cannot verify that -- what Mr. Baretta said was true. We would have to get back to you on that.

But our engineers and conductors, on their safety training and Book of Rules, do take an examination. But I am not aware of any answers being in front of them when we they are answering the questions.

ASSEMBLYMAN ZWICKER: Is that, in your opinion, so far beyond the realm of what you would ever expect to hear from safety training classes, which are so critical?

MR. LAVELL: I believe that we have a credible safety training class at New Jersey Transit.

ASSEMBLYMAN ZWICKER: So while you can't obviously speak to that one particular example since you were not there, that would be, in your opinion, just an outrageous accusation to make; that this-- It wasn't just a one-time; what I heard was that this was something that seemed to be commonplace.

MR. LAVELL: As I stated, I don't believe that to be a true statement.

ASSEMBLYMAN ZWICKER: How do you feel about that statement?

MR. LAVELL: I feel that it's not a true statement.

ASSEMBLYMAN ZWICKER: Okay.

I have some other questions, following up with Assemblywoman Muoio's questions.

On some specific high-level people-- So she asked about the Chief of Policy and Strategic Planning. And what we heard as an answer was that this was not a newly created position; that this was repurposed from somewhere else. Does a job description for the Chief of Policy and Strategic Planning exist?

Sorry; I have to call up the HR person again. (laughter)

MR. SANTORO: Maybe Paul should move.

MS. PRATO: I don't know. (laughter) There is a document that outlines the accountabilities and responsibilities of the position; I don't know that it has ever been formalized in the type of job description that you would have received in response to the subpoena.

ASSEMBLYMAN ZWICKER: What are the accountabilities and responsibilities of the position?

MS. PRATO: I don't know, off the top of my head, in terms of what's written there.

ASSEMBLYMAN ZWICKER: All right; you're the Assistant HR Director, right?

MS PRATO: I am.

ASSEMBLYMAN ZWICKER: Okay.

MS. PRATO: There are 11,000 positions. (laughter)

ASSEMBLYMAN ZWICKER: I understand.

Do you know how many employees report to the Chief of Policy and Strategic Planning? Do you know how many people report to this position?

MR. SANTORO: I don't think there is anyone reporting right now to that position.

ASSEMBLYMAN ZWICKER: Okay. So no one reports to this person?

MR. SANTORO: I believe that to be the case.

ASSEMBLYMAN ZWICKER: When was the last time-- So this person is responsible for strategic planning -- according to the title, at least. When was the last time the strategic plan was updated?

MR. SANTORO: I don't know if we have an official strategic plan.

ASSEMBLYMAN ZWICKER: Okay. Who does the Chief of Policy and Strategic Planning report to?

MR. SANTORO: To the Chief of Staff.

ASSEMBLYMAN ZWICKER: To the Chief of Staff; okay.

Okay, so the Chief of Staff-- Who's the Chief of Staff?

MR. SANTORO: Jackie Halldow.

ASSEMBLYMAN ZWICKER: Okay; so this Committee subpoenaed lots of different things, as my colleagues have talked about. Do you have an updated résumé for her; in particular, what we received does not include her full experience -- the fact that she was the Chief of Staff, I believe; that's correct -- and then spent a year at the Governor's Office? Is that correct?

MR. SANTORO: I believe so, yes.

ASSEMBLYMAN ZWICKER: Do you have an updated résumé for her?

MR. SANTORO: I'd have to check.

ASSEMBLYMAN ZWICKER: After you check, can you supply it to us? Can you provide it to us?

MR. SANTORO: Yes, yes.

ASSEMBLYMAN ZWICKER: Okay.

Are Chiefs of Staffs typically named during public Board hearings?

MR. SANTORO: Named? What do you mean by *named*?

ASSEMBLYMAN ZWICKER: During a Board hearing that's open; you know, when these are happening -- this happens with the Board--

MR. SANTORO: In terms of Board approval?

ASSEMBLYMAN ZWICKER: No; in terms of open to the public.

MR. SANTORO: I apologize, but I don't follow the question.

ASSEMBLYMAN ZWICKER: So are there not public Board meetings?

MR. SANTORO: There are monthly Board meetings.

ASSEMBLYMAN ZWICKER: Right -- that are public?

MR. SANTORO: Yes.

ASSEMBLYMAN ZWICKER: Yes. So I'm wondering -- is the Chief of Staff something that has, in the past, been named during a public meeting or not?

MR. SANTORO: Excuse me, I couldn't hear that.

ASSEMBLYMAN ZWICKER: Sorry. Is the Chief of Staff a position normally named during a public Board meeting?

MR. SANTORO: I don't think we *name* them at every public Board meeting. We have individuals -- many of whom are here -- who sit around a dais; but the Chief of Staff is not one of them. I don't believe it's ever been, in my tenure, but I can't confirm that.

ASSEMBLYMAN ZWICKER: So since the Chief of Policy and Strategic Planning reports to the Chief of Staff, was the Chief of Staff responsible for creating that position?

MR. SANTORO: Potentially, originally, yes. I don't know the history of how that-- That was before my time as well, how that evolved.

ASSEMBLYMAN ZWICKER: Okay.

One of the things that we heard earlier, in the testimony before you besides issues around discrimination, were lots of issues around patronage hiring. And I know this is something that you have testified is important to you as well.

So how many high-level Christie Administration staffers have been hired by New Jersey Transit since 2010?

MR. SANTORO: I don't know the answer to that.

ASSEMBLYMAN ZWICKER: Is it more than zero?

MR. SANTORO: Since 2010?

ASSEMBLYMAN ZWICKER: Since 2000 and-- You pick a year.

MR. SANTORO: Christie staffers?

ASSEMBLYMAN ZWICKER: Does New Jersey Transit make patronage hires? How about that?

MR. SANTORO: I don't know how to answer that.

ASSEMBLYMAN ZWICKER: I think it's a "yes" or a "no."

So we've asked -- the Chairs have asked for a list of patronage titles that have been eliminated; so we'll flip it around -- under your tenure and before you. You have provided 235 positions that have been eliminated. We asked specifically for, not those positions that were related

to cost-savings, but specifically for lists of patronage titles eliminated. You provided 235 names. Is that the correct number?

MR. SANTORO: I don't know; I would have to look at the list; and even the premise of the question, with no disrespect.

ASSEMBLYMAN ZWICKER: That's fine.

You made changes to your policy about this on November 1, 2015 -- New Jersey Transit did, right? What was the -- what were you trying to do by changing the policy as an agency?

MR. SANTORO: That was before my time.

ASSEMBLYMAN ZWICKER: Okay; I think I'll stop.

Thank you.

ASSEMBLYMAN JOHNSON: Thank you, Chair.

And thank you for coming before this Committee today.

A few questions.

Regarding retaliation -- we heard testimony that a supervisor was transferred to a warehouse; and the supervisor had supervised 22 union employees. Why would this individual be transferred to a warehouse? Was it a change in the job description, or was there a-- What would the purpose of that be?

MR. SANTORO: I can't answer that; that is active litigation.

ASSEMBLYMAN JOHNSON: That's in litigation?

MR. SANTORO: That's under active litigation, I believe.

ASSEMBLYMAN JOHNSON: Okay; all right.

Going to patronage hires -- is it possible in your department that some of these patronage hires -- these individuals -- have formed a

clique and have empowered themselves to be a sub-supervisory force to either intimidate or run a certain part of New Jersey Transit?

MR. SANTORO: Clearly, I have not experienced any of that, or seen that. That would clearly have to be under operating, if it's during my tenure -- under me, unbeknownst to me. But I don't believe that to be the case.

ASSEMBLYMAN JOHNSON: Okay.

Getting back to-- I have an EEO question now. He stated that he makes recommendations to, I think, the Area Manager, Area Chief.

MR. SANTORO: Yes, that's what Mr. Sanders mentioned; yes.

ASSEMBLYMAN JOHNSON: Do they have to follow his recommendation?

MR. SANDERS: *Have to* are not the words that I would use. It's usually agreed upon; and there hasn't been an instance in which it was not carried through.

ASSEMBLYMAN JOHNSON: So it's up to their discretion whether they want to follow your recommendation or not.

MR. SANDERS: I would say, ultimately, they act -- all employees act on their discretion, including Area Management. I think that's fair to say.

ASSEMBLYMAN JOHNSON: If they decide not to follow your recommendation, do they have to take this decision to a higher authority, or does it stop there with them?

MR. SANDERS: Area Management is the ultimate decision maker in how they're going to manage their employees.

ASSEMBLYMAN JOHNSON: Okay. So when this decision is made by the -- what's that, Area Chief, Area--?

MR. SANDERS: According to the local area--

ASSEMBLYMAN JOHNSON: Area Management?

MR. SANDERS: Right; yes.

ASSEMBLYMAN JOHNSON: When this decision is made by the Area Manager, it is then brought back to you as to, "Yes, we are," or "No, we're not," does it go to the Executive Director, or-- How is that -- what's the follow-up to that?

MR. SANDERS: Usually it's agreed upon. Oftentimes, the senior management for the particular area is involved. If I'm involved directly, I will loop in the senior management. So there is agreement at that level over what we're going to do. So, you know, it's usually it's-- Again, it's not been the case in any instance that I can recall where there has been any disagreement on what we're going to do, or pushback, per se. We usually carry through on what we agree as the appropriate remedy for any policy or procedural breakdown.

ASSEMBLYMAN JOHNSON: Have you ever recommended termination?

MR. SANDERS: No.

ASSEMBLYMAN JOHNSON: Okay; suspension?

MR. SANDERS: Yes.

ASSEMBLYMAN JOHNSON: Without pay?

MR. SANDERS: Yes.

ASSEMBLYMAN JOHNSON: Has that been agreed to?

MR. SANDERS: It's not been recent. The instance that I'm recalling-- Yes, it was.

ASSEMBLYMAN JOHNSON: So you feel that there has been proper discipline for those who violate discrimination laws, or practices, or regs?

MR. SANDERS: When we've been able to make determinations that there is a finding of probable cause -- yes, I believe we've appropriately disciplined the individuals involved.

ASSEMBLYMAN JOHNSON: Okay. Concerning the African American police officers -- is that a pending suit or is that finished?

SENATOR WEINBERG: That's finished.

ASSEMBLYMAN JOHNSON: Is that pending?

ASSEMBLYMAN McKEON: I believe it's finished.

ASSEMBLYMAN JOHNSON: It's finished. What was the outcome of that in the end? Was there some after-action review, based on the decision of the courts, which brought this complaint to the courts?

MR. SANDERS: Right; that instance preceded me -- the actual incident preceded me. However, when I first came onboard, I was part of a cultural assessment of the Police Department that did include diversity as a focus.

ASSEMBLYMAN JOHNSON: How does a police officer get promoted; what's the process? Is there a test, is there an interview? And also, for assignments -- what determines if an officer applies for an assignment, which is not a promotion -- what is the process for that?

CHIEF CHRISTOPHER TRUCILLO: My name is Chris Trucillo; I'm the Chief of Police at New Jersey Transit. I've been the Chief since July -- the end of July 2010.

During my tenure, as per PBA contract, there are -- it is a written test given. Those who pass the written test move on to an oral evaluation, and the combined score results in a ranked list. When there's a vacancy, people are promoted into the position from that list. That's for police officer to sergeant. In the sergeant's ranks, the same process is also utilized, and that's how sergeants are promoted into the lieutenants ranks.

ASSEMBLYMAN JOHNSON: How about assignments?

CHIEF TRUCILLO: Assignments -- there are, per contract, appointed positions; and the Chief of Police has the authority to appoint into those positions. In my tenure, what I normally do is -- I might make that position -- make the Department aware that there's a position open, and then seek interested candidates. And then we'll look at interested candidates to see who would be a good fit into a particular position. There have been times when I've also appointed into a position.

ASSEMBLYMAN JOHNSON: Based on--?

CHIEF TRUCILLO: Based on what I believe is a good fit for that position.

ASSEMBLYMAN JOHNSON: Okay. How many officers do you have in the Police Department?

CHIEF TRUCILLO: Presently, now, we have 200 -- I believe 263. We're authorized 272, and that includes the additional 25 people who we were authorized, who are presently in the Police Academy.

ASSEMBLYMAN JOHNSON: When do they complete Academy?

CHIEF TRUCILLO: Their graduation is September 28, I believe.

ASSEMBLYMAN JOHNSON: Okay. So you have a total force of about 272.

CHIEF TRUCILLO: Yes, sir.

ASSEMBLYMAN JOHNSON: Okay; statewide?

CHIEF TRUCILLO: Yes.

ASSEMBLYMAN JOHNSON: All right.

The allegations made by these African American police officers-- Are you familiar with that?

CHIEF TRUCILLO: Just for con--

ASSEMBLYMAN JOHNSON: I know you can't get too far into it, because-- Well, I guess the case is closed; yes, we can go into it.

But go ahead, Chief.

CHIEF TRUCILLO: I'm not sure if you're referring to litigation that's prior to my tenure; I believe you might be. I was not in the room when that discussion was going on.

ASSEMBLYMAN JOHNSON: Okay.

Okay, Chief -- Chairman, I think I'm done.

Thank you, Chief.

CHIEF TRUCILLO: Okay.

ASSEMBLYMAN JOHNSON: And thank you.

ASSEMBLYMAN McKEON: I have just very few questions, but I know the Senator was anxious to follow up. And I'm not certain if the Senator or the Assemblywoman have questions.

SENATOR GORDON: I know Senator Weinberg -- Senator Weinberg had some questions for Ms. Prato.

ASSEMBLYMAN McKEON: Yes.

SENATOR WEINBERG: When was the-- Well, while the Police Chief is still here -- when was the settlement reached in that case?

CHIEF TRUCILLO: I'm not-- That's again, Senator, before my tenure.

SENATOR WEINBERG: I thought that was 2012.

CHIEF TRUCILLO: And this is-- I'm not sure of--

SENATOR WEINBERG: The lawsuit might have predated you; but the settlement, I think, is well into your tenure. I think I'm correct about that.

CHIEF TRUCILLO: And I'm sure you--

SENATOR WEINBERG: Can anybody--

CHIEF TRUCILLO: --may be, but I don't feel I have--

SENATOR WEINBERG: Well, if you found out about a several million dollar settlement involving the people who served under you, even though you weren't there when the lawsuit was instituted, you don't recall--

CHIEF TRUCILLO: I don't recall--

SENATOR WEINBERG: --having some reaction?

CHIEF TRUCILLO: --the exact-- I remember the settlement. I was more focused on my mission, which was correcting conditions that led to that settlement.

SENATOR WEINBERG: Well, okay; then you were-- That's my point.

CHIEF TRUCILLO: Yes.

SENATOR WEINBERG: So if you -- then you were somewhat involved -- involved in terms of the corrective action.

CHIEF TRUCILLO: I was involved in corrective action; yes.

SENATOR WEINBERG: Okay, because--

CHIEF TRUCILLO: But not involved--

SENATOR WEINBERG: --you kind of made it sound like you didn't know anything about it.

CHIEF TRUCILLO: Not involved necessarily in terms of that settlement.

SENATOR WEINBERG: Okay; thank you.

Yes; and now back to the HR.

But while we're making the seat switch again (laughter) -- Mr. Santoro, what was your title before you became Executive Director?

MR. SANTORO: I was Assistant Executive Director of Capital Planning and Programs.

SENATOR WEINBERG: And Mr. Wyckoff, what's your title now?

MR. WYCKOFF: I'm Chief of Government and External Affairs.

SENATOR WEINBERG: Did you carry the *Chief of Staff* title at some point?

MR. WYCKOFF: I did.

SENATOR WEINBERG: Until--?

MR. WYCKOFF: Until early June.

SENATOR WEINBERG: Until what?

MR. WYCKOFF: Early June.

SENATOR WEINBERG: Of this year?

MR. WYCKOFF: Of this year.

SENATOR WEINBERG: So your title was changed recently.

MR. WYCKOFF: Yes. When Mr. Santoro came on, in addition to my then-current position of Chief of Government and External Affairs, he asked me to serve also as his Chief of Staff, which I did until June.

SENATOR WEINBERG: Okay.

And my first question is -- back to Mr. Santoro -- who is responsible for fulfilling the subpoena requests for these job descriptions and résumés? Who in your organization?

MR. SANTORO: I don't know if there's one individual, but the DAGs are looking -- are involved in this as well -- fulfilling subpoenas.

SENATOR WEINBERG: As the HR Director, were you responsible, in any way, for gathering job titles or résumés?

MR. SANTORO: I believe-- Oh, you're here; okay. Go ahead.
(laughter)

MS. PRATO: I was asked to pull job résumés from recruitment files and from employee files.

SENATOR WEINBERG: Okay. And job titles -- aren't you the one who would be keeping the job descriptions of various -- particularly senior management positions?

MS. PRATO: Yes, ma'am.

SENATOR WEINBERG: Okay; well, the job description of, for instance, the Chief of Policy and Planning -- you testified-- I'm not sure what you said a little earlier in terms of that specific job description. Would you not be responsible for that job description and supplying it, in terms of people asking for it?

MS. PRATO: Yes, there is -- my understanding -- a draft that was never finalized into the job description format that we would have supplied.

SENATOR WEINBERG: And how does a job description get finalized?

MS. PRATO: It goes through our Compensation Classification Unit; and they work with the supervisor of the position to make sure the accountabilities are accurate, and then it is finalized.

SENATOR WEINBERG: Do all those people report to you?

MS. PRATO: Compensation and Classification does.

SENATOR WEINBERG: So if a job description doesn't get finalized, do you have a certain amount of time that you call them and say, "Hey, what's going on here?"

MS. PRATO: No, there's no prescribed amount of time.

SENATOR WEINBERG: So then, what is the job description before it's finalized? A person who is in a job that is not yet been finalized

-- does that mean that they have no prescribed job responsibilities, officially?

MS. PRATO: No, it doesn't mean that. It means that it's a living document that changes, is revised; we're constantly revising job descriptions, employee qualifications, new accountabilities, eliminating accountabilities, shifting accountabilities. It's a fluid process.

SENATOR WEINBERG: And there's no time limit necessary to get a job description finalized.

Do you have the ability to finalize a job description? Is that your responsibility after this reporting bureaucracy does its work?

MS. PRATO: Yes, I would say I have the ultimate responsibility.

SENATOR WEINBERG: Okay. So that job description, along with, maybe, some others of the senior management, have never been finalized?

MS. PRATO: I know that one has not been finalized; I don't know of others. And perhaps it was an oversight if it was not included in the subpoena.

SENATOR WEINBERG: Okay. Are you aware of how many job descriptions and the kinds of titles that my two Assembly colleagues outlined were missing from this subpoena response? Are you aware that you were putting together these documents as a result of a subpoena?

MS. PRATO: Yes, and they went in tranches. So I'm not sure what may or may not have happened to them; but we will look at them and get them to you.

SENATOR WEINBERG: Well, again, let me accentuate to you -- repeat it again. These documents were requested as the result of a subpoena. And the fact that nobody seems to be aware of how these documents -- or those documents that are missing, I find a little surprising. As I said -- and let me quote our Co-Chair over there, "This Committee is not to be trifled with." You are sitting there, as the Human Relations (*sic*) Director for New Jersey Transit; that's a pretty big job. And you were asked to comply with a subpoena through, I'm assuming, the Attorney General's Office.

MS. PRATO: Yes, ma'am; I understand.

SENATOR WEINBERG: So you have a legal requirement to respond.

MS. PRATO: Yes.

SENATOR WEINBERG: Am I correct?

MS. PRATO: And I've been working with the DAG's Office as the clearinghouse, in terms of document transmission.

SENATOR WEINBERG: I'm sorry; can you repeat that?

MS. PRATO: I've been working with the DAG's Office as the clearinghouse for document transmission.

SENATOR WEINBERG: Well, you're more than a clearinghouse; you are responsible for final job descriptions.

MS. PRATO: I am.

SENATOR WEINBERG: And you're responsible for, I'm assuming, job applications, résumés -- to see if people are qualified for the job description and the job in which they are supposedly functioning?

MS. PRATO: Yes.

SENATOR WEINBERG: So you are more than a clearinghouse. You have direct responsibility for personnel at New Jersey Transit; direct responsibility, based upon what you just told us, for finalizing job descriptions.

MS. PRATO: Yes; and there might be a misunderstanding in the production of the documents. They were going from Human Resources to the DAGs as a clearinghouse. So perhaps, in that transmission, there was a ball dropped.

SENATOR WEINBERG: Yes, it sounds like a very large ball dropped.

Thank you.

SENATOR GORDON: I'd just like -- as long as we have Ms. Prato here, I have some questions I think are of an HR nature. And they relate to background checks.

We've been led to believe that there's -- there certainly isn't a surplus of engineers. And so I would think that it's important to try to expedite the certification of engineers to the extent that you can.

We understand, or we've been advised that, background checks for engineers can take nine months to complete. The background checks for New Jersey Transit police officers, we're told, can be completed in a matter of days. You use an outside vendor for the background checks for the engineers, I'm told.

First of all, is my information correct? And if so, I mean, how do you account for that? I mean--

MS. PRATO: It is incorrect. Our background checks usually take 10 to 12 days to return. They include an educational check and an

employment check. We have frontloaded that in the process, knowing that it does take some time, because they go back in time and check all areas where someone may have lived. So it depends on jurisdiction responses.

SENATOR GORDON: Okay.

MS. PRATO: We use Inquiries, an outside vendor, to perform these searches for us. I do not know of any background check that would ever take nine months.

SENATOR GORDON: Okay.

Also related: engineers. We have been advised that other agencies, like the MTA, have been successfully recruiting engineers away from New Jersey Transit. And if that's correct, one would think that you would need to increase the number of people who are in the training process for engineers. Can you tell us -- have you, in fact, been able to increase the number of people in the training stage for engineers?

MS. PRATO: So that's a two-fold question.

Training for engineers takes about 20 months to go from your hire date to the date that you're certified. So it's a long process. Human Resources, along with Rail Operations, identifies the viable candidates who go into the training program. For example, in January -- January 24, 2017 -- we put 17 employees -- new employees into the training program. Today, we have 11; they drop out for various reasons. One of the tasks that I've assigned to my team members is to understand the reasons why they're dropping out, what can we do to help them succeed, what are the success factors that lead to a successful candidate, what are some of the areas that we should be looking for, what are the core competencies that we should be screening for in the interview process -- so that we end up with 17 who go

in and 17 who come out. It's a tremendously complicated, technical position. There is a lot of memorization required; there's a lot of commitment required.

Not everybody is cut out to be a locomotive engineer. And so there are a lot of folks who you might experience when you interview who say, "That's no problem, I can do that, I can work long hours, I'll work weekends." And then as the process matures, they realize that this position isn't for them. What we're trying to do is build a better process; and we've worked tremendously hard in the last four weeks, with the manpower shortages, to identify a class to start on October 4 that will meet those requirements. We're working with the instructors on the Rail Operations side; we're working with the Human Resources Department on the human capital side.

SENATOR GORDON: Okay.

Just one other HR-related question; and I apologize if this has been touched on before.

Are all senior positions that are available posted and advertised?

MS. PRATO: No. Our policy calls for any position that is not a direct report to the Deputy Executive Director or the Executive Director to be posted. We changed that policy in November 2015. Prior to that, it was any position that was a Senior Director or above. So we tightened the policy and have more positions posted than we did previously.

SENATOR GORDON: So you have actually increased the number of positions that are posted.

MS. PRATO: Correct.

SENATOR GORDON: Okay.

Anyone else?

ASSEMBLYMAN McKEON: Yes, I--

SENATOR KEAN: Mr.--

ASSEMBLYMAN McKEON: Oh, go ahead, Senator. I'll defer to you.

SENATOR KEAN: Oh, I'm sorry. Thank you, Mr. Chairman; thank you, Mr. Chairman.

Two quick questions.

I think the first is -- one of the things that we've had testimony on here before, and a lot of concern from many of our constituents -- was the issue of engineers refusing service; therefore, that meant that they went in service, and they left; and all their constituents did not have -- or, the people who were supposed to ride the trains didn't have the opportunity to ride the trains because they were out of service.

Is there any work being done -- and the answer at that juncture -- the statement was that if it was within the collective bargaining agreement, they allowed those individuals to refuse service at certain times. Has it been given any thought-- Has any thought been given to changing, in the next time that collective bargaining comes up, that set of rules that has allowed for many of our constituents to be adversely impacted over the course of the summer?

MR. SANTORO: So I think that element of the contribution to cancelations -- I'm certain that the next round of negotiations, that will be spoken about as well. And as I may have said before, it's certainly a complex issue; that is one element of the rationale or the reasons why we

had to cancel trains. There are others as well that will be discussed, going forward, with the union negotiations in the future. I think that's still a year-and-a-half, maybe two years away.

But we will certainly be engaging the unions in discussions about how to ensure that the annulments and cancelations are set to a minimum. As I stated in my opening remarks -- with the change in the summer going into the fall, we anticipate having more locomotive engineers available to us. So I think the confluence of the summer ending, vacations being less than they would be in the summer-- So we're looking forward in the short term; and looking forward in the long term, we'll be having discussions with the unions as well.

SENATOR KEAN: It just seems to me that there are certain events, and I think they cause disruption you can't plan for. It seems to be a human deliberate action. Seems to be something that needs to be -- that works against their stated purpose in their contracts, should be acted upon.

MR. SANTORO: And that would be true -- that would clearly be true. But as I said, there are other related issues that we will be discussing with the unions in the near term and the long term.

SENATOR KEAN: The second issue I have -- and if I may, through you, Mr. Santoro -- the residency. If I could speak to the issue from the hiring, and the job descriptions, and-- Do you know of any other state that has a residency rule for State employees, university teaching professions?

MS. PRATO: I am not aware -- I haven't looked for any other states. I am aware in other county governments that I've worked for that they had residency requirements within those counties.

SENATOR KEAN: But it seems to me, for something like New Jersey Transit-- I think the whole policy is wrong-headed. But it seems to me-- Have you seen any instances where that has impacted -- people said, "Oh, I didn't know about the residency requirement. I can't apply for that job because I can't move my family, I can't do this." Have you ever seen that happen, or heard of that happening, from that perspective?

MS. PRATO: I've heard of employees who are unable to move in. They have a year from the date of hire to move into New Jersey. I've heard of employees who have had extenuating circumstances regarding their personal life, or perhaps a spouse, perhaps location where they can't.

We've worked with the New Jersey First Commission; and when we support a position for critical need -- and we've identified our Rail, and our Bus; and especially our Bus at our border facilities to Pennsylvania and New York, where it's very difficult for us to recruit from -- that we've asked for exemptions from the New Jersey First Act policy. And they have, gratefully, granted those.

SENATOR KEAN: Do you think there are people who chose not to apply because they read that in the job description and-- I mean, as reported, I mean, some of the testimony that has the opportunity to be very public in those Commissions, is very personal in some of the reporting that I've read in the *Ledger* and other places. And it seems to me that some of these individuals may not want to even apply for the opportunity because they have a spouse who works across the river, or they have a variety of other things going on in their lives. I mean, you could be losing valuable -- potential valuable employees.

MS. PRATO: So the answer is, I don't know. But what I do know is that we change the posting for positions that we've identified as a critical need -- that now state, "New Jersey Transit has a residency requirement. New Jersey Transit would support a request for exemption, based on critical need." So that we're signaling to other perspective candidates that your residency would be something that we would support a letter in front of the Commission on why we need that skill set.

SENATOR KEAN: Thank you.

Thank you.

SENATOR GORDON: Senator, you know, I happen to share your concerns about these residency requirements. And as I mentioned -- I think there's going to be some significant legislation emerging from this process. I mean, one of the things that we ought to consider is whether New Jersey Transit should be carved out of some of these residency requirements, given the skill requirements -- the very specialized skill requirements of some of these positions. And perhaps we can work on that.

I know Senator Weinberg has one final question, and then we're going to--

SENATOR WEINBERG: Maybe a couple of final questions.

ASSEMBLYMAN McKEON: No; I'm just-- I'll just sit here; no problem.

SENATOR GORDON: You're billing, aren't you? (laughter)

ASSEMBLYMAN McKEON: Yes. (laughter)

SENATOR GORDON: Senator Weinberg.

SENATOR KEAN: He has to get to the beach.

ASSEMBLYMAN McKEON: That's true. Senator Kean's family is waiting for him in Bay Head; would you move this along here?
(laughter)

SENATOR KEAN: No, your family.

SENATOR WEINBERG: You're going to make me feel really badly; but not badly enough not to ask.

Since you finalize the job descriptions -- first of all, are they posted before they're necessarily finalized? Do you post non-finalized job descriptions?

MS. PRATO: In advertising a vacancy?

SENATOR WEINBERG: Yes.

MS. PRATO: In general, I would say "no;" but I don't know that, perhaps, has been a draft that was posted to get up in front of candidates so that we could move it along with some speed.

SENATOR WEINBERG: And if the job description has not been finalized, how do you know what the pay scale should be?

MS. PRATO: So in the particular job description--

SENATOR WEINBERG: Well, I mean--

MS. PRATO: --you're asking--

SENATOR WEINBERG: --we were talking about one job description -- but I suspect there are others -- with the Director of Policy and Planning. That job has been functioning, and the person has been functioning in it, I would say for two, three, four years?

MS. PRATO: Two years; I think we started on the same day.

SENATOR WEINBERG: Okay, so--

MS. PRATO: It might have been two years.

SENATOR WEINBERG: And during all that length of time, there has been no attempt or-- Somehow you haven't been able to fulfill the finalizing of that job description?

MS. PRATO: That's correct.

SENATOR WEINBERG: Does the person who is functioning in it know what his job description is?

MS. PRATO: Yes. Well, he knows what his job duties and accountabilities are. His supervisor would be watching all of the expectations, in terms of goals and work product.

SENATOR WEINBERG: So there is accountability and goals, even if the job description is not finalized?

MS. PRATO: Yes; and as I mentioned before--

SENATOR WEINBERG: Well, was there a difference in the subpoena request -- finalized job descriptions versus whatever these other job descriptions are? Do we know the answer to that? (no response) You don't think so; okay.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike) It's not identical, but it was a very similar--

SENATOR WEINBERG: I'm sorry?

ASSEMBLYMAN McKEON: It's not identical.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike) It's not word-for-word identical, but very similar.

SENATOR KEAN: Can we have that--

ASSEMBLYMAN McKEON: Yes; it's not identical, but very similar, per counsel.

SENATOR WEINBERG: This subpoena-- I'm sorry, I don't understand that. What I want to know is, did our subpoena somehow differentiate between finalized job descriptions and job descriptions that are not finalized?

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
No, it did not.

SENATOR WEINBERG: Okay; all right.

Thank you. That was easier. (laughter)

So in your mind, there should have been no distinction in supplying this information. Is that correct?

MS. PRATO: No; I supplied our finalized job descriptions. I'm happy to supply the draft.

SENATOR WEINBERG: So in your mind, you were not-- In answering this subpoena, a non-finalized job description was not included. Is that correct?

MS. PRATO: So I have a library of job descriptions. And we went through, and we-- All finalized job descriptions are in a library, and we went through and we printed out the ones that were final.

SENATOR WEINBERG: So if it's not finalized, it's not in the library? I'll ask the question in another way. Is that right?

MS. PRATO: Yes, that's correct.

SENATOR WEINBERG: So if it's not in the library, you didn't send it, you didn't respond.

MS. PRATO: Correct.

SENATOR WEINBERG: Thank you.

ASSEMBLYMAN McKEON: I'm good. (laughter)

SENATOR GORDON: You're on.

ASSEMBLYMAN McKEON: Thanks; I promise we'll go quick, as long as you say just what I want you to. (laughter)

MS. PRATO: All right.

ASSEMBLYMAN McKEON: Just a couple of areas; and it really is for Ms. Prato.

I was reviewing your résumé; and I note that in 2006 to 2012, you worked at the Rochester-Genesee Regional Transportation Authority.

MS. PRATO: I did, from 2005 to 2012.

ASSEMBLYMAN McKEON: Okay. And from 2005 to 2010, Jackie Halldow worked there as well, correct?

MS. PRATO: Correct.

ASSEMBLYMAN McKEON: She was a friend, an acquaintance of yours?

MS. PRATO: She worked as the Vice President of Communications.

ASSEMBLYMAN McKEON: And that's the same Ms. Halldow who was placed by the Christie Administration at NJ Transit for six years; went and served the Christie Administration as Deputy Chief of Staff for 13 months -- even though that's not on her résumé--

SENATOR GORDON: She worked in the Governor's Office.

ASSEMBLYMAN McKEON: In the Governor's Office, yes. And then came back and took Mr. Wyckoff's position -- that one; right?

MS. PRATO: Ms. Halldow was the Chief of Staff, went to the Governor's Office, and was rehired as the Chief of Staff.

ASSEMBLYMAN McKEON: Okay. I just was kind of making the connections.

And speaking of which, I was reviewing Ms. Baker's résumé, who was the -- who is now the Chief Compliance Officer. And I note that she was the Attorney General -- the Assistant AG and then the Deputy AG, promoted for -- from 2012 to just recently -- who was assigned to NJ Transit. So she's basically, principally, the one who is making all these litigation decisions, right? And she's now the Chief Compliance Officer. I just wanted to make sure I understood what her position was.

MS. PRATO: She is now the Chief Compliance Officer, and she was with the Deputy Attorney General's Office; yes. And she was--

ASSEMBLYMAN McKEON: She was the one overseeing the litigation we're all talking about, from 2012 forward. Okay.

Have you ever rewritten a job posting to match an educational background of an individual?

MS. PRATO: Yes.

ASSEMBLYMAN McKEON: You have. And was that the case relative to our recent hire of a CFO, Ms. J. Patel?

MS. PRATO: No.

ASSEMBLYMAN McKEON: Well, is it not a fact that Ms. J. Patel, who was with the Christie Administration in the Treasurer's Office, when hired as CFO -- the posting had been that a CPA was required, and then it was changed to indicate that CPA was just preferred.

MS. PRATO: No--

ASSEMBLYMAN McKEON: That's not the case?

MS. PRATO: --that is not the case. That position was originally posted when Kathleen Sharman left the position; Warren Hersch was acting in the position. Kathleen Sharman had left the position. It was originally posted then, with a CPA. And then the determination was made by the Executive Director the CPA was not required. And then, after that, Michael Lihvarcik was hired; and Mike, since, left our employ.

ASSEMBLYMAN McKEON: Okay; so it was the Executive Director's position that a CPA wasn't essential for that position, notwithstanding that the person previously there had it, and it was posted that way.

MS. PRATO: Correct.

ASSEMBLYMAN McKEON: Okay; all right.

I'm reviewing a letter that -- signed by you-- If this was a court, I'd come up and show it to you and make sure that's your signature. I presume that that's the case; it's on New Jersey Transit letterhead, dated August 21, 2017. It references a litigation hold of August 6; but I assume that that was just a typo, as our subpoena wasn't even issued until August 11. But the typo head-- This was where Mr. Baretta was terminated for the failure to bring his computer to NJ Transit in a timely way -- by August 18. That letter -- is that accurately a depiction of a letter that you signed and sent?

MS. PRATO: I believe that's the letter I signed.

ASSEMBLYMAN McKEON: Is there anything on this letter relative to automobile policy violation? I think that's a "yes" or "no."

MS. PRATO: On the letter?

ASSEMBLYMAN McKEON: Yes.

MS. PRATO: No, I don't believe so.

ASSEMBLYMAN McKEON: Okay. It would be a convenient way to get a *gotcha-guy* is to, maybe, have somebody chase him around and see if he pulled into a store, I would imagine.

How many vehicles are there at New Jersey Transit?

SENATOR GORDON: Besides the buses.

MS. PRATO: I don't--

ASSEMBLYMAN McKEON: Meaning people who -- assigned to -- people are allowed to take home, or to use during business hours. No, let's say, just people allowed to take home.

MS. PRATO: I believe the number is 111.

ASSEMBLYMAN McKEON: All right. And is there a policy in place where we have people follow people like that at home?

MS. PRATO: All vehicles are equipped with GPS locating systems.

ASSEMBLYMAN McKEON: Okay; all right. Fair enough.

And if we were to ask for that GPS data on all 100 vehicles, we'd be able to track who, if anyone, diverted from the path directly to their work to home, I would presume; beyond, presumably, Mr. Baretta, relative to what was stated earlier?

MS. PRATO: Yes, but I don't know the retention of-- That's not under my purview.

ASSEMBLYMAN McKEON: Okay; fair enough.

I have no further questions for you. I just -- I think the Chair and I are ready to wrap it up, and I do have some comments to make, and I know you do as well.

SENATOR GORDON: I actually do not have any extensive comments; I have no comments, really, to make as closing remarks. So let me just defer to you, Assemblyman.

ASSEMBLYMAN McKEON: All right.

Well, I appreciate that; and I guess, you know-- And I don't know -- do any of our colleagues have any comments they want to end up with before I go on and on? (no response)

And it won't be on and on again, I promise you; it's late in the day, and it's the summer on top of it, and a Friday, to further accentuate everybody's patience.

But I have to say, relative to what we went through, from beginning to end, regarding the tenure of the individual who was hired to be Chief Compliance Officer, who was going to straighten out all the issues that are well-documented. And each and every point that was made -- to come back and address it as if, "Well, he was using his car for private reasons; that's why we got rid of him." Is that the best you got, relative to everything we went through, relative to all the memorandums that chronicled all the issues that included basic safety? I just think that's abhorrent.

I also note that we were talking about patronage today. And if that's not crystal clear -- as we were trying to tease out beyond what are our own individual investigation brought forward; beyond what the whistleblowers brought to all of our attention -- again, it's just abundantly clear that that needs to be changed. That has to be a part of the solution.

Look what we know -- and, you know, I guess Mr. Drewniak is the low-hanging fruit, because of his prominent role in the whole Bridgegate

circumstance; and because of the fact that when he came in as the Governor's spokesman in 2010, he talked about, "Ending the patronage hiring that typified the past." Quote, unquote, from Mr. Drewniak, relative specifically to NJ Transit. And yet, without going through his entire résumé, by 2015 in April, when they needed somewhere to park him, all of a sudden someone with no transit experience took a job that was the third-highest compensated individual in the entire organization.

In court -- in Federal court, Mr. Drewniak testified he was hired based on a position that was created for him; but he didn't know why. That's under oath. I ask any of us: why?

From the résumés we did get, we know that one individual at New Jersey Transit-- And looking at individuals earning anywhere between \$170,000 and \$175,000, we know one of them was a Christie aid who was involved in the surreptitious -- whatever the word is -- hiding while he was videotaping the head of NJEA during a very contentious time. And later, working at the Port Authority and actually drafting a memo to you, Senator Weinberg, as to your inquiries to Commissioner Schubert, about the George Washington Bridge closings. And a wise-guy response, to boot.

SENATOR WEINBERG: What a surprise. (laughter)

ASSEMBLYMAN McKEON: Three hired were on the Bridgegate witness list; 4 out of 10 were questioned in the infamous Gibson-Dunn report; 2 were titled Senior Compliance Officers when compliance, as we know, is a major part of what the issues are to be addressed; 2 are from the Patton Boggs law firm, which is the lawyers who the Governor used, relative to supporting him through Bridgegate.

So please, I'd asked that the Executive Director -- when we last talked about this, hoping to gather more information if we had responsive subpoenas -- the Committee needs to know what tools you need so that this, or any future Governor, is not in a position to interfere with NJ Transit's riders -- as the State deserves no less.

And my answer, quite frankly, is an Administration with a moral compass that's going to do the right thing. Hopefully, whoever our new Governor is, will do so.

Thank you.

SENATOR GORDON: Thank you.

Any other member of the Committee with any comments?

SENATOR WEINBERG: Nobody's going to follow that.

SENATOR GORDON: Yes, I--

I want to thank our witnesses today.

And with that, I will adjourn the meeting.

Thank you.

(MEETING CONCLUDED)